As filed with the U.S. Securities and Exchange Commission on November 25, 2024

File No. [*]

# UNITED STATES
# SECURITIES AND EXCHANGE COMMISSION
**Washington, D.C. 20549**

# Form 10

**GENERAL FORM FOR REGISTRATION OF SECURITIES**
**PURSUANT TO SECTION 12(b) OR (g) OF**
**THE SECURITIES EXCHANGE ACT OF 1934**

# Sandisk Corporation
**(Exact name of registrant as specified in its charter)**

| **Delaware** | **99-1508671** |
|---|---|
| **(State or other jurisdiction of incorporation or organization)** | **(I.R.S. Employer Identification No.)** |

**951 Sandisk Drive**
**Milpitas, California 95035**
**(Address of principal executive offices)**

**Registrant's telephone number, including area code:**
**(408) 801-1000**

**Securities to be registered pursuant to Section 12(b) of the Exchange Act:**

| **Title of each class to be so registered** | **Name of each exchange on which each class is to be registered** |
|---|---|
| **Common Stock, par value $0.01 per share** | **The Nasdaq Stock Market LLC (Nasdaq Global Select Market)** |

**Securities to be registered pursuant to Section 12(g) of the Exchange Act: None**

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, anon-accelerated filer, a smaller reporting company or an emerging growth company. See definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act:

| | | | |
|---|---|---|---|
| Large accelerated filer | ☐ | Accelerated filer | ☐ |
| Non-accelerated filer | ☒ | Smaller reporting company | ☐ |
| Emerging growth company | ☐ | | |

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

**Sandisk Corporation**

**INFORMATION REQUIRED IN REGISTRATION STATEMENT**
**CROSS-REFERENCE SHEET BETWEEN INFORMATION STATEMENT AND ITEMS OF FORM 10**

Certain information required to be included in this Form 10 is incorporated by reference to specifically identified portions of the body of the information statement filed herewith as Exhibit 99.1. None of the information contained in the information statement shall be incorporated by reference herein or deemed to be a part hereof unless such information is specifically incorporated by reference.

**Item 1. Business.**

The information required by this item is contained under the sections of the information statement entitled "Information Statement Summary," "Summary of the Separation and Distribution," "Risk Factors," "Forward-Looking Statements," "The Separation and Distribution," "Business," "Management's Discussion and Analysis of Financial Condition and Results of Operations," "Certain Relationships and Related Transactions" and "Where You Can Find More Information." Those sections are incorporated herein by reference.

**Item 1A. Risk Factors.**

The information required by this item is contained under the sections of the information statement entitled "Information Statement Summary," "Risk Factors" and "Forward-Looking Statements." Those sections are incorporated herein by reference.

**Item 2. Financial Information.**

The information required by this item is contained under the sections of the information statement entitled "Summary of Historical and Unaudited Pro Forma Condensed Combined Financial Data," "Risk Factors," "Capitalization," "Unaudited Pro Forma Condensed Combined Financial Information," "Notes to Unaudited Pro Forma Condensed Combined Financial Information," "Management's Discussion and Analysis of Financial Condition and Results of Operations" and "Index to Combined Financial Statements" (and the financial statements and related notes referenced therein). Those sections are incorporated herein by reference.

**Item 3. Properties.**

The information required by this item is contained under the section of the information statement entitled "Business—Properties." That section is incorporated herein by reference.

**Item 4. Security Ownership of Certain Beneficial Owners and Management.**

The information required by this item is contained under the section of the information statement entitled "Security Ownership of Certain Beneficial Owners and Management." That section is incorporated herein by reference.

**Item 5. Directors and Executive Officers.**

The information required by this item is contained under the section of the information statement entitled "Management." That section is incorporated herein by reference.

**Item 6. Executive Compensation.**

The information required by this item is contained under the sections of the information statement entitled "Compensation Discussion and Analysis," "Director Compensation," "Executive Compensation" and "Management—Compensation Committee Interlocks and Insider Participation." Those sections are incorporated herein by reference.

**Item 7. Certain Relationships and Related Transactions, and Director Independence.**

The information required by this item is contained under the sections of the information statement entitled "Summary of the Separation and Distribution," "Risk Factors—Risks Related to the Spin-Off," "Management" and "Certain Relationships and Related Transactions." Those sections are incorporated herein by reference.

**Item 8. Legal Proceedings.**

The information required by this item is contained under the sections of the information statement entitled "Business—Legal Proceedings" and "Notes to Unaudited Pro Forma Condensed Combined Financial Information—Note 14. Legal Proceedings." Those sections are incorporated herein by reference.

**Item 9. Market Price of and Dividends on the Registrant's Common Equity and Related Stockholder Matters.**

The information required by this item is contained under the sections of the information statement entitled "The Separation and Distribution," "Dividend Policy," "Security Ownership of Certain Beneficial Owners and Management," and "Description of Capital Stock." Those sections are incorporated herein by reference.

**Item 10. Recent Sales of Unregistered Securities.**

The information required by this item is contained under the section of the information statement entitled "Description of Capital Stock—Sale of Unregistered Securities." That section is incorporated herein by reference.

**Item 11. Description of Registrant's Securities to be Registered.**

The information required by this item is contained under the sections of the information statement entitled "Summary of the Separation and Distribution," "The Separation and Distribution," "Dividend Policy" and "Description of Capital Stock." Those sections are incorporated herein by reference.

**Item 12. Indemnification of Directors and Officers.**

The information required by this item is contained under the section of the information statement entitled "Description of Capital Stock—Limitations on Director and Officer Liability." That section is incorporated herein by reference.

**Item 13. Financial Statements and Supplementary Data.**

The information required by this item is contained under the sections of the information statement entitled "Summary of Historical and Unaudited Pro Forma Condensed Combined Financial Data," "Unaudited Pro Forma Condensed Combined Financial Information," "Notes to Unaudited Pro Forma Condensed Combined Financial Information" and "Index to Combined Financial Statements" (and the financial statements and related notes referenced therein). Those sections are incorporated herein by reference.

**Item 14. Changes in and Disagreements with Accountants on Accounting and Financial Disclosure.**

Not applicable.

**Item 15. Financial Statements and Exhibits.**

*(a) Financial Statements*

The information required by this item is contained under the sections of the information statement entitled "Summary of Historical and Unaudited Pro Forma Condensed Combined Financial Data," "Unaudited Pro Forma Condensed Combined Financial Information," "Notes to Unaudited Pro Forma Condensed Combined Financial Information" and "Index to Combined Financial Statements" (and the financial statements and related notes referenced therein). Those sections are incorporated herein by reference.

*(b) Exhibits*

See below.

The following documents are filed as exhibits hereto:

| Exhibit Number | Exhibit Description |
|---|---|
| 2.1+ | Form of Separation and Distribution Agreement, by and between Western Digital Corporation and the Registrant |
| 3.1+ | Form of Articles of Incorporation of the Registrant |
| 3.2+ | Form of Bylaws of the Registrant |
| 10.1+ | Form of Transition Services Agreement, by and between Western Digital Corporation and the Registrant |
| 10.2+ | Form of Tax Matters Agreement, by and between Western Digital Corporation and the Registrant |
| 10.3+ | Form of Employee Matters Agreement, by and between Western Digital Corporation and the Registrant |
| 10.4+ | Form of Intellectual Property Cross-License Agreement, by and between Western Digital Corporation and the Registrant |
| 10.5+ | Form of Transitional Trademark License Agreement, by and between Western Digital Corporation and the Registrant |
| 10.6+ | Form of Stockholder and Registration Rights Agreement |
| 10.7##+ | Flash Alliance, Master Agreement dated as of July 7, 2006, by and among SanDisk Corporation, Toshiba Corporation and SanDisk (Ireland) Limited |
| 10.8##+ | Operating Agreement of Flash Alliance, Ltd., dated as of July 7, 2006, by and between Toshiba Corporation and SanDisk (Ireland) Limited |
| 10.9##+ | Joint Venture Restructure Agreement, dated as of January 29, 2009, by and among SanDisk Corporation, SanDisk (Ireland) Limited, SanDisk (Cayman) Limited, Toshiba Corporation, Flash Partners Limited and Flash Alliance Limited |
| 10.10##+ | New Y2 Facility Agreement, dated October 20, 2015, by and among SanDisk Corporation, SanDisk (Ireland) Limited, SanDisk (Cayman) Limited, SanDisk Flash B.V., Toshiba Corporation, Flash Partners Limited, Flash Alliance Limited and Flash Forward Limited |

| Exhibit Number | Exhibit Description |
|---|---|
| 10.11##+ | FAL Commitment and Extension Agreement, dated as of December 12, 2017, by and among Western Digital Corporation, SanDisk LLC, SanDisk (Ireland) Limited and Toshiba Memory Corporation |
| 10.12##+ | Y6 Facility Agreement, dated as of December 12, 2017, by and among Western Digital Corporation, SanDisk LLC, SanDisk (Cayman) Limited, SanDisk (Ireland) Limited, SanDisk Flash B.V., Flash Partners, Ltd., Flash Alliance, Ltd., Flash Forward, Ltd. and Toshiba Memory Corporation |
| 10.13##+ | K1 Facility Agreement, dated as of May 15, 2019, by and among Western Digital, SanDisk LLC, SanDisk (Cayman) Limited, SanDisk (Ireland) Limited, SanDisk Flash B.V., Flash Partners, Ltd., Flash Alliance, Ltd., Flash Forward Ltd., Toshiba Memory Corporation and Toshiba Memory Corporation Iwate |
| 10.14##+ | Confidential Settlement and Mutual Release Agreement, dated as of December 12, 2017, by and among Western Digital Corporation, SanDisk LLC, SanDisk (Cayman) Limited, SanDisk (Ireland) Limited, SanDisk Flash B.V., Toshiba Corporation and Toshiba Memory Corporation |
| 10.15##+ | Flash Forward Master Agreement, dated as of July 13, 2010, entered into by and among, on one side, Toshiba Corporation and, on the other side, SanDisk Corporation, and SanDisk Flash B.V. |
| 10.16##+ | Operating Agreement of Flash Forward, Ltd, dated as of March 1, 2011, between Toshiba Corporation and SanDisk Flash B.V. |
| 10.17##+ | FFL Commitment and Extension Agreement, dated as of December 12, 2017, by and among Toshiba Memory Corporation, Western Digital Corporation, SanDisk LLC and SanDisk Flash B.V. |
| 10.18##+ | FFL Second Commitment and Extension Agreement, dated as of May 15, 2019, by and among Toshiba Memory Corporation, Toshiba Memory Iwate Corporation, Western Digital Corporation, SanDisk LLC, SanDisk (Cayman) Limited, SanDisk (Ireland) Limited, SanDisk Flash B.V., Flash Partners, Ltd., Flash Alliance, Ltd., and Flash Forward, Ltd. |
| 10.19##+ | Flash Partners Master Agreement, dated as of September 10, 2004, by and among Toshiba Corporation, SanDisk Corporation, and SanDisk International Limited. |
| 10.20##+ | Operating Agreement of Flash Partners Ltd., dated as of September 10, 2004, by and between Toshiba Corporation and SanDisk International Limited |
| 10.21##+ | FPL Commitment and Extension Agreement, dated as of October 20, 2015, by and among Toshiba Corporation, SanDisk Corporation and SanDisk (Cayman) Limited |
| 10.22##+ | K2 PH1 Facility Agreement, dated as of June 27, 2024, by and among Kioxia Corporation, Kioxia Iwate Corporation, Western Digital Corporation, SanDisk LLC, SanDisk (Cayman) Limited, SanDisk (Ireland) Limited, SanDisk Flash B.V., Flash Alliance, Ltd., and Flash Forward, Ltd. |
| 10.23##+ | BiCS License & Development Agreement, dated as of March 1, 2011, by and between Toshiba Corporation and SanDisk Corporation |
| 10.24##+ | Amended and Restated Joint Memory Development Agreement, dated as of June 27, 2024, by and between Kioxia Corporation and SanDisk LLC. |
| 10.25##+ | Amended and Restated Equity Purchase Agreement, dated as of September 12, 2024, by and between SanDisk China Limited and JCET Management Co., Ltd. |
| 10.26+ | Form of 2025 Long-Term Incentive Plan |
| 10.27+ | Form of Restricted Stock Unit Award Agreement - Vice President and Above (Applicable to New Grants Post-Spin-Off) |
| 10.28+ | Form of Performance Stock Unit Award Agreement (Applicable to New Grants Post-Spin-Off) |

| Exhibit Number | Exhibit Description |
|---|---|
| 10.29+ | Form of Assumed and Converted Fiscal 2022, 2023 & 2024 Restricted Stock Unit Award Agreement - VP and above |
| 10.30+ | Form of Assumed and Converted Fiscal 2025 Restricted Stock Unit Award Agreement - VP and above |
| 10.31+ | Form of Assumed and Converted Fiscal 2023 Performance Stock Unit Award Agreement |
| 10.32+ | Form of Assumed and Converted Fiscal 2024 Performance Stock Unit Award Agreement |
| 10.33+ | Form of Assumed and Converted Fiscal 2025 Performance Stock Unit Award Agreement |
| 10.34+ | Form of Non-Employee Director Restricted Stock Unit Program |
| 10.35+ | Form of Deferred Compensation Plan |
| 10.36+ | Form of 2025 Employee Stock Purchase Plan |
| 10.37+ | Form of Executive Severance Plan |
| 10.38+ | Form of Change in Control Severance Plan |
| 10.39+ | Form of Executive Short-Term Incentive Plan |
| 10.40+ | Offer Letter, dated as of July 1, 2024, to Luis Felipe Visoso Lomelin |
| 21.1+ | Subsidiaries of the Registrant |
| 99.1+ | Information Statement of the Registrant, preliminary and subject to completion, dated November 25, 2024 |
| 99.2* | Form of Notice of Internet Availability of Information Statement Materials |

* To be filed by amendment.
\+ Filed herewith.
## As permitted by Regulation S-K, Item 601(b)(10)(iv) of the Securities Exchange Act of 1934, as amended, certain confidential portions of this exhibit have been redacted from the publicly filed document.

**SIGNATURES**

Pursuant to the requirements of Section 12 of the Securities Exchange Act of 1934, the registrant has caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized.

Sandisk Corporation

By: /s/ David V. Goeckeler
Name: David V. Goeckeler
Title: Chief Executive Officer

Date: November 25, 2024

**FORM OF SEPARATION AND DISTRIBUTION AGREEMENT**

**by and between**

**WESTERN DIGITAL CORPORATION**

**and**

**SANDISK CORPORATION**

**dated as of**

**[●]**

**TABLE OF CONTENTS**

**Exhibits**

**SEPARATION AND DISTRIBUTION AGREEMENT**

**THIS SEPARATION AND DISTRIBUTION AGREEMENT** (this "**Agreement**") is entered into as of [●] by and between Western Digital Corporation, a Delaware corporation ("**WDC**"), and Sandisk Corporation, a Delaware corporation and wholly owned Subsidiary of WDC ("**Spinco**") (each, a "**Party**" and together, the "**Parties**"). Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms inSection 10.

**RECITALS**

**WHEREAS**, WDC, directly and indirectly through its wholly owned Subsidiaries, is engaged in the Flash Business;

**WHEREAS**, the Board of Directors of WDC (the "**WDC Board**") has determined that it is advisable and in the best interests of WDC and WDC's stockholders to separate the Flash Business from the other businesses of WDC (the "**Separation**") and to divest the Flash Business in the manner contemplated by this Agreement and the Ancillary Agreements;

**WHEREAS**, on the terms and subject to the conditions set forth herein, in order to effect such separation, WDC has undertaken the Internal Restructuring and, in connection therewith, will effect the Spinco Contribution and, in exchange therefor, Spinco shall (i) issue to WDC additional shares of Spinco Common Stock and (ii) pay the Spinco Dividend to WDC;

**WHEREAS**, following, and as a result of, the Internal Restructuring and the Spinco Contribution, it is intended that Spinco, through its wholly owned subsidiaries, operate and conduct the Flash Business on a standalone basis;

**WHEREAS**, on the terms and subject to the conditions set forth herein, following the completion of the Internal Restructuring, the Spinco Contribution and the payment of the Spinco Dividend, WDC shall own all of the issued and outstanding shares of Spinco Common Stock and shall effect the distribution of 80.1% of such outstanding shares of Spinco Common Stock to the holders of WDC Common Stock in accordance with Section 3.1 hereof (the "**Distribution**");

**WHEREAS**, following the Distribution, WDC shall retain 19.9% of the outstanding shares of Spinco Common Stock (the "**Retained Stock**") and within twelve (12) months following the Distribution Date effect one or more distributions of the Retained Stock (i) to holders of WDC stock as dividends or in exchange for outstanding shares of WDC stock (any such distribution, a "**Clean-Up Distribution**") and/or (ii) through one or more transfers of the Retained Stock to certain Persons (the "**Debt Exchange Parties**") in exchange for certain debt obligations of WDC (the "**Exchange Debt**") held by the Debt Exchange Parties as principals for their own account (any such distribution, a "**Debt Exchange**" and together with any Clean-Up Distribution, a "**Subsequent Distribution**");

**WHEREAS**, for U.S. federal income Tax purposes, (i) it is intended that the Spinco Contribution, taken together with the Distribution and any Subsequent Distribution, will qualify for non-recognition of gain and loss pursuant to Sections 355, 361 and 368(a)(1)(D) of the Code and (ii) this Agreement constitutes a "plan of reorganization" within the meaning of Section 368 of the Code and Treasury Regulation Section 1.368-2(g); and

**WHEREAS**, the Parties desire to set forth the principal arrangements among them regarding the foregoing transactions and to make certain covenants and agreements specified herein in connection therewith and to prescribe certain conditions relating thereto.

**NOW**, **THEREFORE**, in consideration of the foregoing and the representations, warranties, covenants and agreements contained herein, and intending to be legally bound hereby, the Parties agree as follows:

## 1. TRANSFER OF THE FLASH BUSINESS

**1.1 Transfer of Assets**. Except as provided in Section 1.8(b), at or prior to the Separation Time, WDC shall assign, transfer, convey and deliver ("**Convey**," and such a transaction, a "**Conveyance**") (and shall cause any applicable Subsidiary to Convey) to Spinco or one or more Spinco Subs in accordance with the Separation Plan attached hereto as Schedule 1.1 (the "**Separation Plan**") and the other terms and conditions of this Agreement, and Spinco shall accept from WDC, and shall cause any applicable Spinco Sub to accept, the Flash Assets (as defined below) and all of WDC's and its applicable Subsidiaries' respective direct or indirect right, title and interest in, to and under all Flash Assets (other than any Flash Assets that as of the Separation Time are already Assets of Spinco or a Spinco Sub, which Flash Assets shall continue to be Assets of Spinco or such Spinco Sub after the Separation Time and shall, at the Separation Time, be free and clear of all Liens (other than Permitted Liens)).

**1.2 Assumption of Liabilities**. At or prior to the Separation Time, (1) WDC shall Convey (or shall cause any applicable Subsidiary to Convey) to Spinco or one or more Spinco Subs, in accordance with the Separation Plan and the other terms and conditions of this Agreement, all of the Flash Liabilities (other than those Flash Liabilities that as of the Separation Time are already Liabilities of Spinco or a Spinco Sub, all of which, for purpose of clarity, shall continue to be Liabilities of Spinco or such Spinco Sub after the Separation Time), and (2) Spinco shall, or shall cause any applicable Spinco Sub(s), to assume, perform, satisfy, discharge and fulfill when due and, to the extent applicable, comply with on a timely basis, all Flash Liabilities, in accordance with their respective terms. As between members of the WDC Group, on the one hand, and members of the Spinco Group, on the other hand, following the Separation Time, the members of the Spinco Group, on a joint and several basis, will be solely responsible for all Flash Liabilities in accordance with their terms (without regard to any such terms that make or would make any member of the WDC Group in any manner liable therefor).

**1.3 Transfer of Excluded Assets; Excluded Liabilities**. Subject to Section 1.8(b), at or prior to the Separation Time: (i) WDC shall cause Spinco and any applicable Spinco Sub to Convey to WDC or an appropriately capitalized Subsidiary of WDC (as WDC may designate), in accordance with the Separation Plan and the other terms and conditions of this Agreement, any Excluded Assets that it owns, leases or has any right to use, and WDC shall accept from Spinco or such Spinco Sub, or shall cause any designated Subsidiary of WDC to accept, the Excluded Assets and all such respective right, title and interest in and to any and all of such Excluded Assets and (ii) WDC shall cause Spinco and any applicable Spinco Sub to Convey to WDC or an appropriately capitalized Subsidiary of WDC (as WDC may designate), in accordance with the Separation Plan and the other terms and conditions of this Agreement, any Excluded Liability for which Spinco or Spinco Sub is otherwise responsible, and WDC shall assume, perform, satisfy, discharge and fulfill when due, and to the extent applicable, comply with on a timely basis, or shall cause the designated Subsidiary of WDC to assume, perform, satisfy, discharge and fulfill when due, and to the extent applicable, comply with on a timely basis, any and all of such Excluded Liabilities in accordance with their respective terms. As between members of the WDC Group, on the one hand, and members of the Spinco Group, on the other hand, following the Separation Time, the members of the WDC Group, on a joint and several basis, will be solely responsible for all Excluded Liabilities in accordance with their terms (without regard to any such terms that make or would make any member of the Spinco Group in any manner liable therefor).

**1.4 Misallocated Transfers**. In the event that, at any time from and after the Separation Time, WDC or Spinco (or any member of the WDC Group or the Spinco Group, as applicable) discovers or is notified that it or one of its controlled Affiliates is the owner of, receives or otherwise comes to possess or benefit from any Asset (including the receipt of payments made pursuant to Contracts and proceeds from accounts receivable with respect to such Asset) or is liable for any Liability that is otherwise allocated to any Person that is a member of the other Group, as the case may be, pursuant to this Agreement or any Ancillary Agreement (except in the case of any deliberate acquisition of Assets or assumption of Liabilities from the other Party for value subsequent to the Separation Time), such Asset or Liability shall be deemed a Flash Asset, Excluded Asset, Flash Liability or Excluded Liability, as applicable, for all purposes hereunder, and such Party shall use commercially reasonable efforts to promptly Convey, or cause to be Conveyed, such Asset or Liability to the Person so entitled thereto (and the relevant Party shall cause such entitled Person to accept such Asset or assume, perform, satisfy, discharge and fulfill when due such Liability) for no further consideration other than set forth in this Agreement or such Ancillary Agreement. Prior to any such transfer, such Asset shall constitute a Deferred Asset and be held in accordance with Section 1.8(b).

**1.5 Flash Assets; Excluded Assets**.

(a) For purposes of this Agreement, "**Flash Assets**" shall mean all of WDC's and its Subsidiaries' respective right, title and interest in, to and under the following Assets existing as of immediately prior to the Separation Time:

(i) (A) Spinco Owned Real Property, as set forth on Schedule 1.5(a)(i)(A), and all rights and interests of WDC or its Subsidiaries with respect thereto; (B) the Spinco Leases, as set forth on Schedule 1.5(a)(i)(B), and all rights and interests of WDC or its Subsidiaries thereunder; and (C) any other owned or leased real property used or held for use primarily in the operation of the Flash Business (collectively, "**Spinco Real Property**");

(ii) all issued and outstanding capital stock of, or other equity or ownership interests in, the Subsidiaries of WDC contemplated to be owned (directly or indirectly) by Spinco immediately prior to the Separation Time pursuant to the Separation Plan and the Internal Restructuring (such Subsidiaries, the "**Spinco Subs**");

(iii) excluding Personnel IT Assets and Non-Personnel IT Assets, (A) all of the office equipment, furnishings, fixtures and other tangible assets and (B) all of the Tools, in each case, either (x) physically located in Spinco Real Property (other than any such assets that are exclusively related to, or exclusively used or held for use in, the non-Flash Business) or primarily related to, or primarily used or held for use in, the Flash Business, or (y) otherwise used, or held for use, primarily in the operation of the Flash Business and, in each case, including any leases primarily related thereto;

(iv) subject to Section 1.8, Permits granted to WDC or any of its Subsidiaries that are used, or held for use, primarily in the Flash Business (including any pending applications for such Permits) (the "**Flash Permits**" and to the extent such Flash Permits may be assigned, the "**Transferable Permits**");

(v) all rights to causes of action, lawsuits, judgments, claims (including, subject to Sections 6.4 and 6.5, third-party insurance claims under policies that are an Excluded Asset pursuant to Section 1.5(b)(vi)), counterclaims, demands or enforcement rights of any kind of WDC, its Affiliates, or any member of the Spinco Group or against a Person to the extent such causes of action, lawsuits, judgments, claims, counterclaims, demands or enforcement rights relate to the Flash Business, a Flash Asset or a Flash Liability, including all claims made as of the Separation Date;

(vi) all inventories of materials, parts, raw materials, packaging materials, supplies, work-in-process, goods in transit and finished goods and products that are used, or held for use, primarily in the Flash Business;

(vii) all Spinco IP and all right, title and interest therein, including all Ancillary IP Rights therein;

(viii) all Non-Personnel IT Assets set forth on Schedule 1.5(a)(viii) (the "**Spinco Non-Personnel IT**");

(ix) all Personnel IT Assets that are primarily used by any directors, officers, partners, managers, employees or agents of any member of the Spinco Group;

(x) excluding Personnel IT Assets, Non-Personnel IT Assets and Tools, all Technology (including Software and Source Code in Software) owned by or licensed to WDC or any of its Affiliates (including Spinco and the Spinco Subs) that is primarily used, or primarily held for use, for the research, development, design or manufacture of Flash Business Products;

(xi) all rights with respect to third-party warranties to the extent related to the Flash Assets;

(xii) (A) all Contracts (excluding Spinco Leases and IP Contracts) that are exclusively related to the Flash Business, (B) all IP Contracts (excluding Excluded IP Contracts) that are primarily used or held for use in the Flash Business, (C) all Contracts (or portion of a contract allocated to Spinco) resulting from a Shared Contract Transfer that is related to the Flash Business and (D) the rights, claims, benefits, and interests (whether presently known or unknown, contingent or otherwise) under any Contract included in sub-clause (A), (B) or (C) ((A), (B), (C) and (D), collectively, the "**Spinco Contracts**");

(xiii) subject to Section 5.3, (A) all business records primarily related to the Flash Assets or Flash Liabilities, including the corporate or limited liability company minute books and related stock records of the members of the Spinco Group, information and records used to demonstrate compliance with applicable Law and any other compliance records related to the Flash Business; (B) all of the separate financial records of the members of the Spinco Group or relating to the Flash Business (including any function shared with the non-Flash Business to the extent any of its revenue or costs are allocated to the Flash Business) that are not Tax Records and do not form part of the general ledger of WDC or any of its Affiliates (other than the members of the Spinco Group); *provided, however*, that for matters pertaining to the provision of Tax Records, the Tax Matters Agreement shall govern; (C) all other books, records, invoices, ledgers, files, documents, correspondence, lists, plats, drawings, photographs, product literature, equipment test records, advertising and promotional materials, distribution lists, customer lists, supplier lists, studies, reports, operating, production and other manuals, manufacturing and quality control records and procedures, research and development files, accounting and business books, records, files, documentation and materials, in all cases whether in paper, microfilm, microfiche, computer tape or disc, magnetic tape or any other form, to the extent primarily related to the Flash Business; and (D) prosecution records, including any correspondence with any applicable Governmental Authority, relating to, and any other records, documents or materials that are material to the prosecution or maintenance of, any Spinco IP, in each case, excluding any Intellectual Property Rights other than Spinco IP embodied therein (collectively, (A) through (D), excluding any Excluded Assets, the "**Spinco Books and Records**"); *provided, however*, that: (x) WDC shall be entitled to retain a copy of any and all Spinco Books and Records, which shall be subject to the provisions of Section 2 and deemed the Confidential Information of Spinco and subject to the provisions ofSection 6.6; (y) WDC may retain any materials in clauses (A) and (C) that are not reasonably practicable to identify and extract subject to the right of access pursuant to Section 5.1 which shall be deemed the Confidential Information of Spinco and subject to the provisions ofSection 6.6; and (z) WDC shall be entitled to redact any portion of the Spinco Books and Records to the extent such portion is unrelated to the Flash Business;

(xiv) the right to enforce the confidentiality, non-compete, non-solicit, or assignment provisions of any Shared Contracts (other than Spinco Contracts, which are covered by Section 1.5(a)(xii)) to the extent related to the Flash Business;

(xv) all accounts receivable or unbilled receivables of the Flash Business, including all accounts receivable and unbilled receivables of Spinco and the Spinco Subs;

(xvi) without duplication, any and all Assets reflected as an "asset" on the Flash Business Audited Financial Statements and any such Assets acquired by or for Spinco or any member of the Spinco Group subsequent to the date of such balance sheets which, had they been so acquired on or before such date and owned as of the applicable balance sheet date, would have been reflected on such balance sheet if prepared on a consistent basis, subject to any dispositions of any of such Assets subsequent to the date of such balance sheet made in the ordinary course of business, in all cases other than any such Assets under the line-item titled "Goodwill";

(xvii) the benefits of all prepaid expenses, including prepaid fees, prepaid leases and prepaid rentals, trade accounts and other accounts and notes receivable to the extent related to or held for use in the operation of the Flash Business and all customer deposits related to the provision of service by the Flash Business;

(xviii) all rights of the Spinco Group under this Agreement or any Ancillary Agreement and the certificates, instruments and Transfer Documents delivered in connection therewith;

(xix) all cash and cash equivalents in bank or other deposit accounts of Spinco or any member of the Spinco Group subject to Section 1.10 and Section 3.3(b);

(xx) all rights to insurance policies in the name of or otherwise held by any member of the Spinco Group;

(xxi) the Spinco Pre-Separation Privileged Materials and the rights in Shared Pre-Separation Privileged Materials as set forth in Section 5.3;

(xxii) all Assets allocated to any member of the Spinco Group under the Employee Matters Agreement; and

(xxiii) all other Assets owned or held by WDC or any of its Subsidiaries that are not of a type covered by the preceding clauses (i)-(xxii) above and that are primarily used or held for use in the Flash Business and are not Intellectual Property Rights or Excluded Assets.

(b) The Flash Assets shall not, in any event, include any of the following Assets (the "**Excluded Assets**"):

(i) all cash and cash equivalents, and bank or other deposit accounts, of WDC and its Affiliates (A) other than Spinco or any member of the Spinco Group subject to Section 1.10 and Section 3.3(b) and (B) excluding the Spinco Cash (taking into account the settlement of intercompany accounts in accordance with Section 1.7 and the cash reduction in accordance with Section 3.3(b));

(ii) all right, title or interest in, to or under (x) any Intellectual Property Rights included in the Excluded IP and (y) except the Spinco IP, any other Intellectual Property Rights owned by any member of the WDC Group, including, in each case, all Ancillary IP Rights therein;

(iii) all Non-Personnel IT Assets other than the Spinco Non-Personnel IT;

(iv) all Personnel IT Assets that are primarily used by any directors, officers, partners, managers, employees or agents of any member of the WDC Group;

(v) except for the Flash Assets identified in Section 1.5(a)(v), all rights to insurance policies or practices of WDC and its Affiliates (other than of Spinco and any member of the Spinco Group) (including any captive insurance policies, fronted insurance policies, surety bonds or corporate insurance policies or practices, or any form of self-insurance whatsoever), any refunds paid or payable in connection with the cancellation or discontinuance of any such policies or practices, and any claims made under such policies (subject to the provisions of Sections 6.4 and 6.5);

(vi) other than with respect to any insurance policies referred to in Section 1.5(a)(xx), all rights to causes of action, lawsuits, judgments, claims, counterclaims or demands of WDC, its Affiliates, or any member of the Spinco Group against a party to the extent that they do not relate to the Flash Assets, the Flash Business or the Flash Liabilities;

(vii) (A) all financial records that are not Tax Records and that form part of the general ledger of WDC or any of its Affiliates (other than the members of the Spinco Group), (B) any working papers of WDC's auditors, *provided, however*, that WDC shall provide the Spinco Group with access to such working papers in accordance with Section 5.1 and (C) subject to Section 5.3, the WDC Pre-Separation Privileged Materials and the Shared Pre-Separation Privileged Materials; *provided, however*, in each case, that Spinco and its Representatives shall in all events be entitled to copies of, and shall be entitled to use, any such books and records to the extent related to the Flash Business or the Flash Assets (including any books and records relied on by WDC to prepare the Registration Statement), in each case, to the extent such books and records are in WDC's possession (subject to Section 5.3). For matters pertaining to the retention or provision of Tax Records, the Tax Matters Agreement shall govern;

(viii) subject to Section 1.5(a)(xiii), all records relating to the negotiation and consummation of the Transactions and all records prepared in connection with the potential divestiture of all or a part of the Flash Business, including confidential communications with legal counsel representing WDC or its Affiliates and the right to assert any Privileges comprising WDC Pre-Separation Privileged Materials in accordance with Section 5.3;

(ix) subject to Section 1.8(c) with respect to any Shared Contract, any Contract other than the Spinco Contracts and the rights, claims, benefits and interests (whether presently known or unknown, contingent or otherwise) under any Contract other than the Spinco Contracts;

(x) all Permits of WDC or its Affiliates other than Flash Permits, subject to the rights of Spinco and obligations of the Parties set forth in Section 1.8;

(xi) all of the issued and outstanding capital stock of, or other equity interests in, the Subsidiaries of WDC other than Spinco and the Spinco Subs;

(xii) any and all Assets that are expressly contemplated by any Ancillary Agreement as Assets to be retained by or Conveyed to WDC or any other member of the WDC Group;

(xiii) any Assets allocated to any member of the WDC Group under the Employee Matters Agreement;

(xiv) any of the Assets listed on Schedule 1.5(b)(xiv);

(xv) excluding Personnel IT Assets and Non-Personnel IT Assets, (A) all of the office equipment, furnishings, fixtures and other tangible assets and (B) all of the Tools, in each case, that is both (x) not used, or that is not held for use, primarily in the operation of the Flash Business and (y) not physically located at the Spinco Real Property (or any such assets that are exclusively related to, or exclusively used or held for use in, the non-Flash Business) and, in each case, including any leases primarily related thereto;

(xvi) the IP Contracts listed on Schedule 1.5(b)(xvi) (the "**Excluded IP Contracts**");

(xvii) the right to enforce the confidentiality, non-compete, non-solicit, or assignment provisions of any Contract (other than any Spinco Contracts), to the extent not related to the Flash Business (it being understood that the Contracts containing such rights shall be allocated in accordance with Section 1.5(a)(xii) and Section 1.5(b)(ix) and to the extent such Contract is a Shared Contract); and

(xviii) other than any Flash Assets or any Asset specifically listed or described in Section 1.5(a) or the Schedules thereto, any and all Assets of WDC or its Subsidiaries that are used, or held for use, in the businesses of WDC.

(c) In the event of any inconsistency or conflict that may arise in the application or interpretation of the definitions of "Flash Assets" and "Excluded Assets," the explicit inclusion of an item on any Schedule referred to in either definition shall take priority over any textual provision of either definition that would otherwise operate to include or exclude such Asset from the applicable definition.

(d) Neither "Flash Assets" nor "Excluded Assets," shall include any Tax Attributes, Tax Records or any other Tax Assets, which shall be governed by the Tax Matters Agreement.

(e) The Parties acknowledge and agree that, except for such rights as are otherwise expressly provided in this Agreement or any Ancillary Agreements, none of Spinco or any of the Spinco Subs shall acquire or be permitted to retain any direct or indirect right, title or interest in any Excluded Assets through the Conveyance of all of the authorized and outstanding equity interests in the Spinco Subs and that if any of the Spinco Subs owns, leases or has the right to use any such Excluded Assets, such Excluded Assets shall be Conveyed to WDC as contemplated by Section 1.3.

**1.6 Flash Liabilities; Excluded Liabilities**.

(a) For the purposes of this Agreement, "**Flash Liabilities**" shall mean each of the following Liabilities, regardless of when and where such Liabilities arose or where, or against whom, such Liabilities are asserted or determined:

(i) all Liabilities that are expressly contemplated by this Agreement or any Ancillary Agreement (or any schedules hereto or thereto) as Liabilities to be retained, assumed or retired by Spinco or any other member of the Spinco Group under this Agreement or any of the Ancillary Agreements;

(ii) all Liabilities to the extent relating to:

(1) the conduct and operation of the Flash Business (other than any Disposed Flash Business), whether prior to, at or after the Separation Time (including any such Liability relating to, arising out of or resulting from any act or failure to act by any directors, officers, partners, managers, employees or agents of any member of the Spinco Group (whether or not such act or failure to act is or was within such Person's authority));

(2) the ownership, operation or use of any Flash Asset, whether prior to, at or after the Separation Time, but excluding any such Liabilities with respect to any business or entity owned or operated by the Flash Business or any member of the Spinco Group that has been divested or discontinued prior to the Separation Time (a "**Disposed Flash Business**") (including any real property owned or operated by such a Disposed Flash Business), notwithstanding that such Asset would have constituted a Flash Asset prior to such divestiture or discontinuance; or

(3) any warranty, product liability obligation or claim or similar obligation entered into, created or incurred in the course of business of the Flash Business (other than any Disposed Flash Business) with respect to its products or services, whether prior to, at or after the Separation Time;

(iii) all Liabilities (including for the avoidance of doubt all Liabilities under or related to any Environmental Laws, including for fines and penalties associated with violations of any Environmental Laws, and for the costs associated with any damage to or restoration of natural resources or any investigation and remediation of environmental media impacted by Hazardous Materials) directly relating to: (A)(1) the investigation or remediation of any Release of Hazardous Materials at, on, under or from any Spinco Real Property (excluding the Milpitas Sites), whether such Release occurred prior to, at or after the Separation Time, and claims for response costs, damages or restoration costs related to same; (2) any violation or alleged violation of Environmental Laws, whether prior to, at or after the Separation Time; (3) any loss of life or injury to Persons due to exposure to asbestos or other Hazardous Materials prior to, at or after the Separation Time; or (4) the off-site disposal, storage, transport, discharge or Release of Hazardous Materials prior to, at or after the Separation Time, in each of cases (A)(1), (A)(2), (A)(3) and (A)(4) to the extent relating to, arising out of, resulting from or otherwise in respect of the conduct or operation of the Flash Business or the ownership, operation or use of the Flash Assets (and, in each such case, for the avoidance of doubt, excluding to the extent relating to any Disposed Flash Business or any other Excluded Liabilities); or (B) the investigation or remediation of any Release of Hazardous Materials at, on, under or from the Milpitas Sites, and claims for response costs, damages or restoration costs related to same, with respect to the portion of any Releases occurring after September 5, 2023, to the extent relating to, arising out of, resulting from or otherwise are in respect of the conduct or operation of the Flash Business on after the effective date of said lease or tenancy;

(iv) all Liabilities relating to (A) the Spinco Contracts, (B) the portion of any Shared Contract allocated to a member of the Spinco Group (including without limitation whether replicated, fully assigned or partially assigned), or (C) any other Contract (i) that is or has been assigned to a member of the Spinco Group or (ii) the extent to which a member of the Spinco Group is or becomes a party thereto;

(v) subject to Section 1.8, all Liabilities to the extent relating to leases for the Flash Assets;

(vi) all customer deposits of the Flash Business, including all customer deposits of Spinco and the Spinco Subs;

(vii) accounts payable of the Flash Business, including all accounts payable of Spinco and the Spinco Subs;

(viii) all Liabilities allocated to any member of the Spinco Group under the Employee Matters Agreement;

(ix) all Liabilities allocated to Spinco under the Tax Matters Agreement;

(x) all Liabilities for (A) Indebtedness solely between or among members of the Spinco Group; (B) subject to Section 3.4, the capital leases and operating leases set forth on Schedule 1.6(a)(x) (collectively, the "**Transferred Leases**"); and (C) subject to Section 3.4, the Spinco Debt; and

(xi) fifty percent (50%) of the Shared Liabilities.

(b) The Flash Liabilities shall not, in any event, include any of the following Liabilities of WDC or its Subsidiaries (the "**Excluded Liabilities**"):

(i) without limitation of Section 1.6(b)(vii), all Liabilities (including for the avoidance of doubt all Liabilities under or related to any Environmental Laws, including for fines and penalties associated with violations of any Environmental Laws, and for the costs associated with any damage to or restoration of natural resources or any investigation and remediation of environmental media impacted by Hazardous Materials) directly relating to: (A)(1) the investigation or remediation of any Release of Hazardous Materials at, on, under or from any Spinco Real Property (excluding the Milpitas Sites), whether such Release occurred prior to, at or after the Separation Time, and claims for response costs, damages or restoration costs related to same; (2) any violation or alleged violation of Environmental Laws, whether prior to, at or after the Separation Time; (3) any loss of life or injury to Persons due to exposure to asbestos or other Hazardous Materials, whether prior to, at or after the Separation Time; or (4) the off-site disposal, storage, transport, discharge or Release of Hazardous Materials, whether prior to, at or after the Separation Time, in each of cases (A)(1), (A)(2), (A)(3) and (A)(4) to the extent relating to, arising out of, resulting from or otherwise in respect of: (w) the conduct or operation of the non-Flash Business; (x) the ownership, operation or use of the Excluded Assets; (y) any business, operations or activities of a member of the WDC Group (or any legal predecessor thereto or any current or former Affiliate thereof) not related to the Flash Business; or (z) any business or entity that is a Disposed Flash Business (including any real property owned or operated by such a Disposed Flash Business); (B) the investigation or remediation of any Release of Hazardous Materials at, on, under or from the Milpitas Sites, and claims for response costs, damages or restoration costs (1) related to Releases by any member of the WDC Group occurring prior to September 5, 2023 and (2) related to the portion of any Releases occurring on or after September 5, 2023, provided, in the case of clause (B)(2), to the extent said Releases relate to, arise out of, result from or otherwise are in respect of the conduct or operation of any member of the WDC Group not related to the Flash Business at the Milpitas Sites after September 5, 2023; or (C) the Real Property Transfer Obligations, for which WDC is responsible pursuant to Section 6.8;

(ii) Liabilities for Indebtedness of WDC or its Subsidiaries (other than (A) Indebtedness solely between or among members of the Spinco Group; (B) subject to Section 3.4, the Transferred Leases; and (C) subject to Section 3.4, the Spinco Debt);

(iii) costs or expenses (including any legal, investment banking or other advisory costs or expenses) incurred by or on behalf of any member of the Spinco Group or the WDC Group at or prior to the Distribution Date in connection with the Transactions;

(iv) all Liabilities allocated to any member of the WDC Group under the Employee Matters Agreement;

(v) all Liabilities allocated to WDC under the Tax Matters Agreement;

(vi) all agreements, obligations and Liabilities that are expressly contemplated by this Agreement or any Ancillary Agreement (or any schedules hereto or thereto) as Liabilities to be retained, assumed or retired by WDC or any other member of the WDC Group, including the costs, expenses and Liabilities referred to in Section 3.2(f);

(vii) all Liabilities to the extent relating to:

(1) the conduct and operation of any business (other than the Flash Business, but, for the avoidance of doubt, including any Disposed Flash Business) of the WDC Group, whether prior to, at or after the Separation Time (including any such Liability relating to, arising out of or resulting from any act or failure to act by any directors, officers, partners, managers, employees or agents of any member of the WDC Group (whether or not such act or failure to act is or was within such Person's authority));

(2) the ownership, operation or use of any Assets of the WDC Group (other than the Flash Assets) or any Excluded Asset, whether prior to, at or after the Separation Time;

(3) the ownership or operation of any Disposed Flash Business (including any real property owned or operated by such a Disposed Flash Business), notwithstanding that such Asset would have constituted a Flash Asset prior to such divestiture or discontinuance and any obligations under the definitive agreement(s) providing for the divestiture of any Disposed Flash Business; and

(4) any warranty, product liability obligation or claim or similar obligation entered into, created or incurred in the course of business of the WDC Group (other than the Flash Business) with respect to its products or services, whether prior to, at or after the Separation Time;

(viii) all Liabilities to the extent relating to the portion of any Shared Contract allocated to a member of the WDC Group or any other Contract (including without limitation whether replicated, fully assigned or partially assigned) that is assigned to a member of the WDC Group;

(ix) all customer deposits not related to the Flash Business, including all customer deposits of any member of the WDC Group;

(x) accounts payable not related to the Flash Business, including all accounts payable of any member of the WDC Group;

(xi) any of the Liabilities listed on Schedule 1.6(b)(xi); and

(xii) fifty percent (50%) of the Shared Liabilities.

(c) In the event of any inconsistency or conflict that may arise in the application or interpretation of the definitions of "Flash Liabilities" and "Excluded Liabilities," the explicit inclusion of an item on any Schedule referred to in either definition shall take priority over any textual provision of either definition that would otherwise operate to include or exclude such Liability from the applicable definition.

(d) The Parties acknowledge and agree that none of Spinco or any other member of the Spinco Group shall be required to assume or retain any Excluded Liabilities as a result of the Internal Restructuring, and that if any of the Spinco Subs is liable for any Excluded Liabilities, such Excluded Liabilities shall be assumed by WDC as contemplated by Section 1.3. Any Liability of any member of the WDC Group not included in any of the clauses of Section 1.6(a) shall be an Excluded Liability.

**1.7 Termination of Related Party Agreements; Settlement of Intercompany Accounts**.

(a) Except as set forth in Section 1.8(c), Spinco, on behalf of itself and each other member of the Spinco Group, on the one hand, and WDC, on behalf of itself and each other member of the WDC Group, on the other hand, hereby terminate any and all Contracts, whether or not in writing (it being understood that any guaranteed obligations shall be subject to Section 6.3), entered as of prior to the Separation Time between or among Spinco or any member of the Spinco Group, on the one hand, and WDC or any member of the WDC Group, on the other hand (the "**Related Party Agreements**"), effective as of the Separation Time. No such Contract (including any provision thereof which purports to survive termination) shall be of any further force or effect at or after the Separation Time and all parties shall be released from all Liabilities thereunder other than the Liability to settle any Intercompany Account as provided in Section 1.7(c). From and after the Separation Time, no member of either Group shall have any rights or obligations under any Related Party Agreements, except as specifically provided in: (i) Section 1.7(b) or elsewhere in this Agreement; or (ii) the Ancillary Agreements. Each Party shall, at the reasonable request of the other Party, take, or cause to be taken, such other actions as may be necessary to effect the foregoing.

(b) The provisions of Section 1.7(a) shall not apply to any of the following Contracts (or to any of the provisions thereof):

(i) this Agreement and the Ancillary Agreements (and each other Contract expressly contemplated by this Agreement or any Ancillary Agreement to be entered into or continued by any of the Parties or any of the members of their respective Groups);

(ii) any Contracts to which any Person, other than the Parties and their respective Affiliates, is a party;

(iii) any Contracts between: (A) a Subsidiary of WDC that is in the business of selling or buying products or services to or from third parties and (B) a member of the Spinco Group, and which Contract is related primarily to the provision of such products or services and was or is entered into in the ordinary course of business and on arm's-length terms;

(iv) any other Contracts that this Agreement or any Ancillary Agreement expressly contemplates shall survive the Distribution Date;

(v) any confidentiality or non-disclosure agreements among any members of either Group; and

(vi) any Contracts set forth on Schedule 1.7(b)(vi) (collectively, the "**Excluded Related Party Agreements**"). Notwithstanding anything to the contrary in this Agreement, each Excluded Related Party Agreement shall be governed exclusively by the terms set forth therein and shall not be subject to the terms of this Agreement unless and only to the extent that such Excluded Related Party Agreement expressly states otherwise.

(c) Each Intercompany Account outstanding immediately prior to the Separation will be satisfied and/or settled in full in cash (in each case with no further liability or obligation on Spinco or any member of the Spinco Group) by the relevant members of the WDC Group and the Spinco Group no later than the Distribution Date and prior to the Distribution, in each case in the manner determined by WDC (and any payments in settlement of such Intercompany Accounts shall be taken into account in determining the amount of the Spinco Cash).

**1.8 Delayed Transfers**.

(a) **Obtaining Consents**. The Parties shall cooperate with each other and use their respective commercially reasonable efforts to obtain: (i) the transfer, assignment or reissuance to Spinco or a member of the Spinco Group of all Transferable Permits; (ii) the issuance to Spinco or a member of the Spinco Group of any other Permits of WDC or its Affiliates that are necessary for the ownership or operation of the Flash Business or the Flash Assets that do not constitute Transferable Permits ("**Non-Transferable Permits**"); and (iii) all Consents and Governmental Approvals of all other Persons to the extent necessary to consummate the Internal Restructuring as required by the terms of any Law, license, permit, concession or Contract to which WDC or any of its Subsidiaries is currently a party or by which any of them is bound, subject to the limitations set forth in this Section 1.8; *provided, however*, that with respect to Shared Contracts, Section 1.8(c) shall control; and *provided*, *further*, that if any member of the Spinco Group or any member of the WDC Group is required to make any payments, incur any Liability or offer or grant any accommodation (financial or otherwise, that is not provided for in the underlying Contract) to any third party in connection with any of the actions in clauses (i) through (iii) above, then (A) WDC shall be required to pay any such costs and expenses incurred by either Party on or prior to the Distribution and (B) following the Distribution, each Party shall bear its own such costs and expenses. Other than as provided in the immediately preceding sentence, each of the Parties agrees that it shall not commit, and shall cause its Subsidiaries not to commit, to any third party on behalf of Spinco, WDC or any member of the Spinco Group or WDC Group to make any payments, incur any Liability or offer or grant any accommodation (financial or otherwise, regardless of any provision to the contrary in the underlying Contract, including any requirements for the securing or posting of any bonds, letters of credit or similar instruments, or the furnishing of any guarantees) to any third party to obtain any such Consents that would be a Liability of Spinco, WDC or any member of the Spinco Group or WDC Group after the Separation Time, without the prior express written consent of WDC or Spinco, as applicable. The obligations set forth in this Section 1.8(a) shall terminate upon the twelve (12) month anniversary of the Separation Time or, if the term of a Contract, Permit, Asset or Liability has Expired before the twelve (12) month anniversary of the Separation Time, the obligations set forth in this Section 1.8(a) relating to such Contract, Permit, Asset or Liability shall terminate upon such earlier Expiration.

(b) **Transfer in Violation of Laws or Requiring Consent or Governmental Approval** If and to the extent that the Conveyance to any member of the Spinco Group of any Flash Assets or to any member of the WDC Group of any Excluded Assets would be a violation of applicable Laws or require any Consent or Governmental Approval in connection with the Internal Restructuring (including the transfer, assignment or reissuance of any Transferable Permit or the issuance or reissuance of any Non-Transferable Permit) that has not been obtained at the Separation Time or require that notice be provided to any Person, then, notwithstanding any other provision hereof, the Conveyance to the Spinco Group of such Flash Assets or to the WDC Group of such Excluded Assets (any such Asset, a "**Deferred Asset**") shall automatically be deferred and no Conveyance shall occur until all legal impediments are removed, such Consents or Governmental Approvals have been obtained or such notice requirement(s) have been satisfied; *provided* that the Parties shall (i) use their respective commercially reasonable efforts to promptly remove such legal impediments and obtain such Consents and Governmental Approvals, and (ii) promptly satisfy such notice requirement(s). If the Conveyance of a Deferred Asset would not violate applicable Laws or require any Consent or Governmental Approval immediately following the Distribution, such Conveyance shall be effective immediately following the Distribution, subject to the satisfaction of any applicable notice requirement(s). Notwithstanding the foregoing, any such Deferred Asset shall still be considered a Flash Asset or Excluded Asset, as applicable, and the Person retaining such Asset shall thereafter hold such Asset in trust for the benefit of the Person entitled thereto (in a manner consistent with the obligations set forth in this Section 1.8(b)) until the earlier of the consummation of the Conveyance thereof or the termination of the obligations of the Person retaining such Asset under this Section 1.8(b). To the extent that any Deferred Asset cannot be Conveyed without the Consent or Governmental Approval of any Person which Consent or Governmental Approval has not been obtained prior to the Separation Time despite the Parties' commercially reasonable efforts and compliance with the other provisions hereof, and without limiting the obligation of WDC to obtain consents as provided in this Section 1.8(b), this Agreement will not constitute an agreement to Convey such Deferred Asset if an attempted Conveyance would constitute a breach thereof or violate any Law. The Parties shall use their commercially reasonable efforts to develop and implement mutually acceptable alternative arrangements to place the Person entitled to receive such Deferred Asset in the same position from and after the Separation Time as if such Deferred Asset had been Conveyed as contemplated hereby and so that all the benefits and burdens relating to such Deferred Asset, including possession, use, risk of loss, potential for gain, any Tax Liabilities in respect thereof and dominion, ability to enforce the rights under or with respect to, control and command over such Deferred Asset, inure from and after the Separation Time; *provided, however*, that with respect to Shared Contracts, Section 1.8(c) shall control. Such alternative arrangements may include, among others, the entry into reseller agreements with respect to government Contracts, or the entry into subcontracting, sublicensing, subleasing or other similar agreements. Under any such alternative arrangements, the Party retaining the Deferred Asset will (i) treat such Deferred Asset in the ordinary course of business consistent with past practice, (ii) hold itself out to third parties as agent or nominee on behalf of the other Party and (iii) agree to enforce (at the other Party's cost and at its reasonable request) any and all claims, rights and benefits of such Person against any third parties arising from such Deferred Asset. If and when the legal or contractual impediments the presence of which caused the deferral of transfer of any Deferred Asset pursuant to this Section 1.8(b) are removed or any Consents and/or Governmental Approvals the absence of which caused the deferral of transfer of any Deferred Asset pursuant to this Section 1.8(b) are obtained, the transfer of the applicable Deferred Asset shall be effected in accordance with the terms of this Agreement and/or such applicable Ancillary Agreement. WDC shall be required to pay any costs and expenses incurred by either Party on or prior to the Distribution in connection with this Section 1.8(b). From and after the Distribution, each Party shall bear its own costs and expenses incurred in connection with this Section 1.8(b). The obligations set forth in this Section 1.8(b) relating to any Deferred Asset shall terminate upon the twelve (12) month anniversary of the Separation Time or, if the term of such Deferred Asset has Expired before the twelve (12) month anniversary of the Separation Time, upon such earlier Expiration.

(c) **Shared Contracts**.

(i) With respect to each Shared Contract, the Parties shall, and shall, as applicable, cause the other members of the Spinco Group or the WDC Group to, use commercially reasonable efforts to take one of the following actions, at the election of the WDC Group: (A) replicate the Shared Contract such that there will be two Contracts: (1) a Contract between the counterparty and the applicable member of the Spinco Group with respect to the Flash Business and (2) a Contract between the counterparty and the applicable member of the WDC Group with respect to the non-Flash Business; or (B) partially assign the rights and delegate the duties relating to the (x) Flash Business functions with respect to such Shared Contract to Spinco (or the applicable member of the Spinco Group) or (y) non-Flash Business functions with respect to such Shared Contract to WDC (or the applicable member of the WDC Group), in each case of clauses (A) and (B), so that the Spinco Group will be entitled to the same or reasonably similar rights and interests of, and will be subject to the same or reasonably similar Liabilities under, such Shared Contract to the extent related to the Flash Business, and the WDC Group will be entitled to the same or reasonably similar rights and interests of, and will be subject to the same or reasonably similar Liabilities under, such Shared Contract to the extent not related to the Flash Business (each, a "**Shared Contract Transfer**"). In furtherance of the foregoing, the Parties shall, and shall, as applicable, cause the other members of the Spinco Group or the WDC Group to, use commercially reasonable efforts to take such other actions as are reasonably necessary to consummate each Shared Contract Transfer, including to the extent required by the applicable Shared Contract, sending notices to and/or using commercially reasonable efforts to obtain Consents from the counterparty(ies) to such Shared Contract; *provided, however*, that, notwithstanding the foregoing, if such Shared Contract Transfer is not permitted by the terms of the applicable Shared Contract, or if a necessary Consent is not received from the applicable counterparty(ies) despite the Parties' commercially reasonable efforts, or if such Shared Contract Transfer would impair the benefit the WDC Group or the Spinco Group, as applicable, is able to derive from the applicable portion of such Shared Contract, then WDC and Spinco shall, and shall, as applicable, cause the other members of the WDC Group or the Spinco Group to, use commercially reasonable efforts to (x) provide for an alternative arrangement so that the applicable member of the WDC Group or the Spinco Group, as applicable, will have the same or reasonably similar benefits and burdens of such Shared Contract from and after the Separation Time as though such Shared Contract Transfer had occurred and (y) enter into separate Contracts pursuant to which the applicable members of the WDC Group and the Spinco Group procure such rights and obligations as are necessary such that WDC and Spinco no longer need to avail themselves of the alternative arrangements provided pursuant to clause (x) above. For the avoidance of doubt, neither a Party nor any of its respective Affiliates shall be required to commence any Action with any third party to fulfill its obligations under this Section 1.8(c). Spinco and WDC shall reasonably cooperate in connection with this Section 1.8(c)(i). Upon a Shared Contract Transfer, the resulting Contract that is related to the Flash Business will be a Spinco Contract, and the resulting Contract that is not related to the Flash Business will be an Excluded Asset. All obligations set forth in this Section 1.8(c)(i) shall terminate upon the twelve (12) month anniversary of the Separation Time or, if the term of such Shared Contract has Expired before the twelve (12) month anniversary of the Separation Time, upon such earlier Expiration.

(ii) WDC shall be required to pay any costs and expenses incurred by either Party on or prior to the Distribution in connection with this Section 1.8(c). From and after the Distribution, each Party shall bear its own costs and expenses incurred in connection with this Section 1.8(c).

(iii) Unless otherwise determined by WDC in its sole discretion, each of WDC and Spinco shall, and shall cause the members of its Group to, (A) treat for all Tax purposes the portion of each Shared Contract inuring to the Flash Business or non-Flash Business, as the case may be, as Assets owned by, and/or Liabilities of, as applicable, such Party as of the Separation Time and (B) neither report nor take any Tax position (on a Tax Return or otherwise) inconsistent with such treatment (unless required by applicable Law or good faith resolution of a Tax Contest).

(d) **Real Property**. With respect to any Real Property Interests that will be owned or leased by a member of the Spinco Group but will continue to be used by a member of the WDC Group following the Separation Time, or that will be owned or leased by a member of the WDC Group but will continue to be used by a member of the Spinco Group following the Separation Time, unless otherwise agreed by the applicable parties, the Parties shall, and shall as applicable cause the other members of the Spinco Group or the WDC Group to, (i) with respect to owned Real Property Interests, enter into lease agreements on customary and reasonable market terms in arm's length transactions taking into account the nature, use and location of the real property and (ii) with respect to leased Real Property Interests, use commercially reasonable efforts to enter into sublease agreements on customary and reasonable "back-to-back basis", such that the rent and other material terms under such sublease agreements shall be substantially the same (on a relative basis) as the rent and other material terms in the underlying leases, reflecting (A) adjustments to the rent under each such sublease agreement based on the area subleased relative to the total area under the applicable lease agreement for such Real Property Interest and (B) such commercially reasonable costs that the applicable party may incur as sublandlord in the course of managing such sublease agreements.

**1.9 Novations of Contracts**.

(a) Without limiting the obligations of the Parties under Section 1.8(c), upon WDC's request, Spinco shall, and shall cause its Subsidiaries to, use commercially reasonable efforts to obtain the novation to the applicable member(s) of the Spinco Group of any Spinco Contract or the portion of a Shared Contract allocated to a member of the Spinco Group, or any other Contract (including without limitation, whether replicated, fully assigned or partially assigned) that is assigned (in whole or in part) to a member of the Spinco Group in accordance with this Agreement, whether prior to, at or following the Separation Time (it being understood that such obligations shall apply following the Separation Time regardless of whether any such Spinco Contract or Shared Contract has been Conveyed pursuant to the terms hereof or such Conveyance was deferred in accordance with Section 1.8).

(b) Without limiting the obligations of the Parties under Section 1.8(c), upon Spinco's request, WDC shall, and shall cause its Subsidiaries to, use commercially reasonable efforts to obtain the novation to the applicable member(s) of the WDC Group of any Shared Contract or the portion of a Shared Contract allocated to a member of the WDC Group, or any other Contract (including without limitation, whether replicated, fully assigned or partially assigned) that is assigned (in whole or in part) to a member of the WDC Group in accordance with this Agreement, whether prior to, at or following the Separation Time (it being understood that such obligations shall apply following the Separation Time regardless of whether any such Shared Contract or such other Contract that is assigned (in whole or in part) to a member of the WDC Group has been Conveyed pursuant to the terms hereof or such Conveyance was deferred in accordance with Section 1.8).

(c) Without limiting the obligations of WDC under Section 1.8(c), no member of the WDC Group or the Spinco Group shall be required to make any payments for a novation in accordance with this Section 1.9 (other than as provided for in the underlying Contract, which such payments shall be made by WDC) to any third party for any novation in connection with this Section 1.9; *provided, however*, that WDC shall be required to pay any costs and expenses incurred by either Party on or prior to the Distribution in connection with this Section 1.9; *provided, further*, that, from and after the Distribution, each Party shall bear its own costs and expenses incurred in connection with this Section 1.9.

(d) The obligations set forth in this Section 1.9 relating to any Contract shall terminate upon the twelve (12)-month anniversary of the Separation Time or, if the term of such Contract has Expired before the twelve (12)-month anniversary of the Separation Time, upon such earlier Expiration.

**1.10 Bank Accounts**.

(a) Each of WDC and Spinco shall, and shall cause their respective Subsidiaries to, use their commercially reasonable efforts to take all actions necessary to amend all Contracts governing each bank and brokerage account included as a Flash Asset or owned by Spinco or any other member of the Spinco Group (collectively, the "**Spinco Accounts**"), so that such Spinco Accounts, if currently linked (whether by automatic withdrawal, automatic deposit or any other authorization to transfer funds from or to, hereinafter "linked") to any bank or brokerage account owned by WDC or any member of the WDC Group (collectively, the "**WDC Accounts**") are de-linked from such WDC Accounts.

(b) Each of WDC and Spinco shall, and shall cause their respective Subsidiaries to, use their commercially reasonable efforts to take all actions necessary to amend all Contracts governing the WDC Accounts so that such WDC Accounts, if currently linked to any Spinco Account, are de-linked from such Spinco Accounts, including updating the names of all persons authorized to draw thereon or make withdrawals therefrom to Representatives of the applicable Party.

(c) With respect to any outstanding checks issued by WDC, Spinco or any of their respective Subsidiaries prior to the Separation Time, such outstanding checks shall be honored from and after the Separation Time by the Person or Group owning the account on which the check is drawn, without modifying in any way the allocation of Liability (and rights to reimbursement) for such amounts under this Agreement or any Ancillary Agreement.

(d) As between WDC and Spinco (and the members of their respective Groups), all payments made or reimbursements received by either Party after the Distribution that relate to the business Asset or Liability of the other Party (or member of its Group) shall be held by such Party in trust for the use and benefit of the Party entitled thereto and, promptly upon receipt by such Party of any such payment or reimbursement, such Party shall pay over or cause the applicable member of its Group to pay over, to the other Party, the amount of such payment or reimbursement, without right of setoff.

(e) For the avoidance of doubt, Spinco Cash shall not include any cash or cash equivalents included in WDC Accounts.

**1.11 No Representation or Warranty**. EACH OF WDC (ON BEHALF OF ITSELF AND EACH OTHER MEMBER OF THE WDC GROUP) AND SPINCO (ON BEHALF OF ITSELF AND EACH OTHER MEMBER OF THE SPINCO GROUP) UNDERSTANDS AND AGREES THAT, EXCEPT AS EXPRESSLY SET FORTH HEREIN OR IN ANY ANCILLARY AGREEMENT OR ANY OTHER AGREEMENT OR DOCUMENT CONTEMPLATED BY THIS AGREEMENT, ANY ANCILLARY AGREEMENT OR OTHERWISE, NO PARTY TO THIS AGREEMENT IS REPRESENTING OR WARRANTING IN ANY WAY AS TO THE CONDITION OR THE VALUE OF ANY ASSETS, BUSINESSES OR THE AMOUNT OF ANY LIABILITIES CONTRIBUTED, TRANSFERRED, DISTRIBUTED OR ASSUMED AS CONTEMPLATED HEREBY, AS TO ANY CONSENTS OR GOVERNMENTAL APPROVALS REQUIRED IN CONNECTION HEREWITH OR THEREWITH, AS TO THE VALUE OF ANY ASSETS OF SUCH PARTY, AS TO THE ABSENCE OF ANY DEFENSES OR RIGHT OF SETOFF OR FREEDOM FROM COUNTERCLAIM WITH RESPECT TO ANY ACTION OR OTHER ASSET, INCLUDING ACCOUNTS RECEIVABLE, OF ANY PARTY, OR AS TO THE LEGAL SUFFICIENCY OF ANY CONTRIBUTION, DISTRIBUTION, ASSIGNMENT, DOCUMENT, CERTIFICATE OR INSTRUMENT DELIVERED HEREUNDER TO CONVEY TITLE TO ANY ASSET OR THING OF VALUE UPON THE EXECUTION, DELIVERY AND FILING HEREOF OR THEREOF. FOR THE AVOIDANCE OF DOUBT, THIS SECTION 1.11 SHALL HAVE NO EFFECT ON ANY REPRESENTATION OR WARRANTY EXPRESSLY MADE HEREIN OR IN ANY ANCILLARY AGREEMENT OR ANY OTHER AGREEMENT OR DOCUMENT CONTEMPLATED BY THIS AGREEMENT, ANY ANCILLARY AGREEMENT OR OTHERWISE. FOR THE AVOIDANCE OF DOUBT, EXCEPT AS EXPRESSLY SET FORTH HEREIN OR IN ANY ANCILLARY AGREEMENT OR ANY OTHER AGREEMENT OR DOCUMENT CONTEMPLATED BY THIS AGREEMENT, ANY ANCILLARY AGREEMENT OR OTHERWISE, ANY AND ALL WARRANTIES OF ANY KIND ARE HEREBY DISCLAIMED AND EXCLUDED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NONINFRINGEMENT.

**1.12 Waiver of Bulk-Sales Laws**. Each of Spinco and WDC hereby waives compliance by each member of the other Party's respective Group with the requirements and provisions of the "bulk-sale" or "bulk-transfer" Laws of any jurisdiction that may otherwise be applicable with respect to the transfer or sale of any or all of the Assets to any member of the Spinco Group or the WDC Group, as applicable.

## 2. COMPLETION OF THE INTERNAL RESTRUCTURING

**2.1 Separation Time**. Subject to the satisfaction and waiver (in accordance with the provisions hereof) of the conditions set forth in Section 7 (other than the conditions, which by their nature are to be satisfied at the Separation Time, but subject to such conditions being capable of being satisfied at the Separation Time), and subject to Section 1.8(b), the effective time and date of each Conveyance and assumption of any Asset or Liability in accordance with Section 1 in connection with the Internal Restructuring shall be immediately prior to the Distribution (the date of the Separation, the "**Separation Date**" and such time on such date the "**Separation Time**") or such other time as determined pursuant to Section 1.8.

**2.2 Separation Deliveries**.

(a) **Agreements to be Delivered by WDC**. On the Separation Date, WDC shall deliver, or shall cause its appropriate Subsidiaries to deliver, to Spinco all of the following instruments:

(i) all Transfer Documents as described in Section 2.4 and Section 2.5;

(ii) the Tax Matters Agreement, substantially in the form attached hereto as Exhibit A (the "**Tax Matters Agreement**"), duly executed by the members of the WDC Group party thereto;

(iii) the Transition Services Agreement, substantially in the form attached hereto as Exhibit B (the "**Transition Services Agreement**"), duly executed by the members of the WDC Group party thereto;

(iv) the Transitional Trademark License Agreement, substantially in the form attached hereto as Exhibit C (the "**Transitional Trademark License Agreement**"), duly executed by the members of the WDC Group party thereto;

(v) the Intellectual Property Cross-License Agreement, substantially in the form attached hereto as Exhibit D (the "**Intellectual Property Cross-License Agreement**"), duly executed by the members of the WDC Group party thereto;

(vi) the Stockholder and Registration Rights Agreement, substantially in the form attached hereto as Exhibit E (the "**Stockholder and Registration Rights Agreement**"), duly executed by the members of the WDC Group party thereto;

(vii) the Employee Matters Agreement, substantially in the form attached hereto as Exhibit F (the "**Employee Matters Agreement**"), duly executed by the members of the WDC Group party thereto;

(viii) any other Ancillary Agreements to which the Parties mutually agree; and

(ix) as provided in Item 6 of Schedule 1.7(b)(vi).

(b) **Agreements to be Delivered by Spinco**. On the Separation Date, Spinco shall deliver, or shall cause the Spinco Subs to deliver, as appropriate, to WDC all of the following instruments:

(i) all Transfer Documents as described in Section 2.4 and Section 2.5;

(ii) the Tax Matters Agreement, duly executed by the members of the Spinco Group party thereto;

(iii) the Transition Services Agreement, duly executed by the members of the Spinco Group party thereto;

(iv) the Transitional Trademark License Agreement, duly executed by the members of the Spinco Group party thereto;

(v) the Intellectual Property Cross-License Agreement, duly executed by the members of the Spinco Group party thereto;

(vi) the Stockholder and Registration Rights Agreement, duly executed by the members of the Spinco Group party thereto;

(vii) the Employee Matters Agreement, duly executed by the members of the Spinco Group party thereto;

(viii) any other Ancillary Agreements to which the Parties mutually agree; and

(ix) as provided in Item 6 of Schedule 1.7(b)(vi).

**2.3 Certain Resignations**. WDC shall use its commercially reasonable efforts to cause each employee and director of WDC and its Subsidiaries who will not be employed by Spinco or a Spinco Sub after the Distribution Date to resign, effective not later than the Distribution Date, from all boards of directors or similar governing bodies of Spinco or any Spinco Sub on which they serve, and from all positions as officers of Spinco or any Spinco Sub in which they serve.

**2.4 Transfer of Flash Assets and Assumption of Flash Liabilities**. In furtherance of the Conveyance of Flash Assets and the assumption of Flash Liabilities provided in Section 1.1 and Section 1.2, on or prior to the Separation Time (and thereafter in accordance with Section 1.8): (a) WDC shall execute and deliver, and shall cause its Subsidiaries to execute and deliver, such bills of sale, stock powers, certificates of title, assignments of Contracts, Consents (to the extent obtained), Transferable Permits, easements, leases, deeds and other instruments of Conveyance (in each case in a form that is consistent with the terms and conditions of this Agreement, required by applicable Law to record or register transfer of title in each applicable jurisdiction, and otherwise customary in the jurisdiction in which the relevant Assets are located and reasonably acceptable to the Parties), as and to the extent reasonably necessary or appropriate to evidence the Conveyance of all of WDC's and its Subsidiaries' (other than Spinco and the Spinco Subs) right, title and interest in and to the Flash Assets to Spinco and the Spinco Subs (it being understood that no such bill of sale, stock power, certificate of title, deed, assignment of Contract or other instrument of Conveyance shall require WDC or any of its Affiliates to make any additional representations, warranties or covenants, expressed or implied, not contained in this Agreement or any Ancillary Agreement, except to the extent required to comply with applicable Law, and in which case the Parties shall enter into such supplemental agreements or arrangements as are effective to preserve the allocation of economic benefits and burdens contemplated by this Agreement) and (b) Spinco shall execute and deliver such assumptions of Contracts and other instruments of assumption or Conveyance (in each case in a form that is consistent with the terms and conditions of this Agreement, required by applicable Law to record or register transfer of title in each applicable jurisdiction, and otherwise customary in the jurisdiction in which the relevant Liabilities are located and reasonably acceptable to the Parties) as and to the extent reasonably necessary to evidence the valid and effective assumption of the Flash Liabilities by Spinco (it being understood that no assumptions of Contracts and other instruments of assumption or conveyance shall require Spinco or any of its Affiliates to make any additional representations, warranties or covenants, expressed or implied, not contained in this Agreement or any Ancillary Agreement, except to the extent required to comply with applicable Law, and in which case the Parties shall enter into such supplemental agreements or arrangements as are effective to preserve the allocation of economic benefits and burdens contemplated by this Agreement). All of the foregoing documents contemplated by this Section 2.4 shall be referred to collectively herein as the "**WDC Transfer Documents**."

**2.5 Transfer of Excluded Assets; Assumption of Excluded Liabilities**. In furtherance of the Conveyance of Excluded Assets and the assumption of Excluded Liabilities provided in Section 1.3, prior to or at the Separation Time (and thereafter in accordance with Section 1.8): (a) Spinco shall execute and deliver, and shall cause the Spinco Subs to execute and deliver, such bills of sale, stock powers, certificates of title, assignments of Contracts, Consents (to the extent obtained), Transferable Permits, easements, leases, deeds and other instruments of Conveyance (in each case in a form that is consistent with the terms and conditions of this Agreement, required by applicable Law to record or register transfer of title in each applicable jurisdiction, and otherwise customary in the jurisdiction in which the relevant Assets are located and reasonably acceptable to the Parties) as and to the extent reasonably necessary or appropriate to evidence the Conveyance of all of Spinco's and the Spinco Subs' right, title and interest in and to the Excluded Assets to WDC and its Subsidiaries (other than Spinco and the Spinco Subs) (it being understood that no such bill of sale, stock power, certificate of title, deed, assignment of Contract or other instrument of Conveyance shall require Spinco or any of its Affiliates to make any additional representations, warranties or covenants, expressed or implied, not contained in this Agreement or any Ancillary Agreement except to the extent required to comply with applicable Law, and in which case the Parties shall enter into such supplemental agreements or arrangements as are effective to preserve the allocation of economic benefits and burdens contemplated by this Agreement) and (b) WDC shall execute and deliver such assumptions of Contracts and other instruments of assumption or Conveyance (in each case in a form that is consistent with the terms and conditions of this Agreement, required by applicable Law to record or register transfer of title in each applicable jurisdiction, and otherwise customary in the jurisdiction in which the relevant Liabilities are located and reasonably acceptable to the Parties) as and to the extent reasonably necessary to evidence the valid and effective assumption of the Excluded Liabilities by WDC (it being understood that no assumptions of Contracts and other instruments of assumption or conveyance shall require Spinco or any of its Affiliates to make any additional representations, warranties or covenants, expressed or implied, not contained in this Agreement or any Ancillary Agreement, except to the extent required to comply with applicable Law, and in which case the Parties shall enter into such supplemental agreements or arrangements as are effective to preserve the allocation of economic benefits and burdens contemplated by this Agreement). All of the foregoing documents contemplated by this Section 2.5, together with the WDC Transfer Documents, shall be referred to collectively herein as the "**Transfer Documents**." The Parties shall perform the obligations set forth in Section 2.4 and this Section 2.5, in each case, in accordance with applicable Law.

**2.6 Exchange**. In exchange for the Spinco Contribution, Spinco shall (a) issue to WDC additional shares of Spinco Common Stock such that the number of shares of Spinco Common Stock then outstanding shall be equal to the number of shares of Spinco Common Stock necessary to effect the Distribution and (b) pay to WDC the Spinco Dividend, in immediately available funds to one or more accounts designated by WDC.

## 3. COMPLETION OF THE DISTRIBUTION

### 3.1 The Distribution.

(a) Subject to the terms and conditions hereof, each Record Holder (other than WDC or any other member of the WDC Group) shall be entitled to receive for each share of common stock, par value $0.01 per share, of WDC ("**WDC Common Stock**") held by such Record Holder as of the Record Date one-third (1/3) of one share of Spinco Common Stock. No action by any Record Holder shall be necessary for such Record Holder (or such Record Holder's designated transferee or transferees) to receive the applicable number of shares of Spinco Common Stock (and, if applicable, cash in lieu of any fractional shares as set forth in Section 3.1(c)) such stockholder is entitled to in the Distribution. For stockholders of WDC who own shares of WDC Common Stock through a broker or other nominee, their shares of Spinco Common Stock will be credited to their respective accounts by such broker or nominee.

(b) Pursuant to the Distribution, WDC shall distribute 80.1% of the Spinco Common Stock owned by WDC, which will be 80.1% of the Spinco Common Stock outstanding immediately prior to the Distribution. In no event shall the aggregate number of shares of Spinco Common Stock issued and distributed in the Distribution exceed 80.1% of the number of shares of Spinco Common Stock held by WDC on the Distribution Date.

(c) Notwithstanding anything herein to the contrary, no fractional shares of Spinco Common Stock shall be issued in connection with the Distribution, and any such fractional share interests to which a Record Holder would otherwise be entitled shall not entitle such Record Holder to vote or to any other rights as a stockholder of Spinco. In lieu of any such fractional shares, each Record Holder who, but for the provisions of this Section 3.1(c) would be entitled to receive a fractional share interest of Spinco Common Stock pursuant to the Distribution, shall be paid cash, as hereinafter provided. WDC shall instruct the distribution agent to determine the number of whole shares and fractional shares of Spinco Common Stock allocable to each Record Holder, to aggregate all such fractional shares into whole shares, to sell the whole shares obtained thereby in the open market at the then-prevailing prices on behalf of each Record Holder who otherwise would be entitled to receive fractional share interests and to distribute to each such Record Holder his, her or its ratable share of the total proceeds of such sale, after deducting any Taxes required to be withheld and any applicable transfer Taxes and the costs and expenses of such sale and distribution, including brokers fees and commissions. The sales of fractional shares shall occur as soon after the Distribution as practicable as determined by the distribution agent. None of WDC, Spinco or the distribution agent shall guarantee any minimum sale price for such fractional shares. Neither WDC nor Spinco shall pay any interest on the proceeds from the sale of fractional shares. The distribution agent shall have the sole discretion to select the broker-dealers through which to sell the aggregated fractional shares and to determine when, how and at what price to sell such shares. Neither the distribution agent nor the broker-dealers through which the aggregated fractional shares are sold shall be Affiliates of WDC or Spinco.

(d) Neither of the Parties, and none of their respective Affiliates, will be liable to any Person in respect of any shares of Spinco Common Stock (or dividends or distributions with respect thereto) or cash in lieu of fractional shares of Spinco Common Stock (in accordance with Section 3.1(c)) that, in each case, are properly delivered to a public official pursuant to any applicable abandoned property, escheat or similar Law.

**3.2 Actions Prior to Distribution**.

(a) Prior to the date of this Agreement, the Parties caused the Registration Statement to be prepared and filed with the SEC. The Registration Statement was declared effective by the SEC on [●]. The Parties shall cooperate in preparing, filing with the SEC and causing to become effective any other registration statements or amendments or supplements thereto that are necessary or appropriate in order to effect the Transactions, or to reflect the establishment of, or amendments to, any employee benefit plans contemplated hereby or in any Ancillary Agreements.

(b) Prior to the date of this Agreement, the Parties caused an application for the listing on Nasdaq of Spinco Common Stock to be issued to the Record Holders in the Distribution (the "**Nasdaq Listing Application**") to be prepared and filed with Nasdaq. Prior to the date of this Agreement, the Parties have caused the Nasdaq Listing Application to be approved, subject to official notice of issuance. WDC shall give Nasdaq notice of the Record Date in compliance with Rule 10b-17 under the Exchange Act.

(c) WDC and Spinco will prepare and mail, prior to the Distribution Date, to the holders of shares of WDC Common Stock, such information concerning Spinco and its businesses, operations and management, the Distribution and such other matters as WDC will reasonably determine and as may be required by applicable Law.

(d) WDC and Spinco will take all such action as may be necessary or appropriate under the securities or "blue sky" Laws of the United States (and any comparable Laws under any foreign jurisdiction) in connection with the Distribution.

(e) WDC and Spinco will take all reasonable steps necessary and appropriate to cause the conditions set forth in Section 7.1 to be satisfied and to effect the Distribution on the Distribution Date.

(f) Notwithstanding anything to the contrary, any and all costs, expenses and Liabilities incurred by or on behalf of Spinco or any member of the Spinco Group on or prior to the Distribution as a result of or in connection with the matters set forth in Section 3.1 or this Section 3.2 shall be the sole responsibility of WDC and shall be deemed to be Excluded Liabilities for the purposes hereof. From and after the Distribution, each Party shall bear its own costs and expenses incurred as a result of or in connection with the matters set forth in Section 3.1 and this Section 3.2.

(g) Notwithstanding anything to the contrary, without any further action required by any Party, effective as of immediately prior to the Separation Time, all provisions of this Section 3.2, with the exception of Section 3.2(a), Section 3.2(d) (in the event that any such action under "blue sky" Laws has not been taken prior to the Separation Time) and Section 3.2(f), shall automatically terminate and be of no further force and the Parties shall cease to have any rights or obligations thereunder.

**3.3 Additional Matters**.

(a) **Delivery of Shares**. Upon the consummation of the Distribution, WDC shall deliver to the transfer agent a book-entry authorization representing the shares of Spinco Common Stock being distributed in the Distribution for the account of the WDC stockholders that are entitled thereto. The Distribution shall be deemed to be effective upon written authorization from WDC to the transfer agent to proceed as set forth in Section 3.1.

(b) **Cash Reduction**. Prior to 11:59 p.m. Pacific Time on the date that is two Business Days prior to the Distribution (the "**Cut-Off Time**"), WDC may, and may cause each member of the Spinco Group to, take such actions, at WDC's sole cost and expense, as WDC deems advisable to minimize or reduce the amount of Spinco Cash in excess of the Spinco Cash Amount remaining in the Spinco Accounts as of the Separation Time.

**3.4 Spinco Dividend**. The amount of the Spinco Dividend shall be equal to any cash allocable to Spinco in excess of the Spinco Cash Amount as of the Cut-Off Time; *provided*, that such excess will be calculated after giving effect to the cost of any foreign exchange currency conversions based on the foreign currency exchange rates listed by The Wall Street Journal as of such date and time.

**3.5 Subsequent Distributions.**

(a) WDC shall (i) be entitled to retain the Retained Stock until the time of a Subsequent Distribution, and (ii) dispose of the Retained Stock pursuant to one or more Subsequent Distributions within twelve (12) months of the Distribution Date. WDC shall, in its sole and absolute discretion, determine whether to effectuate a Subsequent Distribution through one or more Clean-Up Distributions, Debt Exchanges or combination thereof.

(b) To the extent WDC determines to effectuate a Subsequent Distribution as a Debt Exchange, such Debt Exchange shall be effected by means of an intermediated exchange with the Debt Exchange Parties based on arm's-length terms and conditions, which terms and conditions shall allocate to the Debt Exchange Parties any risk of loss with respect to any Exchange Debt subject to such Debt Exchange and the Retained Stock transferred to any such Debt Exchange Parties pursuant to such Debt Exchange. All profit gained by any Debt Exchange Party shall solely be for such Debt Exchange Party's account and no such profit shall inure to the benefit of WDC, Spinco or their respective Affiliates.

(c) Spinco shall cooperate with WDC in all respects to accomplish any Subsequent Distribution and shall, at WDC's direction, promptly take any and all reasonable actions necessary or desirable to effect any Subsequent Distribution, including the registration under the Securities Act of the offering of the Retained Stock on an appropriate registration form or forms to be designated by WDC and the filing of any necessary documents pursuant to the Exchange Act and the prompt provision of such financial and other information that may be requested by WDC pursuant to Section 5 of this Agreement.

(d) WDC shall manage the negotiations in connection with any Subsequent Distribution and shall select any investment bank(s), manager(s), underwriter(s) or dealer-manager(s) in connection with any Subsequent Distribution, as well as any financial printer, solicitation and/or exchange agent and financial, legal, accounting, tax and other advisors and service providers in connection with any Subsequent Distribution. Spinco and WDC, as the case may be, shall provide to the exchange or distribution agent all share certificates (to the extent certificated) or book-entry authorizations (to the extent not certificated) and Spinco shall provide to WDC and the exchange or distribution agent (as directed by WDC) any information required in order to complete any Subsequent Distribution.

## 4. MUTUAL RELEASES; INDEMNIFICATION

### 4.1 Release of Pre-Distribution Date Claims.

(a) **Spinco Release**. Except as provided in Section 4.1(c) and Section 4.4, effective as of the Separation Time, Spinco does hereby, for itself and for each other member of the Spinco Group and (to the extent permitted by applicable Law) all Persons who at any time prior to the Separation Time were directors, officers, partners, managers, employees or agents of any member of the Spinco Group (in their respective capacities as such), in each case, together with their respective heirs, executors, administrators, predecessors, successors and assigns, release and forever discharge each of the WDC Indemnitees from any and all Liabilities whatsoever (including any right of contribution), whether arising under any Contract, by operation of Law or otherwise, existing or arising from any acts or events occurring or failing to occur or alleged to have occurred or to have failed to occur on or before the Separation Time, or any conditions existing or alleged to have existed on or before the Separation Time, including in connection with the transactions and all other activities to implement the Internal Restructuring contemplated by this Agreement or any Ancillary Agreement. Without limitation, the foregoing release includes a release of any rights and benefits with respect to such Liabilities that Spinco and each member of the Spinco Group, and their respective successor and assigns, now has or in the future may have conferred upon them by virtue of any Law which provides that a general release does not extend to claims which a party does not know or suspect to exist in its favor at the time of executing the release, if knowledge of such claims would have materially affected such party's settlement with the obligor. In this connection, Spinco hereby acknowledges that it is aware that factual matters now unknown to it may have given or may hereafter give rise to Liabilities that are presently unknown, unanticipated and unsuspected, and it further agrees that this release has been negotiated and agreed upon in light of that awareness and it nevertheless hereby intends to release the WDC Indemnitees from the Liabilities described in the first sentence of this Section 4.1(a). Notwithstanding the foregoing, the release described in this Section 4.1(a) shall not apply with respect to obligations from and after the Separation Time under or relating to the Contracts referred to in Section 1.7(b)(iii).

(b) **WDC Release**. Except as provided in Section 4.1(c) and Section 4.3, effective as of the Separation Time, WDC does hereby, for itself and for each other member of the WDC Group and (to the extent permitted by applicable Law) all Persons who at any time prior to the Separation Time were directors, officers, partners, managers, employees or agents of any member of the WDC Group (in their respective capacities as such), in each case, together with their respective heirs, executors, administrators, predecessors, successors and assigns, release and forever discharge each of the Spinco Indemnitees from any and all Liabilities whatsoever (including any right of contribution), whether arising under any Contract, by operation of Law or otherwise, existing or arising from any acts or events occurring or failing to occur or alleged to have occurred or to have failed to occur on or before the Separation Time or any conditions existing or alleged to have existed on or before the Separation Time, including in connection with the transactions and all other activities to implement the Internal Restructuring contemplated by this Agreement or any Ancillary Agreement. Without limitation, the foregoing release includes a release of any rights and benefits with respect to such Liabilities that WDC and each member of the WDC Group, and their respective successor and assigns, now has or in the future may have conferred upon them by virtue of any Law which provides that a general release does not extend to claims which a party does not know or suspect to exist in its favor at the time of executing the release, if knowledge of such claims would have materially affected such party's settlement with the obligor. In this connection, WDC hereby acknowledges that it is aware that factual matters now unknown to it may have given or may hereafter give rise to Liabilities that are presently unknown, unanticipated and unsuspected, and it further agrees that this release has been negotiated and agreed upon in light of that awareness and it nevertheless hereby intends to release the Spinco Indemnitees from the Liabilities described in the first sentence of this Section 4.1(b). Notwithstanding the foregoing, the release described in this Section 4.1(b) shall not apply with respect to obligations from and after the Separation Time under or relating to the Contracts referred to in Section 1.7(b)(iii).

(c) **No Impairment**. Nothing contained in Section 4.1(a) or Section 4.1(b) shall: (i) limit or otherwise affect any Person's rights or obligations pursuant to or contemplated by, or ability to enforce, this Agreement or any Ancillary Agreement in each case in accordance with its terms, including (A) the obligation of Spinco to assume and satisfy the Flash Liabilities; (B) the obligation of WDC to retain, assume and satisfy the Excluded Liabilities; (C) the obligations of WDC and its Affiliates to Convey the Flash Assets free and clear of all Liens (other than Permitted Liens) in accordance with this Agreement; and (D) the obligations of WDC and Spinco to perform their obligations and indemnify each other under this Agreement, including pursuant to Section 3.4 and this Section 4, and the Ancillary Agreements and any Liabilities arising out of or resulting herefrom or therefrom; (ii) apply to any Liability the release of which would result in the release of any Person other than a Person expressly released pursuant to Section 4.1(a) or Section 4.1(b); (iii) apply to any Liability or claim that any individual may have under any employment or benefit arrangement; or (iv) release or discharge any Person from, or waive any rights under, any Liability provided in or resulting from (x) any Contract to which any member of the Spinco Group, on the one hand, and any WDC Group, on the other hand, is a party, that does not terminate as of the Distribution Date in accordance with Section 1.7, or (y) fraud (collectively, the Liabilities and obligations referred to in this Section 4.1(c) and the last sentence of Section 4.1(d), the "**Retained Claims**").

(d) **No Actions as to Released Claims**. Following the Separation Time, (i) Spinco shall not, and shall cause each other member of the Spinco Group not to, make any claim or demand, or commence any Action asserting any claim or demand, including any claim of contribution, recovery or any indemnification, against any WDC Indemnitees (in each case, other than in respect of the Retained Claims) and (ii) WDC shall not, and shall cause each other member of the WDC Group not to, make any claim or demand, or commence any Action asserting any claim or demand, including any claim of contribution, recovery or any indemnification, against any Spinco Indemnitees (in each case, other than in respect of the Retained Claims). In addition, (x) nothing in this Section 4.1 shall release Spinco or any other member of the Spinco Group from indemnifying any current or former director, officer, manager, employee or agent of WDC or any other member of the WDC Group who was a director, officer, manager, employee or agent of Spinco or any other member of the Spinco Group prior to the Distribution Date if such Person was entitled to a right of indemnification pursuant to the organizational documents of Spinco or any Spinco Sub or pursuant to any Contract, it being understood that if the underlying obligation giving rise to such right to indemnification is an Excluded Liability retained by WDC or any other member of the WDC Group, WDC shall indemnify Spinco for such Liability (including Spinco's costs to indemnify such director, officer, manager, employee or agent) in accordance with the provisions in Section 4.4 and (y) nothing in this Section 4.1 shall release WDC or any other member of the WDC Group from indemnifying any current or former director, officer, manager, employee or agent of Spinco or any other member of the Spinco Group who was a director, officer, manager, employee or agent of WDC or any other member of the WDC Group prior to the Distribution Date if such Person was entitled to a right of indemnification pursuant to the organizational documents of WDC or any other member of the WDC Group or pursuant to any Contract, it being understood that if the underlying obligation giving rise to such right to indemnification is a Flash Liability retained by Spinco or any other member of the Spinco Group, Spinco shall indemnify WDC for such Liability (including WDC's costs to indemnify such director, officer, manager, employee or agent) in accordance with the provisions in Section 4.3.

**4.2 Survival**. The covenants in this Agreement or any Ancillary Agreement that by their terms are to be performed following the Separation Time will survive each of the Internal Restructuring and the Distribution and will remain in full force and effect in accordance with their terms (unless such Ancillary Agreement expressly provides for separate indemnification therein, in which case any such indemnification claims and survival of such covenants will be made thereunder). For the avoidance of doubt, in the event notice of any claim for indemnification under this Section 4 has been given in accordance with Section 4.6 in good faith with reasonable specificity within the applicable survival period, the representations, warranties, covenants and agreements relating to such claim shall survive with respect to such claim until such claim is finally resolved.

**4.3 Indemnification by the Spinco Group**. From and after the Separation Time, each member of the Spinco Group shall, on a joint and several basis, indemnify, defend (or, where applicable, pay the defense costs for) and hold harmless the WDC Indemnitees from and against, and shall reimburse such WDC Indemnitees with respect to, any and all Losses that proximately result from any of the following items (without duplication):

(a) any Flash Liabilities, including, after the Separation Time, the failure of Spinco or any other member of the Spinco Group or any other Person to pay, perform, fulfill, discharge and, to the extent applicable, comply with, in due course and in full, any such Flash Liabilities; and

(b) any breach of, or failure to perform, by Spinco or any other member of the Spinco Group any covenants or obligations to be performed from and after the Separation Time by such Persons pursuant to this Agreement or the Ancillary Agreements, unless such Ancillary Agreement expressly provides for separate indemnification therein, in which case any such indemnification claims will be made thereunder.

**4.4 Indemnification by WDC**. From and after the Separation Time, WDC shall indemnify, defend (or, where applicable, pay the defense costs for) and hold harmless the Spinco Indemnitees from and against, and shall reimburse such Spinco Indemnitees with respect to, any and all Losses that proximately result from any of the following items (without duplication):

(a) any Excluded Liabilities, including the failure of WDC or any other member of the WDC Group or any other Person to pay, perform, fulfill, discharge and, to the extent applicable, comply with, in due course and in full, any such Excluded Liabilities; and

(b) any breach of, or failure to perform, by WDC or any other member of the WDC Group any covenants or obligations to be performed from and after the Separation Time by such Persons pursuant to this Agreement or the Ancillary Agreements, unless such Ancillary Agreement expressly provides for separate indemnification therein, in which case any such indemnification claims will be made thereunder.

**4.5 Limitations on Indemnification**. No Indemnitee shall be entitled to indemnification more than once with respect to the same matter, whether pursuant to the indemnification provided for in this Section 4 or any other remedy provided under this Agreement, any Ancillary Agreement.

**4.6 Procedures for Indemnification**.

(a) An Indemnitee shall give the Indemnifying Party notice of any matter that an Indemnitee has determined has given or would reasonably be expected to give rise to a right of indemnification under this Agreement (other than a Third-Party Claim, which shall be governed by this Section 4.6) within twenty (20) Business Days of such determination, stating the amount of the Loss claimed, if known, and method of computation thereof, and containing a reference to the provisions of this Agreement in respect of which such right of indemnification is claimed by such Indemnitee or arises; *provided, however*, that the failure to provide such notice shall not release the Indemnifying Party from any of its obligations except and solely to the extent the Indemnifying Party shall have been actually and materially prejudiced as a result of such failure.

(b) If a claim or demand is made against a WDC Indemnitee or a Spinco Indemnitee (each, an "**Indemnitee**") by any Person who is not a Party or an Affiliate of a Party (a "**Third-Party Claim**") as to which such Indemnitee is or reasonably expects to be entitled to indemnification pursuant to this Agreement, such Indemnitee shall promptly (and in any event by no later than thirty (30) calendar days after receipt by such Indemnitee of written notice of the Third-Party Claim) notify the Party that is or may be required pursuant to this Section 4 or pursuant to any Ancillary Agreement to make such indemnification (the "**Indemnifying Party**") in writing, and in reasonable detail, of the Third-Party Claim and provide copies of all notices and documents (including court papers) received by the Indemnitee relating to the Third-Party Claim as of the date of such notice by the Indemnitee to the Indemnifying Party. With respect to notices and documents (including court papers) relating to the Third-Party Claim received by the Indemnitee after the date of such notice by the Indemnitee to the Indemnifying Party, the Indemnitee shall promptly (and in any event by no later than ten (10) Business Days after the Indemnitee's receipt thereof) deliver to the Indemnifying Party copies of such notices and documents. However the failure to provide notice of any such Third-Party Claim or any subsequent notices or documents pursuant to this clause shall not release the Indemnifying Party from any of its obligations except and solely to the extent the Indemnifying Party shall have been actually and materially prejudiced as a result of such failure (except that the Indemnifying Party or Indemnifying Parties shall not be liable for any expenses incurred by the Indemnitee in defending such Third-Party Claim during the period in which the Indemnitee failed to give such notice).

(c) Other than in the case of any Liability being managed by a Party in accordance with any Ancillary Agreement or as provided in Section 4.8(a) and 4.6(d), an Indemnifying Party shall be entitled (but shall not be required) to assume, control the defense of, and, subject to Section 4.6(f), settle any Third-Party Claim, at such Indemnifying Party's own cost and expense and by such Indemnifying Party's own counsel, which counsel must be reasonably acceptable to the applicable Indemnitees, if it gives written notice of its intention to do so and agreement that the Indemnitee is entitled to indemnification under this Section 4 to the applicable Indemnitees within the earlier of (i) thirty (30) calendar days of the receipt of notice from such Indemnitees of the Third-Party Claim and (ii) ten (10) Business Days before the due date for the answer or response to a claim. After such notice from an Indemnifying Party to an Indemnitee of its election to assume the defense of a Third-Party Claim, such Indemnitee shall have the right to employ separate counsel and to participate in (but not control) the defense, compromise or settlement thereof, at its own expense and, in any event, shall reasonably cooperate with the Indemnifying Party in such defense and make available to the Indemnifying Party all witnesses, pertinent and material Information and materials in such Indemnitee's possession or under such Indemnitee's control relating thereto as are reasonably required by the Indemnifying Party; *provided, however*, that such access shall not require the Indemnitee to disclose any information the disclosure of which would, in the reasonable judgment of the Indemnitee, result in the loss of any existing Privileges with respect to such information or violate any applicable Law.

(d) Notwithstanding anything to the contrary in this Section 4.6, in the event that: (i) an Indemnifying Party elects not to assume responsibility for defending a Third-Party Claim; (ii) there exists a conflict of interest or potential conflict of interest, as reasonably determined by counsel for the Indemnitee, between the Indemnifying Party and the applicable Indemnitee(s); (iii) a Third-Party Claim primarily seeks criminal culpability or an order, injunction or other equitable relief or relief for other than money damages against the Indemnitee; or (iv) the party making such Third-Party Claim is a Governmental Authority with (A) regulatory authority over the Indemnitee or any of its material Assets or (B) authority to bring a criminal charge against the Indemnitee, such Indemnitee(s) shall be entitled to assume the defense of such Third-Party Claim, at the Indemnifying Party's expense, with counsel of such Indemnitee's choosing. If the Indemnitee is conducting the defense against any such Third-Party Claim, the Indemnifying Party shall reasonably cooperate with the Indemnitee in such defense and make available to the Indemnitee all witnesses, pertinent and material Information and materials in such Indemnifying Party's possession or under such Indemnifying Party's control relating thereto as are reasonably required by the Indemnitee pursuant to a joint defense agreement to be entered into by Indemnitee and the Indemnifying Party; *provided, however*, that such access shall not require the Indemnifying Party to disclose any information the disclosure of which would, in the reasonable judgment of the Indemnifying Party, result in the loss of any existing Privileges with respect to such information or violate any applicable Law.

(e) No Indemnitee may settle, compromise or admit liability with respect to any Third-Party Claim without the consent of the Indemnifying Party, which consent shall not be unreasonably withheld, conditioned or delayed. If an Indemnifying Party has elected not to assume the defense of the Third-Party Claim, it shall not be a defense to any obligation to pay any amount in respect of such Third-Party Claim that the Indemnifying Party was not consulted in the defense thereof, that such Indemnifying Party's views or opinions as to the conduct of such defense were not accepted or adopted, that such Indemnifying Party does not approve of the quality or manner of the defense thereof or that such Third-Party Claim was incurred by reason of a settlement rather than by a judgment or other determination of liability.

(f) In the case of a Third-Party Claim, no Indemnifying Party shall consent to entry of any judgment or enter into any settlement of the Third-Party Claim without the consent (not to be unreasonably withheld, conditioned or delayed) of the Indemnitee if (i) the effect thereof is to permit any criminal culpability, injunction, declaratory judgment, other order or other non-monetary relief to be entered, directly or indirectly, against any Indemnitee, (ii) such settlement does not release the Indemnitee from all liabilities and obligations with respect to such Third-Party Claim, (iii) such settlement includes an admission of guilt, liability, criminal culpability or violation of Law by or on behalf of the Indemnitee, or (iv) the Indemnifying Party is not obligated to or cannot pay the full amount of Losses arising from such judgment or settlement.

(g) For the avoidance of doubt, the provisions of this Section 4.6 shall not apply to Tax Contests which shall be governed exclusively by the Tax Matters Agreement.

(h) Except as otherwise provided in Section 9.4 or any Ancillary Agreement, following the Separation Time, the indemnification provisions of this Section 4 shall be the sole and exclusive remedy of an Indemnitee for any monetary or compensatory damages or Losses resulting from any breach of this Agreement (including with respect to monetary or compensatory damages or Losses arising out of or relating to, as the case may be, any Flash Liability or Excluded Liability) or any Ancillary Agreement.

(i) Notwithstanding anything to the contrary in this Section 4.6, in the event of any conflict or inconsistency between this Section 4.6(i), and any other provision of Section 4.6, the following provisions shall control with respect to any Third-Party Claim in respect of any Shared Liabilities; *provided*, *however*, that nothing in this Section 4.6(i) shall alter or amend the allocation of responsibilities for Shared Liabilities set forth in Section 1.6. If a Third-Party Claim in respect of any Shared Liabilities is made against a Party, then (A) such Party shall assume the defense of such Third-Party Claim with counsel of such Party's choosing (subject to the approval of the other Party, such approval not to be unreasonably withheld, conditioned or delayed), with both Parties sharing equally the total fees, costs and expenses incurred in connection with such defense, and (B) any Indemnitee affiliated with such Party (other than a member of the WDC Group or Spinco Group) that is or becomes a named party to the same Third-Party Claim shall be represented by the same counsel as such Party; *provided*, *however*, that notwithstanding the foregoing, in the event there is, in the reasonable opinion of the joint counsel referenced herein, a material conflict of interest between or among any of the Persons referenced in this sentence, then each such Person that is subject to any such conflict shall be entitled to their own counsel in connection with such Third-Party Claim, and the expenses of such separate counsel shall be shared equally by the Parties. The Parties shall reasonably cooperate and consult with each other regarding any Third-Party Claim in respect of any Shared Liabilities, including with respect to the defense thereof. Any Indemnitee that is not a member of the WDC Group or Spinco Group shall reasonably cooperate with the Parties regarding any Third-Party Claim in respect of any Shared Liabilities. Each Party shall make available to the other Party all witnesses, pertinent and material Information and materials in such Party's possession or under such Party's control, in each case, to the extent such witnesses, pertinent and material Information and materials are reasonably required in connection with a Third-Party Claim in respect of any Shared Liabilities; *provided, however*, that such access shall be made pursuant to a joint defense agreement; *provided further* that such access shall not require a Party to disclose any information the disclosure of which would, in the reasonable judgment of the such Party, result in the loss of any existing Privileges with respect to such information or violate any applicable Law. Notwithstanding anything to the contrary herein, no Party will settle, compromise or admit liability with respect to any Third-Party Claim regarding any Shared Liability without the consent of the other Party (such consent not to be unreasonably withheld, conditioned or delayed).

**4.7 Calculation of Losses**. The amount of any Loss that is indemnifiable under this Section 4 will be net of any proceeds actually received by the Indemnitee from any third party (net of any deductible or retention amount or any other third-party costs or expenses incurred by the Indemnifying Party in obtaining such recovery) for indemnification for such Loss that actually reduce the amount of the Loss ("**Third-Party Proceeds**"). Accordingly, the amount which any Indemnifying Party is required to pay pursuant to this Section 4 to any Indemnitee pursuant to this Section 4 will be reduced by Third-Party Proceeds theretofore actually recovered by or on behalf of the Indemnitee in respect of the related Loss. If an Indemnitee receives a payment required by this Agreement from an Indemnifying Party in respect of any Loss (an "**Indemnity Payment**") and subsequently receives Third-Party Proceeds, then the Indemnitee will pay to the Indemnifying Party an amount equal to the excess of the Indemnity Payment received over the amount of the Indemnity Payment that would have been due if the Third-Party Proceeds had been received, realized or recovered before the Indemnity Payment was made. The Indemnitee shall use commercially reasonable efforts to seek to collect or recover any Third-Party Proceeds to which the Indemnitee is entitled in connection with any Liability for which the Indemnitee seeks contribution or indemnification pursuant to this Section 4; *provided, however*, that the Indemnitee's inability to collect or recover any such Third-Party Proceeds shall not limit the Indemnifying Party's obligations hereunder.

**4.8 Certain Actions; Substitution; Subrogation**.

(a) **Certain Actions**. Notwithstanding anything to the contrary set forth in Section 4.6, and subject to the provisions of the Tax Matters Agreement, which shall remain exclusive as to Tax matters, and except to the extent there are actual or potential conflicts of interest between WDC and Spinco with respect to a particular Action (i) WDC may elect to have exclusive authority and control over the investigation, prosecution, defense, appeal and settlement of any and all Actions pending at the Separation Time to the extent the Action relates exclusively to an Excluded Asset and/or Excluded Liability and as to which, solely, a member or members of the WDC Group (and not any member of the Spinco Group) is named as a target or defendant thereunder, (ii) Spinco may elect to have exclusive authority and control over the investigation, prosecution, defense, appeal and settlement of any and all Actions pending at the Separation Time to the extent the Action relates exclusively to a Flash Asset and/or Flash Liability and as to which, solely, a member or members of the Spinco Group (and not any member of the WDC Group) is named as a target or defendant thereunder and (iii) WDC and Spinco will have joint authority and control over the investigation, prosecution, defense, appeal and settlement of any and all Actions pending at the Separation Time which relate to or arise out of the Flash Business, the Flash Assets or the Flash Liabilities and as to which a member of the WDC Group (other than Spinco and the Spinco Subs) is named as a target or defendant thereunder, irrespective of whether a member of the Spinco Group is also named as a target or defendant thereunder (such Actions, a "**Joint Control Action**"). Notwithstanding the foregoing, in any Action in which both members of the Spinco Group and members of the WDC Group are named parties or that implicates both the Spinco Group, on the one hand, and the WDC Group, on the other hand, in a material respect, including due to the reasonably foreseeable impact on the business of WDC, on the one hand, or Spinco, on the other hand, then such Action shall be deemed to be a Joint Control Action and WDC and Spinco will have joint authority and control over the investigation, prosecution, defense, appeal and settlement of the action each at their own cost. In connection with any Joint Control Action, the Parties shall reasonably consult with each other on a regular basis with respect to strategy and material developments with respect to such action, and no Party may settle or compromise or consent to the entry of judgment in such Action without the consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed. The payment of any settlement or judgment in matters pursuant to which WDC and Spinco have joint authority shall be determined in accordance with the extent to which such settlement relates to a Flash Liability or an Excluded Liability, respectively.

(b) **Substitution**. In the event of an Action that involves solely matters that are indemnifiable and in which the Indemnifying Party is not a named defendant, if either the Indemnitee or the Indemnifying Party so requests, the Parties shall use commercially reasonable efforts to substitute the Indemnifying Party for the named but not liable defendant to be removed from such Action and such defendants shall not be required to make any payments or contribution in connection therewith (regardless if such removal is successful or not). If such substitution or addition cannot be achieved for any reason or is not requested, the rights and obligations of the Parties regarding indemnification and the management of the defense of claims as set forth in this Section 4 shall not be affected.

(c) **Subrogation**. In the event of payment by or on behalf of any Indemnifying Party to or on behalf of any Indemnitee in connection with any Third-Party Claim, such Indemnifying Party shall be subrogated to and shall stand in the place of such Indemnitee, in whole or in part based upon and in proportion to the amount of the Indemnitee's Liability that the Indemnifying Party has paid, as to any events or circumstances in respect of which such Indemnitee may have any right, defense or claim relating to such Third-Party Claim against any claimant or plaintiff asserting such Third-Party Claim or against any other Person. Such Indemnitee shall cooperate with such Indemnifying Party in a reasonable manner, and at the cost and expense of such Indemnifying Party, in prosecuting any subrogated right, defense or claim.

**4.9 Payments**. Indemnification required by this Section 4 shall be made by periodic payments of the amount thereof during the course of the investigation or defense, as and when bills are received or an indemnifiable Loss is incurred. The applicable Indemnitee shall deliver to the Indemnifying Party, upon request, reasonable documentation setting forth the basis for the amount of such payments, including documentation with respect to calculations made and consideration of any Third-Party Proceeds that actually reduce the amount of such indemnifiable Losses; *provided* that the delivery of such documentation shall not be a condition to the payments described in the first sentence of this Section 4.9, but the failure to deliver such documentation may be the basis for the Indemnifying Party to contest whether the applicable Loss or Liability was incurred by the applicable Indemnitee.

**4.10 Non-Applicability to Taxes**. Except as otherwise specifically provided herein, Tax matters shall be exclusively governed by the Tax Matters Agreement and, in the event of any inconsistency between the Tax Matters Agreement and this Agreement, the Tax Matters Agreement shall control. Indemnification for Tax matters (including procedures relating thereto) shall be exclusively governed by the Tax Matters Agreement.

**4.11 Characterization of and Adjustment to Payments**.

(a) In the absence of any change in Tax treatment under the Code or except as otherwise required by other applicable Tax Law, any indemnity payments made under this Agreement shall be reported for Tax purposes by the payor and the recipient as distributions or capital contributions, as appropriate, occurring immediately before the Distribution or as payments of an assumed or retained Liability. Any indemnity payment made under this Agreement shall be increased as necessary so that after making all payments in respect to Taxes imposed on or attributable to such indemnity payment, the recipient receives an amount equal to the sum it would have received had no such Taxes been imposed.

(b) Payments of interest shall be treated as deductible by the payor Party or its relevant Subsidiary and as income to the payee Party or its relevant Subsidiary, as permitted and applicable.

(c) In the case of each of the foregoing, no Party shall take any position inconsistent with such treatment. In the event that a Taxing Authority asserts that a Party's treatment of a payment pursuant to this Agreement should be other than as set forth in this Section 4.11, such Party shall use its commercially reasonable efforts to contest (at the Indemnifying Party's expenses) such challenge.

## 5. ACCESS TO INFORMATION

### 5.1 Access to Personnel and Property.

(a) WDC and Spinco shall use commercially reasonable efforts to preserve all written Information reasonably related to the other Party until the latest of (the "**Preservation Period**") (i) the date on which the Information is no longer required to be retained under the retaining party's record retention policies as in effect immediately prior to the Distribution, including without limitation, pursuant to any litigation hold issued by the retaining party or any of its Subsidiaries prior to the Distribution; (ii) the concluding date of any period as may be required by applicable Law; and (iii) the concluding date of any period during which such Information relates to a pending or threatened Action which is known to the retaining party or its Group in possession of such Information at the time any retention obligation with regard to such Information would otherwise expire; provided that with respect to any pending or threatened Action arising after the Distribution, clause (iii) of this sentence applies only to the extent that the retaining party or its Group in possession of such Information has been notified in writing pursuant to a litigation hold by the other Party of the relevant pending or threatened Action; provided that each Party shall use commercially reasonable efforts to, within a reasonable time following the expiration of the Preservation Period for such Information and upon request of the other Party, purge from its databases, files and other systems or otherwise make unreadable or inaccessible such Information to the extent it is Confidential Information of such other Party; provided, further, that no Party shall be in breach of this Section 5.1(a) if such Party does not have knowledge that certain Information is within its possession, custody or control.

(b) During the Preservation Period, each of WDC and Spinco shall use commercially reasonable efforts to afford to the other and the Representatives of each, at such requesting Party's expense on a time and materials basis, reasonable access during normal business hours, subject to the restrictions for Privileges (as defined below) or Confidential Information set forth in this Agreement and to the requirements of any applicable Law (including, without limitation, any applicable requirements relating to privacy or disclosure of personal information such as a code of conduct or standard of conduct (*provided*, *however*, that the Party restricting any access on the basis of Privilege or requirements of Law shall notify the Party of the access being so restricted and the reasons on which such access is restricted and will arrange for appropriate substitute access or disclosure)), to the personnel, properties, and, in connection with access to such personnel and properties, Information of such Party and its Subsidiaries insofar as such access is reasonably required by the requesting Party (including as may be reasonably necessary to prosecute, maintain or enforce Intellectual Property Rights that are Excluded Assets (in the case of WDC as the requesting Party) or Flash Assets (in the case of Spinco as the requesting Party) in the ordinary course of business), upon the reasonable prior written request by such Party for access to reasonably specific and reasonably identified personnel, properties and Information, and only for the duration such access is reasonably requested and required by the requesting Party, and (x) relates to such requesting Party; (y) relates to, in the case of requests from WDC, the Flash Assets prior to the Separation Time solely as may be reasonably necessary in connection with the prosecution or defense of any Action for which the requesting Party may have Liability under, or may have rights pursuant to the assets Conveyed pursuant to, this Agreement (except for claims, demands or Actions between members of each Group) or the Excluded Assets, and in the case of requests from Spinco, the Excluded Assets prior to the Separation Time solely as may be reasonably necessary in connection with the prosecution or defense of any Action for which the requesting Party may have Liability under, or may have rights pursuant to the assets Conveyed pursuant to, this Agreement (except for claims, demands or Actions between members of each Group) or the Flash Assets; or (z) is reasonably required by a Party to perform its obligations under this Agreement or any Ancillary Agreement to which such Party or any of its Affiliates is a party; *provided, however*, that the Party providing such access may require that such Representatives execute a confidential non-disclosure agreement agreeing to be bound by the provisions of this Section 5, unless such individual is already subject to a non-disclosure agreement containing at least substantially the same terms and conditions as this Section 5 with respect to Confidential Information; *provided, further*, that nothing in this Section 5.1 shall be deemed to grant Spinco or any Spinco Sub, on the one hand, or WDC or any Subsidiary of WDC, on the other hand, any license, easement, servitude or similar right with respect to any real property or Intellectual Property Rights (without limiting the Transitional Trademark License Agreement or the Intellectual Property Cross-License Agreement) that are an Excluded Asset or a Flash Asset, respectively. For the avoidance of doubt, the Tax Matters Agreement, and not this Section 5.1, shall govern access to and the retention and exchange of Tax Returns, schedules and work papers and all material records or other documents relating to Tax matters.

**5.2 Witness Services.** Subject to Section 5.3, during the Preservation Period, each of WDC and Spinco shall use its commercially reasonable efforts to make available to the other, upon reasonable prior written request, its and its Subsidiaries' directors, officers, employees and agents (taking into account the work schedules and other commitments of such Persons) as witnesses to the extent that (a) such Persons may reasonably be required to testify in connection with the prosecution or defense of any Action for which the requesting Party may have Liability under this Agreement or in connection with the Transactions (except for claims, demands or Actions between members of each Group) or the enforcement of any rights included in the Flash Assets (in the case of Spinco as the requesting Party) or the Excluded Assets (in the case of WDC as the requesting Party), including enforcement of Intellectual Property Rights, or the defense of any rights included in the Flash Assets (in the case of Spinco as the requesting Party) or the Excluded Assets (in the case of WDC as the requesting Party), including the defense of Intellectual Property Rights from challenges to the validity, enforceability or ownership thereof and (b) there is no adversity in the Action between the requesting Party and the other Party except for the time and effort required in connection with the services of the officers, directors and employees and agents of the other Party. The reasonable and documented out-of-pocket costs and expenses incurred in the provision of such witnesses shall be paid by the Party requesting the availability of such Person.

**5.3 Privileged Matters**.

(a) The respective rights and obligations of the Parties to maintain, preserve, assert or waive any or all privileges belonging to either Party or its Subsidiaries with respect to the Flash Business or the other businesses of WDC, including the attorney-client and work product privileges (collectively, "**Privileges**"), will be governed by the provisions of thisSection 5.3.

(b) Notwithstanding anything to the contrary contained herein, (i) WDC shall have the sole authority to assert or waive all Privileges with respect to communications and work product that (x) involve, or were made by, any attorney or attorneys representing any party or parties within the WDC Group and/or the Spinco Group, (y) existed at any time at or prior to the Separation Time and (z) either (1) do not relate to the Flash Business, the Flash Assets or the Flash Liabilities, or (2) relate to the consummation of the Transactions, including the negotiation and execution of this Agreement and the Ancillary Agreements (but excluding any Privileges to the extent related to any Shared Liabilities) (the "**WDC Pre-Separation Privileged Materials**") and (ii) Spinco shall have the sole authority to assert or waive all Privileges with respect to communications and work product that (x) involve, or were made by, any attorney or attorneys representing any party or parties within the WDC Group and/or the Spinco Group, (y) existed at any time at or prior to the Separation Time and (z) relate solely to the Flash Business, the Flash Assets and/or the Flash Liabilities (the "**Spinco Pre-Separation Privileged Materials**", and the WDC Pre-Separation Privileged Materials or the Spinco Pre-Separation Privileged Materials, the "**Exclusive Pre-Separation Privileged Materials**").

(c) With respect to communications and work product protected by any Privileges that (x) involve, or were made by, an attorney or attorneys representing any party or parties within the WDC Group and/or the Spinco Group, (y) existed at any time at or prior to the Separation Time, and (z) do not constitute Exclusive Pre-Separation Privileged Materials (the "**Shared Pre-Separation Privileged Materials**"), WDC shall retain all applicable Privileges; *provided*, *however*, that (i) WDC shall not waive any Privilege with respect to Shared Pre- Separation Privileged Materials without the prior written consent of Spinco, such consent not to be unreasonably withheld, and (ii) WDC shall provide Spinco and members of the Spinco Group with reasonable access to such Shared Pre-Separation Privileged Materials. In connection with affording Spinco or any member of the Spinco Group access to such Shared Pre-Separation Privileged Materials, the Parties and their respective Group's shall cooperate with one another to take appropriate steps to preserve the Privileges afforded to such Shared Pre-Separation Privileged Materials, including by entering into a common interest and joint defense agreement or such other steps as may be reasonably necessary in order to preserve the Privileges afforded to such Shared Pre-Separation Privileged Materials.

(d)

(i) Upon receipt by a Party or any of its Affiliates, as the case may be, of any subpoena, discovery or other request from any third party that actually or arguably calls for the production or disclosure of Exclusive Pre-Separation Privileged Materials of the other Party, or if a Party, or any of its Affiliates, as the case may be, obtains knowledge that any current or former employee of such Party or its Affiliates, as the case may be, receives any subpoena, discovery or other request from any third party that actually or arguably calls for the production or disclosure of the other Party's Exclusive Pre-Separation Privileged Materials, such Party will promptly notify the other Party of the existence of the request and, to the extent legally permissible, provide such other Party with prompt written notice of the existence, terms and circumstances surrounding such request or requirement so that such other Party may (A) seek an injunction, protective order or other appropriate remedy or (B) waive compliance with the provisions of this Agreement. Any such communications required to be disclosed shall not be used against the Party to whom such Exclusive Pre-Separation Privileged Materials belong in any claim between the Parties.

(ii) Upon receipt by a Party or any of its Affiliates, as the case may be, of any subpoena, discovery or other request from any third party that actually or arguably calls for the production or disclosure of Shared Pre-Separation Privileged Materials, or if a Party or any of its Affiliates, as the case may be, obtains knowledge that any current or former employee of such Party or its Affiliates, as the case may be, receives any subpoena, discovery or other request from any third party that actually or arguably calls for the production or disclosure of Shared Pre-Separation Privileged Materials, such Party will promptly notify the other Party of the existence of the request and, to the extent legally permissible, provide the other Party with prompt written notice of the existence, terms and circumstances surrounding such request or requirement so that the Parties may (A) seek an injunction, protective order or other appropriate remedy or (B) waive compliance with the provisions of this Agreement. No Shared Pre-Separation Privileged Materials shall be used against either Party in any dispute between the Parties.

(e)

(i) Any attorney-client relationship between any member of the Spinco Group, on the one hand, and any attorney employed by any member of the WDC Group as of the Separation Time, on the other hand, shall automatically terminate at the Separation Time. Each member of the Spinco Group hereby waives any conflict with respect to the continued representation of any member of the WDC Group by such attorney and, if so required, agrees to execute a written waiver of such continued representation.

(ii) Any attorney-client relationship between any member of the WDC Group, on the one hand, and any attorney employed by any member of the Spinco Group as of the Separation Time, on the other hand, shall automatically terminate at the Separation Time. Each member of the WDC Group hereby waives any conflict with respect to the continued representation of any member of the Spinco Group by such attorney and, if so required, agrees to execute a written waiver of such continued representation.

## 6. ADDITIONAL AGREEMENTS

### 6.1 Further Assurances; Cooperation.

(a) Subject to the limitations or other provisions of this Agreement and any Ancillary Agreement: (i) each of the Parties shall use commercially reasonable efforts (subject to, and in accordance with, applicable Law) to take promptly, or cause to be taken promptly, all actions, and to do promptly, or cause to be done promptly, and to assist and cooperate with the other Party in doing, all things reasonably necessary, proper or advisable to consummate and make effective the Transactions and carry out the intent and purposes of this Agreement and the Ancillary Agreements, including (x) using commercially reasonable efforts to obtain satisfaction of the conditions precedent to each Party's obligations hereunder or in any Ancillary Agreement within its reasonable control; (y) performing all covenants and agreements herein or in any Ancillary Agreement applicable to such Party; and (z) executing and delivering any Transfer Document; and (ii) none of the Parties will, without the prior written consent of the other applicable Party, take any action which would reasonably be expected to prevent or materially impede, interfere with or delay the Transactions. Without limiting the generality of the foregoing, where the cooperation of third parties, such as insurers or trustees, would be necessary in order for a Party to completely fulfill its obligations under this Agreement or the Ancillary Agreements, such Party shall use commercially reasonable efforts to cause such third parties to provide such cooperation. Nothing in this Section 6.1 will operate to affect the rights and obligations of the Parties under Section 1 and Section 2.

(b) To the extent that any Ancillary Agreements, or schedules or exhibits thereto (including, for example, the Services Schedule and the Data Processing Addendum referred to in the Transition Services Agreement) are specified to be completed following the date hereof, the Parties shall mutually agree upon the terms, covenants, agreements and contents of such items in good faith, except to the extent a different standard for completion of such item is specified elsewhere in this Agreement or the other Ancillary Agreements, in which case such specifically specified standard for completion shall apply.

**6.2 Removal of Tangible Assets**. Except as may be otherwise provided in the Ancillary Agreements or otherwise agreed to by the Parties, the Parties shall reasonably cooperate, after the Separation Time, with respect to moving or causing to be moved (i) from any facilities of the WDC Group, all tangible Flash Assets and (ii) from any Spinco Real Property, all tangible Excluded Assets, in each case, in a manner so as not to unreasonably interfere with the operations of any member of the WDC Group or Spinco Group and not to cause damage to any facilities or real property.

**6.3 Guarantees**.

(a) Except as otherwise specified in any Ancillary Agreement, on or prior to the Separation Time or as soon as practicable thereafter, (i) Spinco shall (with the reasonable cooperation of the applicable member of the WDC Group) use its commercially reasonable efforts to novate, assign or replace (including by inserting Spinco as replacement guarantor) any Spinco Guarantee in order to remove or otherwise have released any member of the WDC Group that is a guarantor of or obligor for any such Spinco Guarantee and (ii) WDC shall (with the reasonable cooperation of the applicable member of the Spinco Group) use its commercially reasonable efforts to novate, assign or replace (including by inserting WDC as replacement guarantor) any WDC Guarantee in order to remove or otherwise have released any member of the Spinco Group that is a guarantor of or obligor for any such WDC Guarantee (in each case, any such novation, assignment, replacement, removal or release, a "**Guarantee Release**").

(b) On or prior to the Separation Time, to the extent required to obtain a Guarantee Release:

(i) of any Spinco Guarantee, Spinco will use its commercially reasonable efforts to execute a replacement Spinco Guarantee in the form of the existing Spinco Guarantee (after giving effect to the Guarantee Release) or such other form as is agreed to by the relevant parties to such Spinco Guarantee, except to the extent that such replacement Spinco Guarantee contains representations, covenants or other terms or provisions either (A) with which Spinco would be reasonably unable to comply or (B) which would be reasonably expected to be breached; and

(ii) of any WDC Guarantee, WDC will use its commercially reasonable efforts to execute a replacement WDC Guarantee in the form of the existing WDC Guarantee (after giving effect to the Guarantee Release) or such other form as is agreed to by the relevant parties to such WDC Guarantee, except to the extent that such replacement WDC Guarantee contains representations, covenants or other terms or provisions either (A) with which WDC would be reasonably unable to comply or (B) which would be reasonably expected to be breached.

(c) If a Party is unable to obtain a Guarantee Release prior to the Separation Time, then the other Party will: (i) continue to use its commercially reasonable efforts to obtain a Guarantee Release; (ii) indemnify, defend and hold harmless the other Party and its Affiliates against, and reimburse such Party and its Affiliates for, any Losses of such Party and its Affiliates incurred by them because such Party or its Affiliate is required to make any payment required under any such WDC Guarantee or Spinco Guarantee, as applicable; and (iii) agree not to (and to cause members of their respective Groups not to) renew or extend the term of, increase its obligations under, or transfer to a third party, any loan, guarantee, lease, contract or other obligation for which the other Party or member of such Party's Group is or may be liable, without the prior written consent of such other Party, unless all obligations of such other Party and the other members of such Party's Group with respect thereto are thereupon terminated by documentation reasonably satisfactory in form and substance to such Party. Each Party's commercially reasonable efforts with respect to this Section 6.3 shall not require such Party to take any action that would be reasonably expected to expose it or any other member of its Group to any incremental expenses or losses of benefits. Any costs and expenses incurred by the Parties arising out of or related to the matters set forth in this Section 6.3 shall be borne by the Parties in accordance with Section 9.1.

**6.4 Insurance Matters**.

(a) Subject to, and other than as set forth in Section 6.4(b), Spinco acknowledges that from and after the Separation Time: (i) any insurance policies maintained by WDC or its Subsidiaries, including any self-insurance, fronted insurance or captive insurance policy or program (the "**WDC Insurance Policies**"), shall not be available, transferred or assigned to Spinco, the Spinco Subs, the Flash Assets or the Flash Business; (ii) Spinco, the Spinco Subs, the Flash Assets and the Flash Business shall cease to be insured by the WDC Insurance Policies; and (iii) Spinco shall be responsible for securing all insurance it deems appropriate for the operation of Spinco, the Spinco Subs, the Flash Assets and the Flash Business.

(b) From and after the Separation Time, Spinco and the Spinco Subs shall have the right to assert claims under the occurrence-based WDC Insurance Policies covering the period prior to the Separation Time, other than any self-insurance, fronted insurance or captive insurance policy or program ("**Shared WDC Policies**"), arising out of any actual or alleged occurrence occurring prior to the Separation Time relating to Spinco, the Spinco Subs, the Flash Assets or the Flash Business ("**Pre-Separation Spinco Claims**"). Except as provided in this Section 6.4(b), from and after the Separation Time, WDC shall have no obligation to Spinco and the Spinco Subs with respect to or under any of the Shared WDC Policies; *provided* that from and after the Separation Time, WDC shall use commercially reasonable efforts to direct any carriers under the Shared WDC Policies to make any available insurance coverage under the Shared WDC Policies available to Spinco, the Spinco Subs, the Flash Assets and the Flash Business for Pre-Separation Spinco Claims; *provided, further*, that (i) all deductibles, retentions, claims handling fees and similar amounts incurred or payable under any such Shared WDC Policies shall be shared in the same proportion as any insurance proceeds actually received by the WDC Group, on the one hand, and the Spinco Group, on the other hand, with respect to any one claim (or related claims) under the relevant Shared WDC Policy and (ii) Spinco shall be solely responsible for any retrospective premium increases to the extent attributable to any Pre-Separation Spinco Claims; *provided, further*, that any amounts due to WDC under this Section 6.4(b) shall be remitted promptly by Spinco to WDC following WDC's written request.

(c) With respect to Pre-Separation Spinco Claims, Spinco and the Spinco Subs shall be solely responsible for the submission, processing, administration and handling of the Pre-Separation Spinco Claims under the Shared WDC Policies; *provided, however*, that at Spinco's reasonable request and sole cost and expense, WDC shall reasonably cooperate with and assist Spinco and the Spinco Subs in the submission, processing, administration and handling of the Pre-Separation Spinco Claims under the Shared WDC Policies.

(d) Spinco and the Spinco Subs shall keep WDC reasonably apprised of any Pre-Separation Spinco Claims under the Shared WDC Policies, and WDC shall have the right to reasonably monitor any such Pre-Separation Spinco Claims under the Shared WDC Policies.

(e) With respect to all Shared WDC Policies, Spinco and the Spinco Subs agree and covenant not to make any claim or assert any rights against WDC or under the Shared WDC Policies except as expressly provided under this Section 6.4.

(f) Notwithstanding anything in this Agreement, (i) WDC shall not be deemed to have made any representation or warranty as to the availability of any coverage under any Shared WDC Policies; (ii) except for Retained Claims or as provided in Section 4.4, neither WDC nor its Subsidiaries shall be liable to Spinco or the Spinco Subs for any claims, or portions thereof, not covered by an insurer under any Shared WDC Policy for any reason, including any deductibles, retentions, policy terms, conditions, exclusions, limitations or restrictions (including erosion or exhaustion of limits), coverage disputes, failure to timely notice a claim by WDC, Spinco or the Spinco Subs, any defect in such claim or its processing or bankruptcy or insolvency of any insurance carrier; and (iii) WDC shall retain all rights to control the Shared WDC Policies, including the right to erode, exhaust, settle, release, commute, buy back or otherwise resolve disputes with respect to any of the Shared WDC Policies, notwithstanding the right of Spinco and the Spinco Subs to make claims under the Shared WDC Policies in accordance with this Section 6.4.

**6.5 Casualty and Condemnation**(a) . If, between the date hereof and the Separation Time, there shall occur any physical damage to or destruction of, or theft or similar loss of, any of the material tangible Assets described in Section 1.5(a) (a "**Casualty Loss**") or any condemnation or taking by eminent domain by a Governmental Authority of any of the Assets described in Section 1.5(a) (a "**Condemnation Event**"), then: (i) WDC shall use its commercially reasonable efforts to (A) replace or repair (as applicable) the asset or property subject to such Casualty Loss and (B) replace the asset or property that has been condemned or taken such that the operation of the Flash Business can continue in all material respects in the ordinary course consistent with past practices; or (ii) if the Separation is consummated notwithstanding such Casualty Loss or Condemnation Event, and if such damaged, destroyed, stolen, lost or condemned or taken Assets have not been repaired or replaced as of the Separation Time, then, without limiting Spinco's or any member of the Spinco Group's other rights hereunder, promptly after any casualty insurance proceeds, business interruption insurance proceeds or condemnation proceeds payable to WDC or any of its Affiliates with respect to such Casualty Loss or Condemnation Event have been actually collected, WDC shall, or shall cause its Affiliate to, pay to Spinco: (x) the aggregate amount, if any, of such casualty insurance proceeds described above actually paid to WDC or any of its Affiliates in connection with such Casualty Loss; (y) the aggregate amount, if any, of such business interruption insurance proceeds described above actually paid to WDC or any of its Affiliates in connection with such Casualty Loss; and (z) the aggregate amount, if any, of such condemnation proceeds described above actually paid to WDC or any of its Affiliates in connection with such Condemnation Event, in each case, net of any deductible or retention amount or any other costs or expenses incurred in obtaining such recovery. WDC shall, and shall cause its Affiliates to, use commercially reasonable efforts to collect amounts due (if any) under insurance policies or programs in respect of any Casualty Loss or as a result of a Condemnation Event. The amount of any insurance or condemnation proceeds described above actually paid to WDC shall be included as a Flash Asset and not be distributable cash available to WDC or any other member of the WDC Group.

**6.6 Confidentiality**.

(a) For a period of four (4) years following the Separation Time (or such longer period applicable in accordance with the last sentence of this Section 6.6(a) or Section 6.6(b)), the Parties shall hold, and shall cause each of their respective controlled Affiliates to hold, and each of the foregoing shall cause their respective directors, officers, employees, agents, consultants and advisors to hold, in strict confidence, and not to disclose or release or use, for any purpose other than as permitted pursuant to this Agreement or the Ancillary Agreements (including as reasonably necessary to provide or receive services under the Transition Services Agreement), without the prior written consent of the applicable Party concerning its Confidential Information, any and all Confidential Information concerning the other Party or such Party's Group; *provided, however*, that the Parties may disclose, or may permit disclosure of, Confidential Information: (i) to their respective auditors, attorneys, financial advisors, bankers and other appropriate consultants and advisors who have a need to know such information for auditing and other non-commercial purposes and are informed of their obligation to hold such information confidential to the same extent as is applicable to the Parties and in respect of whose failure to comply with such obligations, the applicable Party will be responsible; (ii) if the Parties or any of their respective controlled Affiliates are required or compelled to disclose any such Confidential Information by judicial or administrative process or by other requirements of Law or stock exchange rule; (iii) as required in connection with any legal or other proceeding by one Party against the other Party; or (iv) as necessary in order to permit a Party to prepare and disclose its financial statements, or other disclosures required by Law or applicable stock exchange. Notwithstanding the foregoing, in the event that any demand or request for disclosure of Confidential Information is made pursuant to clause (ii) above, the applicable Party shall promptly notify the Party whose Confidential Information is the subject of such demand or request for disclosure of the existence of such request or demand and, to the extent commercially practicable, shall provide such Party thirty (30) calendar days (or such lesser period as is commercially practicable) to seek an appropriate protective order or other remedy, which the applicable Party will cooperate in obtaining. In the event that such appropriate protective order or other remedy is not obtained, the Party whose Confidential Information is required to be disclosed shall or shall cause the other applicable Party to furnish, or cause to be furnished, only that portion of the Confidential Information that is legally required to be disclosed and shall take commercially reasonable steps to ensure that confidential treatment is accorded such information. With respect to any and all Confidential Information that is a Trade Secret, the confidentiality obligations in this Section 6.6(a) shall continue in full force and effect for as long as such Confidential Information remains a Trade Secret under applicable Law.

(b) The provisions of this Section 6.6 do not limit the obligations of any Party regarding the confidentiality of Confidential Information under any other Contract.

(c) Nothing in this Section 6.6 shall alter or limit any rights or obligations of WDC or Spinco pursuant to the Intellectual Property Cross-License Agreement.

**6.7 Receipt of Communications; Payments**. After the Separation Time, each Party (or any member of its Group) may receive mail, packages and other communications properly belonging to the other Party (or any member of its Group). Accordingly, at all times after the Separation Time, each Party authorizes the other Party to receive and, if necessary to identify the proper recipient in accordance with this Section 6.7, open all mail, packages and other communications received by such Party that belongs to such other Party, and to the extent that they do not relate to the business of the receiving Party, the receiving Party shall promptly deliver such mail, packages or other communications (or, in case the same also relates to the business of the receiving Party or another Party, copies thereof) to such other Party as provided for in Section 9.6; *provided* that the failure to deliver such mail, packages or other communications (or copies thereof) shall not constitute a breach of this Section 6.7 except to the extent that any such Party shall have been actually prejudiced as a result of such failure. The provisions of this Section 6.7 are not intended to, and shall not, be deemed to constitute an authorization by either Party to permit the other to accept service of process on its behalf and no Party is or shall be deemed to be the agent of any other Party for service of process purposes. After the Separation Time, each of Spinco and WDC shall cause the other members of its respective Group and its and any of their respective then-Affiliates to, promptly pay or deliver to the other Party (or their designee) any monies or checks that have been received after the Separation Time to the extent they are (or represent the proceeds of) an Excluded Asset or a Flash Asset, respectively.

**6.8 Real Property Transfer Obligations**. WDC shall, and shall cause its Affiliates to, make all filings and submissions, and take all other steps, required by Law in connection with all Real Property Transfer Obligations, to the extent applicable to any of the transactions contemplated by this Agreement; *provided* that WDC shall, and shall cause its Affiliates to, reasonably consult with Spinco with respect to such filings, submissions and compliance, including reasonably consulting with Spinco on any determination regarding the need to make any filing or submission and providing Spinco with a reasonable opportunity to comment on a draft of any required filing or submission. WDC shall pay any costs relating to, arising out of or resulting from such filings, submissions and compliance with respect to any Real Property Transfer Obligations.

**6.9 Non-Competition**. For a period of forty (40) months from and after the Separation Time (the "**Restricted Period**") and except as otherwise permitted in the Ancillary Agreements or any Contracts set forth in Schedule 1.7(b)(vi), WDC shall not, and shall cause its controlled Affiliates not to, develop, manufacture, market or sell standalone SSDs (whether internal or external SSDs). For the avoidance of doubt, this Section 6.9 shall not apply to HDDs that include Flash Business Products as a component or to Platforms Products.

**6.10 Specified Trademarks**. From and after the Separation Time, WDC (i) shall not, and shall cause its Affiliates not to, use in commerce, prosecute or take any action to maintain, and (ii) shall, and shall cause its Affiliates to, abandon and permit to lapse, the Specified Trademarks.

## 7. CONDITIONS

**7.1 Conditions to the Distribution**. The obligations of WDC to effect the Distribution pursuant to this Agreement shall be subject to the satisfaction, or, to the extent permitted by applicable Law, waiver by WDC, in its sole and absolute discretion (subject to Section 9.7), at or prior to the Separation Time of each the following conditions:

(a) the WDC Board shall have declared the Distribution and approved all related Transactions, which declaration may be made or withheld at its sole and absolute discretion (and such declaration or approval shall not have been withdrawn);

(b) the Registration Statement shall have been declared effective by the SEC, with no stop order suspending the effectiveness of the Registration Statement in effect, and no proceedings for such purpose shall be pending before, or threatened by, the SEC;

(c) WDC shall have mailed the Information Statement (and such other information concerning Spinco, the Distribution and such other matters as the Parties shall determine and as may otherwise be required by Law) to the applicable Record Holders;

(d) Nasdaq shall have approved the Nasdaq Listing Application, subject to office notice of issuance;

(e) the Internal Restructuring shall have been completed in all material respects prior to the Distribution, other than such steps (if any) that are expressly contemplated to occur at or after the Distribution;

(f) the Ancillary Agreements shall have been executed and delivered by each of the parties thereto;

(g) an independent appraisal firm shall have delivered (i) opinions, dated as of (x) the date of the declaration of the Distribution by the WDC Board and (y) the Distribution Date (or, with respect to clause (y), a bringdown of such opinion as of the Distribution Date), to the WDC Board that (1) after giving effect to the consummation of the Transactions, (A) the assets of each of WDC and Spinco, at a fair valuation, exceed its respective debts (including contingent liabilities), (B) each of WDC and Spinco will be able to pay its respective debts (including contingent liabilities) as they become due and (C) neither WDC nor Spinco will have an unreasonably small amount of either assets or capital for the operations of the businesses in which it is engaged or in which management has indicated it intends to engage and (2) immediately prior to giving effect to the Distribution and pursuant to Section 170 of the DGCL, the surplus of WDC exceeds the net amount of the value of the Distribution less the Spinco Dividend and (ii) opinions, dated as of (x) the date of the declaration of the Spinco Dividend by the Board of Directors of Spinco (the "**Spinco Board**") and (y) the Distribution Date (or, with respect to clause (y), a bringdown of such opinion as of the Distribution Date), to the Spinco Board that (1) after giving effect to the consummation of the Transactions, (A) the assets of Spinco, at a fair valuation, exceed its debts (including contingent liabilities), (B) Spinco will be able to pay its debts (including contingent liabilities) as they become due and (C) Spinco will not have an unreasonably small amount of either assets or capital for the operations of the businesses in which it is engaged or in which management has indicated it intends to engage and (2) immediately prior to giving effect to the Spinco Dividend and pursuant to Section 170 of the DGCL, the surplus of Spinco exceeds the amount of the Spinco Dividend (the opinions to be delivered pursuant to clause (i) and clause (ii), collectively, the "**Solvency Opinions**"); and such Solvency Opinions shall be reasonably acceptable to WDC in form and substance; and such Solvency Opinions shall not have been withdrawn or rescinded or modified in any respect adverse to WDC;

(h) WDC shall have obtained an opinion from Skadden, Arps, Slate, Meagher & Flom LLP, tax counsel to WDC, in form and substance satisfactory to WDC (in its sole discretion), to the effect that the Spinco Contribution, taken together with the Distribution, will qualify as a tax-free reorganization under Sections 368(a)(1)(D), 361 and 355 of the Code;

(i) all other actions and filings necessary or appropriate under the securities and "blue sky" Laws of the United States (and any comparable Laws under any foreign jurisdiction) in connection with the Distribution shall have been taken;

(j) (i) the waiting periods (including all extensions thereof), filings, Governmental Approvals, authorizations or consents applicable to the consummation of the Transactions shall have expired, been terminated, been made or been obtained (ii) the approvals and notices specified under any Law listed on Schedule 7.1(j) shall have been obtained and provided;

(k) no preliminary or permanent injunction or other order, decree, or ruling issues by a Governmental Authority, and no statute (as interpreted through orders or rules of any Governmental Authority duly authorized to effectuate the statute), rule, regulation or executive order promulgated or enacted by any Governmental Authority shall be in effect preventing the consummation of, or materially limiting the benefits of, the Transactions;

(l) no other event or development shall have occurred or failed to occur that, in the judgment of the WDC Board, in its sole discretion, prevents the consummation of the Transactions or any portion thereof or makes the consummation of the Transactions inadvisable; and

(m) (I) WDC shall have either (i) refinanced the obligations under its Existing Credit Agreement or (ii) obtained a waiver from the requisite lenders under its Existing Credit Agreement, in each case, in a manner and to the extent necessary (as determined by WDC in good faith) to permit the Transactions and (II) Spinco shall have consummated the necessary debt financing transactions (as determined by Spinco in good faith).

## 8. DISPUTE RESOLUTION

**8.1 Negotiation**.

(a) Each Party shall appoint a representative who shall be responsible for administering this dispute resolution provision (each, an "**Appointed Representative**"). The Appointed Representatives shall have the authority to resolve any such disputes.

(b) Except as otherwise provided in this Agreement or in any Ancillary Agreement, in the event of a controversy, dispute or claim arising out of, in connection with, or in relation to the interpretation, performance, nonperformance, validity, termination or breach of this Agreement or any Ancillary Agreement or otherwise arising out of, or in any way related to, this Agreement or any Ancillary Agreement or the transactions contemplated hereby or thereby (collectively, the "**Agreement Disputes**"), the Appointed Representatives shall negotiate in good faith for a reasonable period of time to settle such Agreement Dispute; *provided, however*, that: (i) such reasonable period shall not, unless otherwise agreed to by the Parties, exceed thirty (30) calendar days from the time of receipt by a Party; and (ii) the relevant employees from the relevant Parties shall first have tried to resolve the differences between the Parties. Nothing said or disclosed, nor any document produced, in the course of any negotiations, conferences and discussions in connection with efforts to settle an Agreement Dispute that is not otherwise independently discoverable shall be offered or received as evidence or used for impeachment or for any other purpose, but shall be considered as to have been disclosed for settlement purposes.

(c) Unless otherwise agreed in writing, the Parties will continue to provide service and honor all other commitments under this Agreement and each Ancillary Agreement during the course of dispute resolution pursuant to the provisions of this Section 8.1 with respect to all matters not specifically subject to such dispute resolution.

(d) Except as otherwise specifically provided herein, this Section 8.1 shall not apply to Section 3.4.

## 9. MISCELLANEOUS

**9.1 Expenses**. Except as otherwise provided in this Agreement, the Transfer Documents or any Ancillary Agreement, or as otherwise agreed to in writing by the Parties, whether or not the Transactions are consummated, WDC shall bear all costs and expenses of any member of the Spinco Group or WDC Group incurred on or prior to the Distribution in connection with the preparation, execution, delivery and implementation of this Agreement, the Transfer Documents, the Ancillary Agreements and the transactions contemplated hereby and thereby; *provided* that, except as otherwise provided in this Agreement, the Transfer Documents or any Ancillary Agreement, from and after the Distribution, each Party shall bear its own direct and indirect costs and expenses incurred in connection with the preparation, execution, delivery and implementation of this Agreement, the Transfer Documents, the Ancillary Agreements and the transactions contemplated hereby and thereby.

**9.2 Entire Agreement**. This Agreement and the Ancillary Agreements, including any schedules, exhibits and amendments hereto and thereto, and the other agreements and documents referred to herein and therein, shall together constitute the entire agreement between the Parties with respect to the subject matter hereof and thereof and shall supersede all prior negotiations, agreements and understandings, both written and oral, between the Parties with respect to such subject matter hereof and thereof.

**9.3 Governing Law**. This Agreement and the consummation of the Transactions, and any Action (whether at law, in contract, in tort or otherwise) arising out of or relating to this Agreement and the consummation of the Transactions, or the negotiation, validity, interpretation, performance, breach or termination of this Agreement and the consummation of the Transactions, shall be governed by and construed in accordance with the internal law of the State of Delaware, regardless of the law that might otherwise govern under applicable principles of conflicts of law thereof.

**9.4 Specific Performance; Jurisdiction**.

(a) Except as otherwise provided herein, any and all remedies herein expressly conferred upon a Party shall be deemed cumulative with and not exclusive of any other remedy conferred hereby, or by law or equity upon such Party, and the exercise by a Party of any one remedy shall not preclude the exercise of any other remedy. Nothing in this Agreement shall be deemed a waiver by any Party of any right to specific performance or injunctive relief. The Parties understand and agree that the covenants and agreements on each of their parts herein contained are uniquely related to the desire of the Parties and their respective Affiliates to consummate the Transactions, that the Transactions are a unique business opportunity at a unique time for each of WDC and Spinco and their respective Affiliates, and further agree that irreparable damage would occur in the event that any provision of this Agreement were not performed in accordance with its specific terms, and further agree that, although monetary damages may be available for the breach of such covenants and agreements, monetary damages would be an inadequate remedy therefor. It is accordingly agreed that, in addition to any other remedy that may be available to it, including monetary damages, each of the Parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement exclusively in the Delaware Court of Chancery and any state appellate court therefrom within the State of Delaware (or, if the Delaware Court of Chancery declines to accept jurisdiction over a particular matter, any state or federal court within the State of Delaware). Each of the Parties further agrees that no Party shall be required to obtain, furnish or post any bond or similar instrument in connection with or as a condition to obtaining any remedy referred to in this Section 9.4 and each Party waives any objection to the imposition of such relief or any right it may have to require the obtaining, furnishing or posting of any such bond or similar instrument.

(b) Each of the Parties irrevocably agrees that, subject (except in the case of any legal action or proceeding seeking specific performance) to prior compliance with Section 8.1, any legal action or proceeding with respect to this Agreement and the rights and obligations arising hereunder, or for recognition and enforcement of any judgment in respect of this Agreement and the rights and obligations arising hereunder, brought by the other Party or its successors or assigns, shall be brought and determined exclusively in the Delaware Court of Chancery and any state appellate court therefrom within the State of Delaware (or, if the Delaware Court of Chancery declines to accept jurisdiction over a particular matter, any state or federal court within the State of Delaware). Each of the Parties hereby irrevocably submits with regard to any such action or proceeding for itself and in respect of its property, generally and unconditionally, to the personal jurisdiction of the aforesaid courts and agrees that it will not bring any action relating to this Agreement or any of the transactions contemplated by this Agreement in any court other than the aforesaid courts. Each of the Parties hereby irrevocably waives, and agrees not to assert, by way of motion, as a defense, counterclaim or otherwise, in any action or proceeding with respect to this Agreement: (i) any claim that it is not personally subject to the jurisdiction of the above named courts for any reason other than the failure to serve in accordance with this Section 9.4; (ii) any claim that it or its property is exempt or immune from jurisdiction of any such court or from any legal process commenced in such courts (whether through service of notice, attachment prior to judgment, attachment in aid of execution of judgment, execution of judgment or otherwise); and (iii) to the fullest extent permitted by applicable Law, any claim that: (x) the suit, action or proceeding in such court is brought in an inconvenient forum; (y) the venue of such suit, action or proceeding is improper; or (z) this Agreement, or the subject matter hereof, may not be enforced in or by such courts (other than by reason of, except in the case of any action or proceeding for specific performance, needing to first comply with the provisions of Section 8.1). In the event that any suit or action is instituted to enforce any provision in this Agreement, the prevailing party in such dispute shall be entitled to recover from the losing party all fees, costs and expenses of enforcing any right of such prevailing party under or with respect to this Agreement, including, without limitation, such reasonable fees and expenses of attorneys and accountants, which shall include, without limitation, all fees, costs and expenses of appeals. The Parties agree that service of any court paper may be made in any manner as may be provided under the applicable Laws or court rules governing service of process in such court. The Parties agree that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by applicable Law.

**9.5 Waiver of Jury Trial**. EACH OF THE PARTIES IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY ACTION OR LEGAL PROCEEDING (WHETHER AT LAW, IN CONTRACT, IN TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

**9.6 Notices**. All notices and other communications hereunder shall be in writing and shall be deemed duly delivered: (a) four (4) Business Days after being sent by registered or certified mail, return receipt requested, postage prepaid; (b) one (1) Business Day after being sent for next Business Day delivery, fees prepaid, via a reputable nationwide overnight courier service; (c) if sent by email transmission prior to 6:00 p.m. recipient's local time, upon transmission when receipt is confirmed; or (d) if sent by email transmission after 6:00 p.m. recipient's local time, the Business Day following the date of transmission when receipt is confirmed:

(a) If to WDC:

c/o Western Digital Corporation
[Address]
Attn: **[●]**
Email: **[●]**

with a copy to (which shall not constitute notice):

Skadden, Arps, Slate, Meagher & Flom LLP
525 University Avenue Suite 1400
Palo Alto, CA 94301
Attn: Thomas J. Ivey and Christopher J. Bors
Email: thomas.ivey@skadden.com and christopher.bors@skadden.com

(b) If to Spinco:

c/o Sandisk Corporation
[Address]
Attn: **[●]**
Email: **[●]**

with a copy to (which shall not constitute notice):

Skadden, Arps, Slate, Meagher & Flom LLP
525 University Avenue Suite 1400
Palo Alto, CA 94301
Attn: Thomas J. Ivey and Christopher J. Bors
Email: thomas.ivey@skadden.com and christopher.bors@skadden.com

**9.7 Amendments and Waivers**.

(a) This Agreement may be amended or supplemented in any and all respects and any provision of this Agreement may be waived and any such waiver shall be binding upon a Party, only if such waiver is set forth in a writing executed by such waiving Party bound thereby, and any such amendment or supplement shall be effective only if set forth in a writing executed by each of the Parties; and any such waiver, amendment or supplement shall not be applicable or have any effect except in the specific instance in which it is given. No course of dealing between or among any Persons having any interest in this Agreement shall be deemed effective to modify, amend or discharge any part of this Agreement or any rights or obligations of any Party under or by reason of this Agreement.

(b) Notwithstanding the foregoing, no failure on the part of any Party to exercise any power, right, privilege or remedy under this Agreement, and no delay on the part of any Party in exercising any power, right, privilege or remedy under this Agreement, shall operate as a waiver of such power, right, privilege or remedy; and no single or partial exercise of any such power, right, privilege or remedy shall preclude any other or further exercise thereof or of any other power, right, privilege or remedy. The rights and remedies hereunder are cumulative and not exclusive of any rights or remedies that any Party would otherwise have. Any waiver, permit, consent or approval of any kind or character of any breach or default under this Agreement or any such waiver of any provision of this Agreement must satisfy the conditions set forth in Section 9.7(a) and shall be effective only to the extent in such writing specifically set forth.

**9.8 Termination**. This Agreement may be terminated and the Transactions may be abandoned at any time prior to the Separation Time by mutual written consent of the Parties.

**9.9 No Third-Party Beneficiaries**. Except for the provisions of Section 4 with respect to indemnification of Indemnitees, which is intended to benefit and be enforceable by the Persons specified therein as Indemnitees, this Agreement is solely for the benefit of the Parties and their respective successors and permitted assigns and is not intended, and shall not be deemed, to (a) create any agreement of employment with any person, (b) confer on third parties (including any employees of the Parties and their respective Groups) any remedy, claim, reimbursement, claim of action or other right in addition to those existing without reference to this Agreement, or (c) otherwise create any third-party beneficiary hereto.

**9.10 Assignability; Binding Effect**. This Agreement shall be binding upon, and shall be enforceable by and inure solely to the benefit of, the Parties and their respective successors and permitted assigns; *provided, however*, that neither this Agreement nor any Party's rights, interests or obligations hereunder may be assigned or delegated by any such Party, in whole or in part (whether by operation of law or otherwise), without the prior written consent of the other Party, and any attempted assignment or delegation of this Agreement or any of such rights or obligations by any Party without the prior written consent of the other Party shall be void and of no effect. Except as set forth in Section 9.9, nothing in this Agreement, express or implied, is intended to or shall confer upon any Person (other than the Parties and their permitted successors and assigns) any power, right, privilege or remedy of any nature whatsoever under or by reason of this Agreement.

**9.11 Priority of Agreements**. If there is a conflict between any provision of this Agreement and a provision in any of the Ancillary Agreements, the provision of this Agreement will control unless specifically provided otherwise in this Agreement or in the Ancillary Agreement.

**9.12 Survival of Covenants**. The covenants in this Agreement that by their terms are to be performed following the Separation Time will survive each of the Internal Restructuring and the Distribution and will remain in full force and effect in accordance with their terms.

**9.13 Construction**.

(a) For purposes of this Agreement, whenever the context requires: (i) the singular number shall include the plural, and vice versa; (ii) the masculine gender shall include the feminine and neuter genders; (iii) the feminine gender shall include the masculine and neuter genders; and (iv) the neuter gender shall include masculine and feminine genders.

(b) The Parties agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in the construction or interpretation of this Agreement.

(c) As used in this Agreement, the words "include" and "including," and variations thereof, shall not be deemed to be terms of limitation, but rather shall be deemed to be followed by the words "without limitation."

(d) As used in this Agreement, the words "hereof," "herein," "hereto" and "hereunder" and words of similar import shall refer to this Agreement as a whole and not to any particular provision of this Agreement.

(e) The measure of a period of one (1) month or year for purposes of this Agreement will be the date of the following month or year corresponding to the starting date; and, if no corresponding date exists, then the end date of such period being measured will be the next actual date of the following month or year (for example, one month following February 18 is March 18 and one month following March 31 is May 1).

(f) As used in this Agreement, the word "extent" in the phrase "to the extent" shall mean the degree to which a subject or other thing extends, and such phrase shall not mean simply "if."

(g) As used in this Agreement, the word "will" shall be deemed to have the same meaning and effect as the word "shall."

(h) As used in this Agreement, the terms "or," "any" or "either" are not exclusive and shall be deemed to be "and/or."

(i) As used in this Agreement, references to "written" or "in writing" include in electronic form.

(j) As used in this Agreement, references to the "date hereof" are to the date of this Agreement.

(k) Except as otherwise indicated, all references in this Agreement to "Sections," "Exhibits" and "Schedules" are intended to refer to Sections of this Agreement and Exhibits or Schedules to this Agreement.

(l) The table of contents and the section and other headings and subheadings contained in this Agreement and the Exhibits hereto are for convenience of reference only, shall not be deemed to be a part of this Agreement and shall not be referred to in connection with the construction, meaning or interpretation of this Agreement. The preamble and the recitals set forth at the beginning of this Agreement are incorporated by reference into and made a part of this Agreement.

(m) Any payment to be made pursuant hereto shall be made in U.S. dollars and by wire transfer of immediately available funds.

(n) As used in this Agreement, references to "$" in this report are to the lawful currency of the United States of America.

**9.14 Severability**. Any term or provision of this Agreement which is invalid or unenforceable in any situation in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement in any other jurisdiction or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction. If any provision of this Agreement is so broad as to be unenforceable, such provision shall be interpreted to be only so broad as is enforceable. If a final judgment of a court of competent jurisdiction declares that any term or provision of this Agreement is invalid or unenforceable, the Parties agree that the court making such determination shall have the power to limit such term or provision, to delete specific words or phrases or to replace such term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision, and this Agreement shall be valid and enforceable as so modified. In the event such court does not exercise the power granted to it in the prior sentence, the Parties agree to replace such invalid or unenforceable term or provision with a valid and enforceable term or provision that will achieve, to the extent possible, the economic, business and other purposes of such invalid or unenforceable term or provision.

**9.15 Counterparts**. This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument and shall become effective when counterparts have been signed by each of the Parties and delivered to the other Party, it being understood that all Parties need not sign the same counterpart. This Agreement may be executed and delivered by facsimile transmission, by electronic mail in "portable document format" (".pdf") form or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, or by a combination of such means. The exchange of a fully executed Agreement (in counterparts or otherwise) by facsimile or electronic transmission shall be treated in all manner and respects as an original agreement and shall be considered to have the same binding legal effects as if it were the original signed version thereof delivered in person.

At the request of any Party, the other Party shall re-execute original forms thereof and deliver them to the requesting Party. No Party shall raise the use of a facsimile machine or other electronic means to deliver a signature or the fact that any signature was transmitted or communicated through the use of a facsimile machine or other electronic means as a defense to the formation of a Contract, and each such Party forever waives any such defense.

**9.16 Plan of Reorganization**. This Agreement shall constitute a "plan of reorganization" within the meaning of Section 368 of the Code and Treasury Regulation Section 1.368-2(g).

## 10. DEFINITIONS

**10.1 Defined Terms**. For purposes of this Agreement, the following terms, when utilized in a capitalized form, shall have the following meanings:

"**Action**" shall mean any demand, charge, claim, action, suit, counter suit, arbitration, mediation, hearing, inquiry, proceeding, audit, review, complaint, litigation or investigation, or proceeding of any nature whether administrative, civil, criminal, regulatory or otherwise, by or before any federal, state, local, foreign or international Governmental Authority or any arbitration or mediation tribunal, excluding any ordinary course prosecution or maintenance activities or proceedings before the U.S. Patent and Trademark Office (USPTO), U.S. Copyright Office, any successor offices or any similar Intellectual Property Rights offices or agencies throughout the world.

"**Affiliate**" shall mean, with respect to any Person, any other Person directly or indirectly controlling, controlled by, or under common control with such other Person as of the date on which, or at any time during the period for which, the determination of affiliation is being made. For purposes of this definition, the term "control" (including, with correlative meanings, the terms "controlled by" and "under common control with"), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by Contract or otherwise.

"**Ancillary Agreements**" shall mean each of the agreements that implement the transactions contemplated by the Separation Plan (including any local business transfer agreements), the Tax Matters Agreement, the Transition Services Agreement, the Transitional Trademark License Agreement, the Intellectual Property Cross-License Agreement, the Stockholder and Registration Rights Agreement, the Employee Matters Agreement and any other agreements mutually agreed to by the Parties pursuant to Section 2.2(a). For purposes of clarity and the avoidance of doubt, Ancillary Agreements shall not include any Excluded Related Party Agreements.

"**Ancillary IP Rights**" shall mean, with respect to any Intellectual Property Rights: (A) the right to seek, recover and retain damages, costs, profits, injunctive relief and other remedies for any past or future infringement or misappropriation thereof, (B) the right to register, prosecute, maintain or record such Intellectual Property Rights with any Governmental Authority after the Separation Time, (C) the right to collect royalties or other payments under or on account of such Intellectual Property Rights after the Separation Time and (D) all goodwill to the extent associated with such Intellectual Property Rights, in each case, in all countries in the world.

"**Assets**" shall mean any and all assets, properties and rights (including goodwill), wherever located (including in the possession of vendors or other third parties or elsewhere), whether real, personal or mixed, tangible, intangible or contingent, in each case whether or not recorded or reflected or required to be recorded or reflected on the books and records or financial statements of any Person, including the following: (i) all computers and other electronic data processing equipment, telecommunication equipment and data, fixtures, machinery, equipment, furniture, office equipment, motor vehicles and other transportation equipment, special and general tools, apparatus, cables, electrical devices, prototypes and models, test devices, transmitters, other miscellaneous supplies and other tangible personal property of any kind; (ii) all inventories of materials, parts, raw materials, packing materials, supplies, works-in-process, goods in transit, consigned goods and finished goods and products; (iii) all Real Property Interests; (iv) all interests in any capital stock or other equity interests of any Subsidiary or any other Person; all bonds, notes, debentures, evidences of indebtedness, puts, calls, straddles, options and other securities of any kind issued by any Subsidiary or any other Person; all loans, advances or other extensions of credit or capital contributions to any Subsidiary or any other Person, and all other investments in securities of any Person; (v) all Permits, distribution and supplier arrangements, sale and purchase agreements, joint operating agreements, license agreements, leases of personal property, open purchase orders for raw materials, supplies, parts or services, unfilled orders for the manufacture and sale of products and all other Contracts and business arrangements; (vi) all deposits, letters of credit and performance and surety bonds; (vii) all Intellectual Property Rights; (viii) all cost information, sales and pricing data, customer prospect lists, supplier records, customer, distribution and supplier lists, customer and vendor data, correspondence and lists, product literature (including historical), advertising and promotional materials, other printed or written materials and artwork; design, development, manufacturing and quality control records, procedures and files, vendor and customer drawings, formulations and specifications, quality records and reports and other books, records, ledgers, files, documents, plats, photographs, studies, surveys, reports, plans and documents, operating, production and other manuals, including corporate minute books and related stock records and financial records, in all cases whether in paper, microfilm, microfiche, computer tape or disc, magnetic tape or any other form; (ix) all prepaid expenses, including prepaid leases and prepaid rentals, trade accounts and other accounts and notes receivable (whether current or non-current); (x) all interests, rights to causes of action, lawsuits, judgments, claims, counterclaims, rights under express or implied warranties, rights of recovery and rights of setoff of any kind, demands and benefits of any Person, including all claims or rights against any Person arising from the ownership of any Asset, all rights in connection with any bids or offers, causes of action or similar rights, whether accrued or contingent; and (xi) all Governmental Approvals, and other licenses and authorizations issued by any Governmental Authority. Except as otherwise specifically set forth herein or in the Tax Matters Agreement, the rights and obligations of the Parties with respect to Taxes shall be governed by the Tax Matters Agreement, and, therefore, assets related to Taxes (including any Tax Items, Tax Attributes or rights to receive any Refunds) shall not be treated as Assets.

"**Business Day**" shall mean any day, other than a Saturday, a Sunday and any day which is a legal holiday under the laws of the States of California or Delaware, or is a day on which banking institutions located in the States of California or Delaware are authorized or required by Law or other governmental action to close.

"**Code**" shall have the meaning set forth in the form of Tax Matters Agreement.

"**Confidential Business Information**" shall mean all information, data or material other than Confidential Operational Information, including: (i) earnings reports and forecasts; (ii) macro-economic reports and forecasts; (iii) business and strategic plans; (iv) general market evaluations and surveys; (v) litigation presentations and risk assessments; (vi) budgets; and (vii) financing and credit-related information.

"**Confidential Information**" shall mean Confidential Business Information or Confidential Operational Information concerning a Party and/or its Subsidiaries which, prior to, at or following the Separation Time, has been disclosed by a Party (in such capacity, the "**Disclosing Party**") or its Subsidiaries to the other Party (in such capacity, the "**Receiving Party**") or its Subsidiaries, in written, oral (including by recording), electronic or visual form, or otherwise has come into the possession of the Receiving Party, including pursuant to the access provisions of Section 5.1 or any other provision of this Agreement or any Ancillary Agreement (except to the extent that such information can be shown to have been: (i) in the public domain through no breach of confidentiality obligations by the Receiving Party or its Subsidiaries; (ii) lawfully acquired without confidentiality obligations from other sources by the Receiving Party or its Subsidiaries to which it was furnished, other than, in the case of WDC as the Receiving Party, any Confidential Information of Spinco that was acquired by WDC or any of its Subsidiaries prior to the Separation Time; (iii) independently developed by the Receiving Party or its Subsidiaries after the date hereof without reference to the Confidential Business Information or Confidential Operational Information of the Disclosing Party or its Subsidiaries and without a breach of this Agreement, other than, in the case of WDC as the Receiving Party, any Confidential Information of Spinco that was independently developed by WDC or any of its Subsidiaries prior to the Separation Time; or (iv) approved for release by written authorization of the Disclosing Party and/or the third-party owner of the disclosed information; *provided, however*, that in the case of clause (ii), to the Receiving Party's knowledge, such sources did not provide such information in breach of any confidentiality obligations). Following the Separation Time, (a) all Confidential Business Information and Confidential Operational Information included in Flash Assets shall, subject to the exceptions set forth in clauses (i) to (iv) of this "Confidential Information" definition, be deemed to be Confidential Information of Spinco, (b) Spinco shall be deemed to be the Disclosing Party thereof and (c) the WDC Group shall be deemed a Receiving Party thereof, in each case, regardless of whether such information originated from or was originally disclosed by any member of the WDC Group.

"**Confidential Operational Information**" shall mean all operational information, data or material including: (i) specifications, ideas and concepts for products, services and operations; (ii) quality assurance policies, procedures and specifications; (iii) customer information; (iv) Software; (v) training materials and information; and (vi) all other know-how, methodologies, procedures, techniques and Trade Secrets related to design, development and operational processes.

"**Consents**" shall mean any consents, waivers or approvals from, or notification requirements to, or authorizations by, any third parties.

"**Contract**" shall mean (i) any legally binding written or oral agreement, contract, subcontract, lease, sublease, understanding, instrument, note, option, warranty, sales order, purchase order, license, sublicense, bond, mortgage, indenture, insurance policy or commitment or undertaking of any nature, as well as, with respect to any Shared Contracts or (ii) solely as between the WDC Group and the Spinco Group, any contract (or portion of a contract allocated) resulting from the Shared Contract Transfer pursuant to Section 1.8(c), including any assignment or partial assignment (or purported assignment or partial assignment including via the letter method), replication or transfer of a Contract, but excluding any Permit and Benefit Arrangement (as defined in the Employee Matters Agreement).

"**Distribution Date**" shall mean, as applicable, the date selected by the WDC Board or its designee for the distribution of the shares of Spinco Common Stock to the Record Holders in connection with the Distribution as set forth in Section 3.1.

"**Domain Names**" shall mean all rights to Uniform Resource Locators, Web site addresses, domain names and social media accounts.

"**Entity**" shall mean any corporation (including any non-profit corporation), general partnership, limited partnership, limited liability partnership, joint venture, estate, trust, company (including any limited liability company or joint stock company), firm or other enterprise, association, organization or entity.

"**Environmental Laws**" shall mean all Laws relating to pollution, the protection, restoration or remediation of, or prevention of harm to, the environment or natural resources or, to the extent relating to exposure to hazardous or toxic materials, substances or wastes, the protection of human health and safety.

"**Exchange Act**" shall mean the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

"**Excluded IP**" shall mean the Intellectual Property Rights listed on Schedule 10.1(b), along with the Specified Trademarks.

"**Existing Credit Agreement**" shall mean that certain Amended and Restated Loan Agreement dated as of January 7, 2022, as amended on December 23, 2022, June 20, 2023 and June 11, 2024 (as may be further amended, supplemented, amended and restated or otherwise modified from time to time), by and among WDC, the additional borrowers party thereto from time to time, JPMorgan Chase Bank, N.A., as Administrative Agent and Collateral Agent and certain banks and financial institutions from time to time party thereto.

"**Expired**" shall mean, when used with respect to any Contract, Permit or Deferred Asset, the expiration of such Contract, Permit or Deferred Asset after the end of all automatic or voluntary extensions of the term of such Contract, Permit or Deferred Asset, whether pursuant to the express terms of applicable Law, the terms of the Contract, Permit or Deferred Asset or in conformity with the historical practice of WDC or its relevant Affiliate with respect to such Contract, Permit or Deferred Asset and with respect to any deferred liability shall mean the extinguishment of such Liability. "**Expiration**" shall have a correlative meaning.

"**Flash Business**" shall mean the "Flash" operating segment of the WDC Group, as described in WDC'sForm 10-K for the fiscal year ended June 28, 2024, including the businesses of marketing, offering, selling, licensing, providing, distributing, developing, manufacturing, importing or exporting Flash Business Products.

"**Flash Business Audited Financial Statements**" shall mean the audited combined financial statements of the Flash Business for the three fiscal years ended June 28, 2024, June 30, 2023 and July 1, 2022, including the combined balance sheets of the Flash Business as of June 28, 2024, and June 30, 2023, and the combined statements of operations, comprehensive income (loss), cash flows and changes in parent company net investment of the Flash Business, for each of the three fiscal years ended June 28, 2024, June 30, 2023 and July 1, 2022.

"**Flash Business Products**" shall mean: (i) any semiconductor memory, including flash memory, MRAM, phase-change memory and ReRAM (collectively, "**Semiconductor Memory**"); (ii) any system or module primarily based on Semiconductor Memory; and (iii) any ancillary components, materials and software, including, but not limited to, controllers, firmware, housing, packaging and support means, to the extent incorporated into or primarily used with (i) and/or (ii).

"**Foreign Investment Laws**" shall mean all Laws relating to or otherwise providing a Governmental Authority with the ability or authority to review, impose limitations on, prohibit, or otherwise take action with respect to foreign investments that could impact, among other things, national security or public order.

"**Governmental Approvals**" shall mean any notices, reports or other filings to be made to, or any Consents, registrations, permits or authorizations to be obtained from, any Governmental Authority.

"**Governmental Authority**" shall mean any federal, state, local, domestic, foreign or international court, government, department, commission, board, bureau, agency, official or other regulatory, administrative or governmental authority or self-regulatory organization.

"**Group**" shall mean the WDC Group or the Spinco Group, as the context requires.

"**Hazardous Materials**" shall mean: (i) any petrochemical or petroleum products, oil or coal ash, per-and polyfluoroalkyl substances, radioactive materials, radon gas, asbestos in any form that is or could become friable, urea formaldehyde foam insulation and transformers or other equipment that contain dielectric fluid which contains any polychlorinated biphenyls; (ii) any chemicals, materials or substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "hazardous constituents," "restricted hazardous materials," "extremely hazardous substances," "toxic substances," "contaminants," "pollutants," "toxic pollutants" or words of similar meaning and regulatory effect under any applicable Environmental Law; and (iii) any other chemical, material or substance, exposure to which is prohibited, limited or regulated by, or that may result in liability under, any applicable Environmental Law.

"**Indebtedness**" shall mean, with respect to any Person, without duplication, all (i) unpaid principal of and accrued interest and fees on all indebtedness of such Person for borrowed money (excluding all intercompany indebtedness between or among such Person and its Subsidiaries but including any prepayment penalties, premiums, costs, breakage or other amounts payable upon the discharge thereof at the Separation Time), (ii) other indebtedness of such Person evidenced by credit agreements, notes, bonds, indentures, securities, mortgage, debt security, preferred stock (including payment-in-kind interest), debentures or other debt instruments, (iii) amounts owing as deferred purchase price for the purchase of any property or assets (excluding trade payables incurred in the ordinary course of business), and (iv) indebtedness or obligations of another Person referred to in clause (i) above guaranteed by such Person; *provided* that letters of credit and performance bonds issued in the ordinary course of business and capital leases shall not be Indebtedness.

"**Information**" shall mean all information in written, oral, electronic or other tangible or intangible forms, including information in works of authorship, documentation, studies, reports, records, books, manuals, files, data, databases, drawings, samples, graphics, illustrations, artwork, Contracts, instruments, surveys, flow charts, customer and supplier lists and names, pricing and cost information, business and marketing plans, proposals and materials, compositions, communications by or to attorneys, memos and other materials prepared by attorneys or under their direction, employee or business information, in each case, in whatever form or medium and whether or not protected or protectable under a Patent or a Copyright or embodying proprietary Intellectual Property Rights.

"**Information Statement**" shall mean the information statement of Spinco, included as Exhibit 99.1 to the Registration Statement, to be distributed or made available to holders of WDC Common Stock in connection with the Distribution, including any amendments or supplements thereto.

"**Intellectual Property Rights**" shall mean any and all statutory and/or common law intellectual property rights throughout the world, including any of the following: (i) all rights in United States and foreign patents and utility models and applications therefor (including provisional applications) and all reissues, divisions, renewals, extensions, provisionals, reexaminations, continuations and continuations in part thereof (collectively, "**Patents**"); (ii) all trade secret rights and similar rights in know-how, Information or other materials (collectively, "**Trade Secrets**"); (iii) all registered and unregistered copyrights and all other rights corresponding thereto in any works of authorship, including Software (collectively, "**Copyrights**"); (iv) all registered, applied-for and unregistered trademark rights and similar rights in trade names, logos, trade dress, trademarks and service marks (collectively, "**Trademarks**"); (v) all design rights, maskwork rights, rights in databases and data collections (including knowledge databases, customer lists and customer databases); (vi) all rights to Uniform Resource Locators, Web site addresses, domain names and social media accounts; (vii) any similar, corresponding or equivalent rights to any of the foregoing; (viii) all intangible rights in Technology; and (ix) any registrations and renewals of or applications to register any of the foregoing.

"**Intercompany Account**" shall mean any receivable, payable or loan between any member of the WDC Group, on the one hand, and any member of the Spinco Group, on the other hand, that exists prior to the Distribution Date except for any such receivable, payable or loan that arises pursuant to this Agreement or any Ancillary Agreement.

"**Internal Restructuring**" shall mean the corporate restructuring steps contemplated by the Separation Plan, including: (i) the Spinco Contribution; (ii) the transfer, directly or indirectly, of the Excluded Assets and Excluded Liabilities, in each case, relating to, arising out of or resulting from the transactions contemplated by this Agreement (including as set forth in Section 1.3); and (iii) each of the transactions contemplated by Section 1.7.

"**IP Contracts**" shall mean Contracts under which a party thereto grants or is granted an assignment, license, non-assertion covenant, authorization, immunization or similar rights under or with respect to Intellectual Property Rights, Information or Technology, excluding any Contract where all assignments, licenses, non-assertion covenants, authorizations, immunizations or similar rights under or with respect to Intellectual Property Rights, Information or Technology in such Contract are incidental and immaterial to the primary purpose of such Contract.

"**Law**" shall mean any statute, law (including common law), ordinance, regulation, rule, code or other legally enforceable requirement of, or Order issued by, enacted, adopted, promulgated, implemented or otherwise put into effect by or under the authority of a Governmental Authority.

"**Liabilities**" shall mean all debts, liabilities, guarantees, assurances, commitments and obligations, whether fixed, contingent or absolute, asserted or unasserted, matured or unmatured, liquidated or unliquidated, accrued or not accrued, known or unknown, due or to become due, whenever or however arising (including whether arising out of any Law or Order, or any Contract or tort based on negligence or strict liability) and whether or not the same would be required by generally accepted principles and accounting policies to be reflected in financial statements or disclosed in the notes thereto. Except as otherwise specifically set forth herein or in the Tax Matters Agreement, the rights and obligations of the Parties with respect to Taxes shall be governed by the Tax Matters Agreement and, therefore, Taxes shall not be treated as Liabilities governed by this Agreement.

"**Lien**" shall mean, with respect to any property or asset, any mortgage, lien, pledge, charge, security interest, license, encumbrance, claim, option, pledge, title defect, preemptive right or limitation on transfer (other than such a limitation arising under federal, state or foreign securities Laws) in respect of such property or asset.

"**Losses**" shall mean Liabilities, claims, damages, penalties, judgments, assessments, losses, costs, expenses (including reasonable attorneys' and consultants' fees and expenses) and interest, in any case, whether arising under strict liability or otherwise; *provided, however*, that any portion of such Losses that are punitive, exemplary, unforeseeable or speculative shall be indemnifiable only if such Losses have been awarded by a court of competent jurisdiction and were determined to have been proximately caused by the Indemnifying Party. For purposes of clarity, the fact that a Third-Party Claim includes a request for punitive, exemplary, unforeseeable or speculative damages is not a basis for refusing an Indemnitee's request that an Indemnifying Party defend such claim.

"**Milpitas Sites**" shall mean the real property located at (i) 901 SanDisk Drive, Milpitas, California 95035, USA, (ii) 951 SanDisk Drive, Milpitas, California 95035, USA, (iii) 1001 SanDisk Drive, Milpitas, California 95035, USA, (iv) 1101 SanDisk Drive, Milpitas, California 95035, USA and (v) 1051 SanDisk Drive, Milpitas, California 95035, USA.

"**Non-Personnel IT Assets**" shall mean, other than Personnel IT Assets, all (i) information technology Systems, and (ii) documentation, reference, resource and training materials to the extent relating thereto; *provided* that, notwithstanding the foregoing, Non-Personnel IT Assets shall exclude Intellectual Property Rights.

"**Object Code**" shall mean Software in binary, object or executable form that is intended to be directly executable by a computer without the intervening steps of compilation or assembly.

"**Order**" shall mean any: (i) order, judgment, injunction, edict, decree, ruling, pronouncement, determination, decision, opinion, verdict, sentence, subpoena, writ or award issued, made, entered, rendered or otherwise put into effect by or under the authority of any court, administrative agency or other Governmental Authority or any arbitrator or arbitration panel; or (ii) Contract with any Governmental Authority entered into in connection with any Action.

"**Permit**" shall mean any franchise, permit, certification, license, easement, servitude, variance, right, exemption, approval, consent, waiver, registration or other authorization of a Governmental Authority issued under or with respect to applicable Laws or Orders.

"**Permitted Liens**" shall mean: (i) mechanics', carriers', workmen's, warehousemen's, repairmen's or other like Liens arising or incurred in the ordinary course of business consistent with past practice, which do not and would not reasonably be expected to, individually or in the aggregate, materially interfere with the present use of assets or property subject thereto or affected thereby; (ii) Liens for Taxes, assessments and other governmental charges and levies that are not due and payable or that are being contested in good faith by appropriate proceedings and for which an adequate reserve has been established; (iii) Liens reflected in the [●] Balance Sheet; (iv) defects or irregularities in title, easements, rights-of-way, covenants, restrictions, and other, similar matters that would not, individually or in the aggregate, reasonably be expected to materially impair the value of or continued use and operation of the assets to which they relate or are being contested; (v) Liens imposed or promulgated by operation of applicable Law with respect to real property and improvements, including zoning regulations, permits, licenses, utility easements, rights of way and similar Liens imposed or promulgated by any Governmental Authority; (vi) statutory liens for amounts not yet delinquent to secure obligations to landlords, lessors or renters under leases or rental agreements that have not been breached; (vii) non-exclusive licenses, immunities from suit, or covenants not to assert granted under or with respect to any Intellectual Property Rights; (viii) pledges made in connection with, or to secure payment of, workers' compensation, unemployment insurance or similar programs mandated by applicable Law; (ix) other Liens arising in the ordinary course of business and not incurred in connection with the borrowing of money which do not, individually or in the aggregate, materially interfere with the present use of assets or property subject thereto or affected thereby; (x) Liens on WDC, Spinco and each of their respective Subsidiaries, or on the assets or equity interests of WDC, Spinco and each of their Subsidiaries, that will be released in connection with or after giving effect to the Distribution or the Separation Time; and (xi) Liens granted under or in connection with the Existing Credit Agreement.

"**Person**" shall mean any individual, Entity or Governmental Authority.

"**Personnel IT Assets**" shall mean (i) personal computers (including laptop computers but excluding servers), telephones (including cell phones and smartphones) and personal telephone equipment (including headsets), and (ii) computer monitors, docking stations, and printers [assigned to and primarily used by remote employees]; *provided* that, notwithstanding the foregoing, Personnel IT Assets shall exclude Intellectual Property Rights.

"**Platforms Products**" shall mean:

(i) any storage system having one or more hard disk drive (HDD) slots;

(ii) any storage system having two or more solid state drive (SSD) slots, and if included, any SSD installed with and sold with such a system;

(iii) any standalone ASIC or semiconductor IC core that provides PCIe-to-NVMe-oF protocol bridge functionality;

(iv) any controller or controller card that encompasses clause (iii) above;

(v) any storage device (except for a standalone SSD) or system (except for one having a single SSD slot) that encompasses clauses (iii) or (iv) above;

(vi) any storage device that is attached to a controller card that encompasses clause (iii) above; and

(vii) any standalone SSD for post-sale installation into a storage system in clauses (i) or (ii) above that was previously sold by WDC.

"**Real Property Interests**" shall mean all interests in real property of whatever nature, including easements and servitudes, whether as fee owner, owner or holder of a Lien, lessor, sublessor, lessee, sublessee or otherwise.

"**Real Property Transfer Obligations**" shall mean any Liabilities and costs (including any costs associated with any required filings, investigation, remediation or other responsive action) arising from or relating to compliance or non-compliance with Environmental Laws with real property transfer requirements and any regulations thereunder, in each case as a result of the transactions contemplated by this Agreement.

"**Record Date**" shall mean 1:00 p.m. Pacific Time on the date to be determined by the WDC Board as the record date for determining stockholders of WDC entitled to receive shares of Spinco Common Stock in the Distribution.

"**Record Holders**" shall mean the holders of record of shares of WDC Common Stock as of the close of business on the Record Date.

"**Refund**" shall have the meaning set forth in the form of Tax Matters Agreement.

"**Registration Statement**" shall mean the registration statement on Form 10 of Spinco (which includes the Information Statement) relating to the registration under Section 12(b) of the Exchange Act of Spinco Common Stock, including any amendments or supplements thereto.

"**Release**" shall mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into or migration through the indoor or outdoor environment (including surface water, groundwater, land surface or subsurface strata or ambient air), including the abandonment or discarding of barrels, containers and other closed receptacles containing any hazardous substance, pollutant or contaminant.

"**Representatives**" shall mean with respect to any Person, such Person's officers, employees, accountants, consultants, legal counsel, financial advisors, agents, directors and other representatives.

"**SEC**" shall mean the U.S. Securities and Exchange Commission.

"**Securities Act**" shall mean the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

"**Shared Contract**" shall mean any shared written Contract (excluding Spinco Leases, purchase orders and insurance policies) to which one or more members of the WDC Group and/or the Spinco Group is a party relating to the Flash Business and that also relates to any other business or business function of WDC or its Subsidiaries, which Shared Contracts shall be subject to the rights and obligations of the Parties set forth in Section 1.8(c). For the avoidance of doubt, upon a Shared Contract Transfer pursuant to Section 1.8(c), the resulting Contract (or portion of a contract allocated thereunder) shall no longer be a Shared Contract.

**"Shared Liabilities"** shall mean any Liabilities: (i) arising out of or based upon any untrue statement or alleged untrue statement of a material fact contained or incorporated by reference in (A) the Registration Statement (including the Information Statement), or (B) any other disclosure document primarily relating to the Transaction that is disseminated publicly on or prior to the Distribution Date or filed on or prior to the Distribution Date with either the SEC or other Governmental Authority; or (ii) arising out of or based upon any omission or alleged omission to state a material fact required to be stated in any of the documents within the purview of clause (i) or necessary to make the statements therein not misleading.

"**Software**" shall mean any and all (i) computer programs, including any and all software implementations of algorithms, firmware, models and methodologies, whether in Source Code or Object Code form, and (ii) databases and compilations, including any and all data and collections of data, whether machine readable or otherwise.

"**Source Code**" shall mean Software comprising computer programming code Software in human readable form, excluding Object Code.

"**Specified Trademarks**" shall mean the registered Trademarks listed on Schedule 10.1(e), including all right, title and interest therein and all goodwill associated therewith.

"**Spinco Cash**" shall mean the aggregate amount of cash and cash equivalents held by Spinco and its Subsidiaries as of immediately prior to the Separation Time, including the amount of any checks and drafts (i) received by Spinco and its Subsidiaries but not yet deposited, and (ii) deposited for the account of Spinco or any of its Subsidiaries but not yet cleared.

"**Spinco Cash Amount**" shall mean one billion dollars ($1,000,000,000.00).

"**Spinco Common Stock**" shall mean the Common Stock, par value $0.01 per share, of Spinco.

"**Spinco Contribution**" shall mean the transfer, directly or indirectly, of the Flash Assets from the WDC Group to the Spinco Group and the assumption of the Flash Liabilities by the Spinco Group, in each case, relating to, arising out of or resulting from the transactions contemplated by this Agreement (including as set forth in Section 1.1, Section 1.2, Section 1.8(c) and Section 1.9).

"**Spinco Debt**" shall mean, without duplication, as of immediately prior to the Separation Time, any unpaid principal of and accrued interest and fees on all indebtedness of Spinco and its Subsidiaries for borrowed money, not including (i) intercompany indebtedness between or among Spinco and its Subsidiaries (but including any prepayment penalties, premiums, costs, breakage or other amounts payable upon the discharge thereof at the Separation Time) and (ii) Spinco Leases.

"**Spinco Dividend**" shall mean the cash to be paid by Spinco to WDC in exchange for the Spinco Contribution in an amount calculated pursuant to Section 3.4.

"**Spinco Group**" shall mean Spinco, each of the Spinco Subs and any legal predecessors thereto.

"**Spinco Guarantees**" shall mean arrangements in which guaranties (including guaranties of performance or payment under Contracts, commitments, Liabilities and Permits), letters of credit or other credit or credit support arrangements, including bid bonds, advance payment bonds, performance bonds, payment bonds, retention and/or warranty bonds or other bonds or similar instruments, were or are issued, entered into or otherwise put in place by any Person to support or facilitate, or otherwise in respect of, the obligations of any member of the Spinco Group or the Flash Business or Contracts, commitments, Liabilities and Permits of any member of the Spinco Group or the Flash Business.

"**Spinco Indemnitees**" shall mean: (i) Spinco and each other member of the Spinco Group; and (ii) all Persons who are or have been stockholders, directors, partners, managers, managing members, officers, agents or employees of any member of the Spinco Group (in each case, in their respective capacities as such) (excluding any shareholder of Spinco), together with their respective heirs, executors, administrators, successors and assigns..

"**Spinco IP**" shall mean all Intellectual Property Rights (including Intellectual Property Rights in Source Code for Software) owned by or licensed to WDC or any of its Affiliates (including Spinco and the Spinco Subs) that are primarily used in, or primarily held for use in, the Flash Business, including (i) the Trademarks, Domain Names and Copyrights listed on Schedule 10.1(d) and (ii) the Spinco Patents, in each case, excluding the Excluded IP.

"**Spinco Leased Real Property**" shall mean all real property leased, subleased, licensed or otherwise occupied by or from WDC or any of its Subsidiaries primarily for the operation of the Flash Business, the address of which is identified on Schedule 1.5(a)(i)(B).

"**Spinco Leases**" shall mean all leases, licenses, subleases and occupancy agreements (whether written or oral), including any amendments, modifications, supplements and lease guaranties thereto, identified on Schedule 1.5(a)(i)(B) pursuant to which the Spinco Leased Real Property is leased, subleased, licensed or otherwise occupied by or from WDC or its Subsidiaries primarily for the operation of the Flash Business.

"**Spinco Owned Real Property**" shall mean all real property owned (or, in the case ofnon-U.S. real property, the foreign equivalent of ownership in the applicable jurisdiction) by WDC or its Subsidiaries, together with all buildings and other structures, facilities or improvements located thereon and all easements, licenses, rights and appurtenances of WDC or its Subsidiaries relating to the foregoing, that is intended to be conveyed to Spinco or any of its Subsidiaries by WDC or its Subsidiaries pursuant to this Agreement as set forth on Schedule 1.5(a)(i)(A).

"**Spinco Patents**" shall mean (i) all Patents listed on Schedule 10.1(c) and (ii) (A) any Patent that claims (or is entitled to validly claim) priority from any of the foregoing Patents; (B) any Patent that is a continuation, continuation in part, divisional or reissue of any of the foregoing Patents, or that is linked to any of the foregoing Patents by a terminal disclaimer; and (C) any foreign counterpart of any of the foregoing Patents.

"**Subsidiary**" shall mean that an Entity shall be deemed to be a "Subsidiary" of another Person if such Person directly or indirectly owns, beneficially or of record: (i) an amount of voting securities or other interests in such Entity that is sufficient to enable such Person to elect at least a majority of the members of such Entity's board of directors or other governing body; or (ii) at least fifty percent (50%) of the outstanding equity or financial interests of such Entity; *provided* that for all purposes of this Agreement, none of Flash Partners Ltd., Flash Alliance Ltd. or Flash Forward Ltd. shall be considered a Subsidiary of Spinco or a Subsidiary of WDC.

"**Systems**" shall mean all hardware, networks, electronics, platforms, servers, interfaces, websites and related information technology systems and services, computer systems and equipment, public Internet protocol address blocks, telecommunications equipment, information technology infrastructure, network devices and equipment (including routers, wireless access points, switches and hubs), fiber and backbone cabling and other telecommunications wiring, demarcation points and rooms, computer rooms and telecommunications closets, including any of the foregoing that are outsourced.

"**Tax**" or "**Taxes**" shall have the meaning set forth in the form of Tax Matters Agreement.

"**Tax Attribute**" shall have the meaning set forth in the form of Tax Matters Agreement.

"**Tax Contest**" shall have the meaning set forth in the form of Tax Matters Agreement.

"**Tax Item**" shall have the meaning set forth in the form of Tax Matters Agreement.

"**Tax Records**" shall have the meaning set forth in the form of Tax Matters Agreement.

"**Tax Return**" shall have the meaning set forth in the form of Tax Matters Agreement.

"**Taxing Authority**" shall have the meaning set forth in the form of Tax Matters Agreement.

"**Technology**" shall mean all tangible items constituting, disclosing or embodying any or all of the following: inventions, works, discoveries, innovations, know-how, ideas, research and development, formulas, algorithms, processes, techniques, designs, design rules, concepts, methods, specifications, algorithms, procedures, protocols, routines, register-transfer levels, netlists, Verilog files, simulations, emulation and simulation reports, test vectors and integrated circuits and integrated circuit masks, mask works, Software, blueprints, diagrams, models, prototypes and other forms of technology and/or scientific, technical or logic information or materials, in each case, whether or not protected or protectable under a Patent or a Copyright or embodying proprietary Intellectual Property Rights; *provided* that, notwithstanding the foregoing, Technology shall exclude Intellectual Property Rights.

"**Tools**" shall mean all machinery, equipment, tools, wires and vehicles; *provided* that, notwithstanding the foregoing, Tools shall exclude Intellectual Property Rights.

"**Transactions**" shall mean the Internal Restructuring, the Distribution, any Subsequent Distribution and the other transactions contemplated by this Agreement, the Separation Plan and the Ancillary Agreements.

"**WDC Group**" shall mean WDC, each of its Subsidiaries and any legal predecessors thereto, but excluding any member of the Spinco Group.

"**WDC Guarantees**" shall mean arrangements in which guaranties (including guaranties of performance or payment under Contracts, commitments, Liabilities and Permits), letters of credit or other credit or credit support arrangements, including bid bonds, advance payment bonds, performance bonds, payment bonds, retention and/or warranty bonds or other bonds or similar instruments, were or are issued, entered into or otherwise put in place by any Person to support or facilitate, or otherwise in respect of, the obligations of any member of the WDC Group or any business (other than the Flash Business) of the WDC Group or Contracts, commitments, Liabilities and Permits of any member of the WDC Group or any business (other than the Flash Business) of the WDC Group.

"**WDC Indemnitees**" shall mean WDC, each member of the WDC Group, and all Persons who are or have been stockholders, directors, partners, managers, managing members, officers, agents or employees of any member of the WDC Group (in each case, in their respective capacities as such) (excluding any shareholder of WDC), together with their respective heirs, executors, administrators, successors and assigns.

**10.2 Other Defined Terms**. In addition, each of the following terms shall have the meaning given to such term in the applicable Section of this Agreement listed opposite such term:

| Term | Section |
|---|---|
| Agreement | Preamble |
| Agreement Disputes | Section 8.1(b) |
| Appointed Representative | Section 8.1(a) |
| Casualty Loss | Section 6.5(a) |
| Clean-Up Distribution | Recitals |
| Condemnation Event | Section 6.5(a) |
| Conveyance | Section 1.1 |
| Debt Exchange | Recitals |
| Debt Exchange Parties | Recitals |
| Deferred Asset | Section 1.8(b) |
| Disposed Flash Business | Section 1.6(a)(ii)(2) |
| Distribution | Recitals |
| Employee Matters Agreement | Section 2.2(a)(vii) |
| Exchange Debt | Recitals |
| Excluded Assets | Section 1.5(b) |
| Excluded Liabilities | Section 1.6(b) |
| Excluded Related Party Agreements | Section 1.7(b)(vi) |
| Exclusive Pre-Separation Privileged Materials | Section 5.3(b) |
| Flash Assets | Section 1.5(a) |
| Flash Liabilities | Section 1.6(a) |
| Flash Permits | Section 1.5(a)(iv) |
| Guarantee Release | Section 6.3(a) |
| Indemnifying Party | Section 4.6(b) |
| Indemnitee | Section 4.6(b) |
| Indemnity Payment | Section 4.7 |
| Intellectual Property Cross-License Agreement | Section 2.2(a)(v) |
| Joint Control Action | Section 4.8(a) |
| Nasdaq Listing Application | Section 3.2(a) |
| Non-Transferable Permits | Section 1.8(a) |
| Parties | Preamble |
| Party | Preamble |
| Pre-Separation Spinco Claims | Section 6.4(b) |
| Preservation Period | Section 5.1(a) |
| Privileges | Section 5.3(a) |
| Related Party Agreements | Section 1.7(a) |
| Restricted Period | Section 6.9 |
| Retained Claims | Section 4.1(c) |
| Retained Stock | Recitals |
| Separation | Recitals |
| Separation Date | Section 2.1 |
| Separation Plan | Section 1.1 |
| Separation Time | Section 2.1 |
| Shared Contract Transfer | Section 1.8(c) |
| Shared Pre-Separation Privileged Materials | Section 5.3(c) |
| Solvency Opinions | Section 7.1(g) |
| Spinco | Preamble |
| Spinco Accounts | Section 1.10(a) |
| Spinco Board | Section 7.1(g) |
| Spinco Books and Records | Section 1.5(a)(xiii) |
| Spinco Contracts | Section 1.5(a)(xii) |
| Spinco Non-Personnel IT | Section 1.5(a)(viii) |
| Spinco Pre-Separation Privileged Materials | Section 5.3(b) |
| Spinco Real Property | Section 1.5(a)(i) |
| Spinco Subs | Section 1.5(a)(ii) |
| Stockholder and Registration Rights Agreement | Section 2.2(a)(vi) |
| Subsequent Distribution | Recitals |
| Tax Matters Agreement | Section 2.2(a)(ii) |
| Third-Party Claim | Section 4.6(b) |
| Third-Party Proceeds | Section 4.7 |
| Transfer Documents | Section 2.5 |
| Transferable Permits | Section 1.5(a)(iv) |
| Transferred Leases | Section 1.6(a)(b)(x) |
| Transition Services Agreement | Section 2.2(a)(iii) |
| Transitional Trademark License Agreement | Section 2.2(a)(iv) |

[Signature Page Follows]

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed as of the date first above written.

**WESTERN DIGITAL CORPORATION**

By: _____
Name:
Title:

**SANDISK CORPORATION**

By: _____
Name:
Title:

[*SIGNATURE PAGE TO SEPARATION AND DISTRIBUTION AGREEMENT*]

**Exhibit 3.1**

**FORM OF**
**AMENDED AND RESTATED**
**CERTIFICATE OF INCORPORATION OF**
**SANDISK CORPORATION**

**ARTICLE I**
**NAME OF CORPORATION**

The name of this corporation is:

Sandisk Corporation

**ARTICLE II**
**REGISTERED OFFICE**

The address of the registered office of this corporation in the State of Delaware is c/o 251 Little Falls Drive, Wilmington, New Castle County, Delaware 19808, and the name of its registered agent at that address is Corporation Service Company.

**ARTICLE III**
**PURPOSE**

The purpose of this corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware as set forth in Title 8 of the Delaware Code (as amended from time to time, the "DGCL").

**ARTICLE IV**
**AUTHORIZED CAPITAL STOCK**

This corporation shall be authorized to issue two classes of shares of stock to be designated, respectively, "Preferred Stock" and "Common Stock"; the total number of shares which this corporation shall have authority to issue is [•] ([•]); the total number of shares of Preferred Stock shall be [•] ([•]) and each such share shall have a par value of one cent ($0.01); and the total number of shares of Common Stock shall be [•] ([•]) and each such share shall have a par value of one cent ($0.01).

The shares of Preferred Stock may be issued from time to time in one or more series. The Board of Directors is hereby vested with authority to fix by resolution or resolutions the designations and the powers (including full, limited or no voting powers), preferences and relative, participating, optional or other special rights, and qualifications, limitations or restrictions thereof, including without limitation the dividend rate, conversion rights, redemption price and liquidation preference, of any series of shares of Preferred Stock, and to fix the number of shares constituting any such series, and to increase or decrease the number of shares of any such series (but not below the number of shares thereof then outstanding). In case the number of shares of any such series shall be so decreased, the shares constituting such decrease shall resume the status which they had prior to the adoption of the resolution or resolutions originally fixing the number of shares of such series.

**ARTICLE V**
**BOARD POWER REGARDING BYLAWS**

In furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized to make, repeal, alter, amend and rescind the bylaws of this corporation (as may be amended, restated or amended and restated from time to time, the "Bylaws").

**ARTICLE VI**
**MANAGEMENT OF BUSINESS; AUTHORIZATION**

The business and affairs of this corporation shall be managed by or under the direction of the Board of Directors. In addition to the powers and authority hereinbefore or by statute expressly conferred upon them, the directors are hereby empowered to exercise all such powers and do all such acts and things as may be exercised or done by this corporation, subject, nevertheless, to the provisions of the DGCL, this Amended and Restated Certificate of Incorporation and the Bylaws; provided, however, that no Bylaws hereafter adopted, amended or repealed by the stockholders shall invalidate any prior act of the directors that would have been valid if such Bylaws had not been so adopted, amended or repealed.

**ARTICLE VII**
**ELECTION OF DIRECTORS**

The number of directors constituting the Board of Directors shall be as from time to time fixed by, or in the manner provided in, the Bylaws. Elections of directors need not be by written ballot unless the Bylaws shall so provide.

**ARTICLE VIII**
**LIMITATION OF DIRECTOR AND OFFICER LIABILITY**

To the fullest extent permitted by the DGCL as the same exists or may hereafter be amended, a director or officer of this corporation shall not be personally liable to this corporation or any of its stockholders for monetary damages for breach of fiduciary duty as a director or officer. No amendment to, or modification or repeal of, this Article VIII shall adversely affect any right or protection of a director or officer of this corporation existing hereunder with respect to any state of facts existing or act or omission occurring, or any cause of action, suit or claim that, but for this Article VIII, would accrue or arise, prior to such amendment, modification or repeal. If the DGCL is amended after this Amended and Restated Certificate of Incorporation is filed with the Secretary of the State of Delaware to authorize corporate action further eliminating or limiting the personal liability of directors or officers, then the liability of a director or officer of this corporation shall be eliminated or limited to the fullest extent permitted by the DGCL, as so amended.

**ARTICLE IX**
**NO ACTIONS BY WRITTEN CONSENT OF STOCKHOLDERS**

No action required to be taken or which may be taken at any annual or special meeting of stockholders of this corporation may be taken without a meeting, and the power of stockholders to consent in writing without a meeting to the taking of any action is specifically denied.

**ARTICLE X**
**STOCKHOLDER MEETINGS**

Meetings of stockholders may be held within or without the State of Delaware, as the Bylaws may provide. The books and records of this corporation may be kept (subject to any provision contained in the DGCL) outside the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the Bylaws.

**ARTICLE XI**
**CORPORATE POWER**

This corporation reserves the right to amend, alter, change or repeal any provision contained in this Amended and Restated Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred on stockholders herein are granted subject to this reservation.

**ARTICLE XII**
**FORUM SELECTION**

Unless this corporation consents in writing to the selection of an alternative forum: (a) the following actions shall, to the fullest extent permitted by law, be exclusively brought in the Court of Chancery of the State of Delaware or, if such court does not have subject matter jurisdiction thereof, the federal district court of the State of Delaware: (i) any derivative action or proceeding brought on behalf of this corporation; (ii) any action asserting a claim of breach of a fiduciary duty owed by any current or former director, officer, other employee or stockholder of this corporation to this corporation or this corporation's stockholders; (iii) any action asserting a claim arising pursuant to any provision of the DGCL, this Amended and Restated Certificate of Incorporation or the Bylaws (as either may be amended or restated) or as to which the DGCL confers jurisdiction on the Court of Chancery of the State of Delaware; or (iv) any action asserting a claim governed by the internal affairs doctrine of the law of the State of Delaware; and (b) the federal district courts of the United States shall be the exclusive forum for the resolution of any complaint asserting a cause of action arising under the Securities Act of 1933, as amended. To the fullest extent permitted by law, any person or entity purchasing or otherwise acquiring or holding any interest in shares of capital stock of this corporation shall be deemed to have notice of and consented to the provisions of this Article XIII.

**ARTICLE XIII**
**SEVERABILITY**

If any provision or provisions of this Amended and Restated Certificate of Incorporation shall be held to be invalid, illegal or unenforceable as applied to any circumstance for any reason whatsoever: (i) the validity, legality and enforceability of such provisions in any other circumstance and of the remaining provisions of this Amended and Restated Certificate of Incorporation (including, without limitation, each portion of any paragraph of this Amended and Restated Certificate of Incorporation containing any such provision held to be invalid, illegal or unenforceable that is not itself held to be invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby; and (ii) to the fullest extent possible, the provisions of this Amended

and Restated Certificate of Incorporation (including, without limitation, each such portion of any paragraph of this Amended and Restated Certificate of Incorporation containing any such provision held to be invalid, illegal or unenforceable) shall be construed so as to permit this corporation to protect its directors, officers, employees and agents from personal liability in respect of their good faith service to or for the benefit of this corporation to the fullest extent permitted by law.

**Exhibit 3.2**

**FORM OF**
**SANDISK CORPORATION**
**(a Delaware corporation)**

**AMENDED AND RESTATED BYLAWS**

**(As Adopted on [•])**

## ARTICLE I
## Offices

**1.1** ***Registered Office***. The registered office of Sandisk Corporation (this "Corporation") in the State of Delaware shall be at 251 Little Falls Drive, Wilmington, New Castle County, Delaware 19808, and the name of the registered agent in charge thereof shall be Corporation Service Company.

**1.2** ***Principal Office***. The principal office for the transaction of the business of this Corporation shall be 951 Sandisk Drive, Milpitas, California 95035. The Board of Directors (the "Board") is hereby granted full power and authority to change said principal office from one location to another.

**1.3** ***Other Offices***. This Corporation may also have such other offices at such other places, either within or without the State of Delaware, as the Board may from time to time determine or as the business of this Corporation may require.

## ARTICLE II
## Meetings Of Stockholders

**2.1** ***Annual Meetings***. If required by applicable law, annual meetings of the stockholders of this Corporation shall be held for the purpose of electing directors and for the transaction of such proper business as may come before such meetings.

**2.2** ***Special Meetings***. Subject to the rights of the holders of any series of Preferred Stock (as defined in the certificate of incorporation of this Corporation, the "Certificate of Incorporation"), and to the requirements of applicable law, special meetings of the stockholders may be called at any time by the Board, the Board Chair or the Chief Executive Officer.

**2.3** ***Place of Meetings***. All meetings of the stockholders shall be held at such time, date and place, if any, within or without the State of Delaware, as shall be designated from time to time by the Board and stated in the notice of the meeting or in a duly executed waiver of notice thereof. The Board may, in its sole discretion, determine that a meeting of the stockholders shall not be held at any place, but may instead be held solely by means of remote communication. This Corporation may postpone, reschedule or cancel any meeting of stockholders previously scheduled by the Board.

**2.4** ***Notice of Meetings***. Whenever stockholders are required or permitted to take any action at a meeting, a notice of the meeting in the form of a writing or electronic transmission shall be given that shall state the place, if any, the date and time of the meeting, the means of remote communication, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called. Unless otherwise provided by law, the Certificate of Incorporation or these Bylaws, the notice of any meeting shall be given not less than ten (10) nor more than sixty (60) days before the date of the meeting to each stockholder entitled to vote at such meeting.

Without limiting the manner by which notice otherwise may be given effectively to stockholders, any notice to stockholders given by this Corporation under any provision of the General Corporation Law of the State of Delaware (the "General Corporation Law"), these Bylaws or the Certificate of Incorporation may be given in writing directed to the stockholder's mailing address (or by electronic transmission directed to the stockholder's electronic mail address, as applicable) as it appears on the records of this Corporation. Notice shall be given (i) if mailed, when deposited in the United States mail, postage prepaid, (ii) if delivered by courier service, the earlier of when the notice is received or left at the stockholder's address, or (iii) if given by electronic mail, when directed to such stockholder's electronic mail address (unless the stockholder has notified this Corporation in writing or by electronic transmission of an objection to receiving notice by electronic mail or such notice is prohibited by the General Corporation Law to be given by electronic transmission). A notice by electronic mail must include a prominent legend that the communication is an important notice regarding this Corporation. A notice by electronic mail will include any files attached thereto and any information hyperlinked to a website if such electronic mail includes the contact information of an officer or agent of this Corporation who is available to assist with accessing such files or information. Any notice to stockholders given by this Corporation under any provision of the General Corporation Law, these Bylaws or the Certificate of Incorporation provided by means of electronic transmission (other than any such notice given by electronic mail) may only be given in a form consented to by such stockholder, and any such notice by such means of electronic transmission shall be deemed to be given as provided by the General Corporation Law.

The terms "electronic mail," "electronic mail address," "electronic signature" and "electronic transmission" as used herein shall have the meanings ascribed thereto in the General Corporation Law.

**2.5** ***Adjournments***. Any meeting of stockholders, annual or special, may be adjourned from time to time for any reason, whether or not a quorum is present, to reconvene at the same or some other place, if any, by either (i) the chair of the meeting or (ii) a majority in voting power of the shares of this Corporation which are present in person or by proxy and entitled to vote on the subject matter. Notice need not be given of any such adjourned meeting if the time and place, if any, or means of remote communication, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such adjourned meeting are provided in accordance with the General Corporation Law. At the adjourned meeting at which a quorum shall be present or represented, this Corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than thirty (30) days, or if after the adjournment a new record date is fixed for the adjourned meeting, notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

**2.6** ***Quorum***. Except as otherwise provided by law, the Certificate of Incorporation or these Bylaws, at each meeting of stockholders the presence in person or by proxy of the holders of a majority in voting power of the outstanding shares of stock entitled to vote at the meeting shall be necessary and sufficient to constitute a quorum for the transaction of business thereat. In the absence of a quorum, then either (i) the chair of the meeting or (ii) a majority in voting power of the stockholders present in person or by proxy and entitled to vote on the subject matter, shall have power to adjourn the meeting from time to time in the manner provided in Section 2.5 of these Bylaws until a quorum shall be present or represented.

**2.7** ***Voting***.

(a) Except as otherwise provided by or pursuant to law or the provisions of the Certificate of Incorporation, each stockholder entitled to vote at any meeting of stockholders shall be entitled to one vote for each share of stock held by such stockholder which has voting power upon the matter in question and which shall have been held by and registered in the name of the stockholder on the books of this Corporation on the date fixed pursuant to Section 2.10 of these Bylaws as the record date for the determination of stockholders entitled to notice of and to vote at a meeting.

(b) Shares of its own stock belonging to this Corporation or to another corporation, if a majority of the shares entitled to vote in the election of directors of such other corporation is held, directly or indirectly, by this Corporation, shall neither be entitled to vote nor be counted for quorum purposes. Persons holding stock of this Corporation in a fiduciary capacity shall be entitled to vote such stock. Persons whose stock is pledged shall be entitled to vote, unless in the transfer by the pledgor on the books of this Corporation the pledgor shall have expressly empowered the pledgee to vote on the subject matter. Stock having voting power that is held of record in the names of two or more persons, whether fiduciaries, members of a partnership, joint tenants in common, tenants by entirety or otherwise, or with respect to which two or more persons have the same fiduciary relationship, shall be voted in accordance with the provisions of the General Corporation Law.

(c) Any such voting rights may be exercised by the stockholder entitled thereto in person or by the stockholder's proxy; provided, however, that no proxy shall be voted or acted upon after three years from its date unless said proxy shall provide for a longer period. The authorization of a person to act as proxy may be documented, signed and delivered in accordance with Section 116 of the General Corporation Law, provided that such authorization shall set forth, or be delivered with, information enabling this Corporation to determine, the identity of the stockholder granting such authorization. A proxy shall be irrevocable if it states that it is irrevocable and if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power. The attendance at any meeting of a stockholder who may theretofore have given a proxy which is not irrevocable shall not have the effect of revoking the same, unless the stockholder shall attend the meeting and vote in person or deliver to the Secretary prior to the voting of the proxy a revocation of the proxy or a new proxy bearing a later date. At any meeting of the stockholders at which a quorum is present all matters, except as otherwise provided in the Certificate of Incorporation, these Bylaws, the rules or regulations of any stock exchange applicable to this Corporation, or applicable law or pursuant to any regulation applicable to this Corporation or its securities, shall be decided by the vote of the holders of a majority in voting power of the shares present in person or by proxy and entitled to vote on the subject matter. The vote at any meeting of the stockholders on any question need not be by written ballot, unless so directed by the chair of the meeting. On a vote by ballot, each ballot shall be signed by the stockholder voting, or by his or her proxy, if there be such proxy, and it shall state the number of shares voted.

**2.8** ***List of Stockholders***. This Corporation shall prepare and make, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting for a period of at least ten (10) days ending on the day prior to the meeting date (a) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of meeting, or (b) during ordinary business hours at the principal office of this Corporation. If the meeting is to be held at a place, then a list of stockholders entitled to vote at the meeting shall be produced and kept at the time and place of the meeting during the whole time thereof and may be examined by any stockholder who is present. If the meeting is to be held solely by means of remote communication, then such list shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting. Except as otherwise provided by law, the stock ledger shall be the only evidence as to who are the stockholders entitled to examine the list of stockholders required by this Section 2.8 or to vote in person or by proxy at any meeting of stockholders.

**2.9** ***Inspector of Elections***. This Corporation shall, in advance of any meeting of stockholders, appoint one or more inspectors of election, who may be employees of this Corporation, to act at the meeting or any adjournment thereof and to make a written report thereof. This Corporation may designate one or more persons as alternate inspectors to replace any inspector who fails to act. In the event that no inspector is so appointed or designated or any inspector so appointed or designated is unable to act at a meeting of stockholders, the person presiding at the meeting shall appoint one or more inspectors to act at the meeting. Each inspector, before entering upon the discharge of his or her duties, shall take and sign an oath to execute faithfully the duties of inspector prescribed by applicable law with strict impartiality and according to the best of his or her ability. The inspector may appoint or retain other persons or entities to assist the inspector in the performance of the duties of inspector. The inspector or inspectors so appointed or designated shall (i) ascertain the number of shares of capital stock of this Corporation outstanding and the voting power of each such share, (ii) determine the shares of capital stock of this Corporation represented at the meeting and the validity of proxies and ballots, (iii) count all votes and ballots, (iv) determine and retain for a reasonable period a record of the disposition of any challenges made to any determination by the inspectors, and (v) certify their determination of the number of shares of capital stock of this Corporation represented at the meeting and such inspectors' count of all votes and ballots. Such certification and report shall specify such other information as may be required by law. In determining the validity and counting of proxies and ballots cast at any meeting of stockholders of this Corporation, the inspectors may consider such information as is permitted by applicable law. No person who is a candidate for an office at an election may serve as an inspector at such election.

**2.10** ***Fixing Date for Determination of Stockholder of Record.*** In order that this Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any other change, conversion or exchange of stock or for the purpose of any other lawful action, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board, and which record date: (1) in the case of determination of stockholders entitled to vote at any meeting of stockholders or adjournment thereof, shall, unless otherwise required by law, not be more than sixty (60) nor less than ten (10) days before the date of such meeting; and (2) in the case of any other action, shall not be more than sixty (60) days prior to such other action. If no record date is fixed: (1) the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held; and (2) the record date for determining stockholders for any other purpose shall be at the close of business on the day on which the Board adopts the resolution relating thereto. A determination of stockholders entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board may fix a new record date for the adjourned meeting.

**2.11** ***Stockholder Proposals and Nominations.***

(a) Annual Meetings of Stockholders.

(i) Nominations of persons for election to the Board and the proposal of business to be considered by the stockholders may be made at an annual meeting of stockholders only (A) pursuant to this Corporation's notice of meeting (or any supplement thereto), (B) by or at the direction of the Board or any committee thereof, which the Board has authorized to do so, or (C) by any stockholder of this Corporation who was a stockholder of record of this Corporation at the time the notice provided for in this Section 2.11 or Section 2.14 is delivered to the Secretary of this Corporation, who is entitled to vote at the meeting and complies with the notice procedures set forth in this Section 2.11 or Section 2.14, as applicable, and to the extent that Rule 14a-19 under the Exchange Act (as defined below) applies, has complied with Rule14a-19 under the Exchange Act. Subject to Section 2.11(a)(iv) and except as otherwise required by law, clause (C) of this Section 2.11(a) shall be the exclusive means for a stockholder to make nominations or propose other business (other than matters properly brought pursuant to applicable provisions of federal law, including the Securities Exchange Act of 1934 (as amended from time to time, the "Exchange Act")) and the rules and regulations of the Securities and Exchange Commission thereunder before an annual meeting of stockholders. The number of nominees a stockholder may nominate for election at an annual meeting of stockholders shall not exceed the number of directors to be elected at such annual meeting.

(ii) Except as otherwise required by law, for nominations or other business to be properly brought before an annual meeting by a stockholder pursuant to clause (C) of Section 2.11(a)(i), the stockholder must have given timely notice thereof in writing to the Secretary of this Corporation with the information contemplated by this Section 2.11(a)(ii) including, where applicable, delivery to this Corporation of timely and completed questionnaires as contemplated by this Section 2.11(a)(ii), and any such proposed business other than the nominations of persons for election to the Board must be a proper matter for stockholder action under the General Corporation Law. To be timely, a stockholder's

notice shall be delivered to the Secretary at the principal office of this Corporation on a date not later than the close of business on the ninetieth (90th) day nor earlier than the close of business on the one hundred twentieth (120th) day prior to the first anniversary of the preceding year's annual meeting (provided, however, that in the event that there was no annual meeting in the prior year or the date of the annual meeting is more than thirty (30) days before or after such anniversary date of the prior year's annual meeting, notice by the stockholder must be so delivered not earlier than the close of business on the one hundred twentieth (120th) day prior to such annual meeting and not later than the close of business on the later of the ninetieth (90th) day prior to such annual meeting or the tenth day following the day on which public announcement of the date of such meeting is first made by this Corporation). In no event shall the public announcement of an adjournment or postponement of an annual meeting commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above. For the avoidance of doubt, a stockholder shall not be entitled to make additional or substitute nominations following the expiration of the time periods set forth in these Bylaws. Such stockholder's notice shall set forth (A) (x) as to each person whom the stockholder proposes to nominate for election or reelection as a director: (1) all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors in an election contest, or is otherwise required, in each case pursuant to and in accordance with Section 14(a) of the Exchange Act and the rules and regulations promulgated thereunder, (2) such person's written consent to being named as a nominee in any proxy statement relating to the annual meeting and to serving as a director if elected, and (3) include a completed and signed questionnaire, representation and agreement required by Section 2.11(c) of these Bylaws; and (y) a description of all direct and indirect compensation and other material monetary arrangements, agreements or understandings during the past three (3) years, and any other material relationship, if any, between or concerning such stockholder, any stockholder and the beneficial owner or any of their respective affiliates or associates, on the one hand, and the proposed nominee or any of his or her affiliates or associates, on the other hand; (B) as to any other business that the stockholder proposes to bring before the meeting, a brief description of the business desired to be brought before the meeting, the text of the proposal or business (including the text of any resolutions proposed for consideration and in the event that such business includes a proposal to amend these Bylaws, the language of the proposed amendment), the reasons for conducting such business at the meeting and any material interest in such business of such stockholder and the beneficial owner, if any, on whose behalf the proposal is made; and (C) as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or proposal is made (1) the name and address of such stockholder, as they appear on this Corporation's books, and of such beneficial owner, (2) the class (and, if applicable, series) and number of shares of capital stock of this Corporation which are owned beneficially and of record by such stockholder and such beneficial owner as of the date of the notice, and a representation that the stockholder will notify this Corporation in writing within five (5) business days after the record date for such meeting of the class (and, if applicable, series) and number of shares of capital stock of this Corporation owned of record by the stockholder and such beneficial owner as of the record date for the meeting, (3) a description of any agreement, arrangement or understanding, including without limitation any agreements that would be required to be disclosed pursuant to Item 5 or Item

6 of Exchange Act Schedule 13D (regardless of whether the requirement to file a Schedule 13D is applicable to the stockholder or beneficial owner), with respect to the nomination or proposal between or among such stockholder and/or such beneficial owner, any of their respective affiliates or associates, and any others acting in concert with any of the foregoing (including, in the case of a nomination, the nominee), and a representation that the stockholder will notify this Corporation in writing within five (5) business days after the record date for such meeting of any such agreement, arrangement or understanding in effect as of the record date for the meeting, (4) a description of any agreement, arrangement or understanding (including any derivative or short positions, profit interests, options, warrants, convertible securities, stock appreciation or similar rights, hedging transactions, and borrowed or loaned shares) involving such stockholder or beneficial owner that is in effect as of the date of the stockholder's notice, whether or not such instrument or right shall be subject to settlement in underlying shares of capital stock of this Corporation, the effect or intent of which is to mitigate loss to, manage risk or benefit from share price changes for, or increase or decrease the voting power of, such stockholder or such beneficial owner, with respect to securities of this Corporation, or which provides, directly or indirectly, the opportunity to profit or share in any profit derived from any decrease in the price or value of the shares of capital stock of this Corporation, and the class (and, if applicable, series) and number of shares of this Corporation's capital stock that relate to such agreements, arrangements or understandings and a representation that the stockholder will notify this Corporation in writing within five (5) business days after the record date for such meeting of any such agreement, arrangement or understanding of this nature in effect as of the record date for the meeting, (5) a description of any proxy (other than a revocable proxy or consent given in response to a solicitation made pursuant to, and in accordance with, Section 14(a) of the Exchange Act by way of a solicitation statement filed on Schedule 14A), agreement, arrangement, understanding or relationship in effect as of the date of the notice pursuant to which such stockholder or such beneficial owner has or shares a right to vote or direct any third party to vote any shares of capital stock of this Corporation and a representation that the stockholder will notify this Corporation in writing within five (5) business days after the record date for such meeting of any proxy, agreement, arrangement, understanding or relationship of this nature in effect as of the record date for the meeting, (6) a representation that the stockholder is a holder of record of stock of this Corporation entitled to vote at such meeting, will continue to be a stockholder of record of this Corporation entitled to vote at such meeting through the date of such meeting and intends to appear in person or by proxy at the meeting to propose such business or nomination, (7) a representation whether the stockholder or the beneficial owner, if any, intends or is part of a group which intends, (x) with respect to a proposal of business other than a nomination, to deliver a proxy statement and/or form of proxy to holders of at least the percentage of this Corporation's outstanding voting stock required to approve or adopt the proposal or, (y) with respect to a nomination, to solicit proxies in support of director nominees other than persons nominated by or at the direction of the Board or any committee thereof from holders representing at least 67% of the voting power of the shares entitled to vote in the election of directors, (8) any direct or indirect material legal, economic or financial interest of the stockholder or any beneficial owner in the outcome of any vote to be taken at any annual or special meeting of stockholders of this Corporation or any other entity with respect to any matter that is substantially related,

directly or indirectly, to any nomination proposed by any stockholder pursuant to this Section 2.11 and (9) any other information relating to such stockholder and beneficial owner, if any, required to be disclosed in a proxy statement or other filing required to be made in connection with solicitations of proxies for, as applicable, the proposal and/or for the election of directors in an election contest pursuant to and in accordance with Section 14(a) of the Exchange Act and the rules and regulations promulgated thereunder. This Corporation may require any proposed nominee to furnish such other information as it may reasonably require to determine the eligibility of such proposed nominee to serve as a director of this Corporation. A stockholder shall further update and supplement its notice of any nomination to be brought before a meeting, if necessary, so that the information provided or required to be provided in such notice pursuant to this Section 2.11(a)(ii) shall be true and correct (i) as of the record date for the meeting and (ii) as of the date that is ten (10) business days prior to the meeting or any adjournment, recess, rescheduling or postponement thereof. Such update and supplement shall be delivered to the Secretary of this Corporation not later than three (3) business days after the later of the record date or the date notice of the record date is first publicly announced (in the case of the update and supplement required to be made as of the record date for the meeting) and not later than seven (7) business days prior to the date for the meeting, if practicable (or, if not practicable, on the first practicable date prior to the meeting), or any adjournment, recess, rescheduling or postponement thereof (in the case of the update and supplement required to be made as of ten (10) business days prior to the meeting or any adjournment, recess, rescheduling or postponement thereof); provided, however, that this Corporation shall not be required to include in its proxy materials any successor, substitute or replacement nominee for director if a stockholder's notice is not timely pursuant to this Section 2.11(a)(ii) with respect to such successor, substitute or replacement nominee for director. For the avoidance of doubt, any information provided in such update or supplement shall not be deemed to cure any deficiencies in a notice previously delivered pursuant to this Section 2.11(a)(ii) and shall not extend the time period for delivery of notice pursuant to this Section 2.11(a)(ii). If a stockholder giving notice fails to provide such update or supplement within the required time period, the information as to which such update or supplement relates may be deemed not to have been provided in accordance with this Section 2.11(a)(ii). The information required to be included in a notice pursuant to this Section 2.11(a)(ii) shall not include any ordinary course business activities of any broker, dealer, commercial bank, trust company or other nominee who is directed to prepare and submit the notice required by this Section 2.11(a)(ii) on behalf of a beneficial owner of the shares held of record by such broker, dealer, commercial bank, trust company or other nominee and who is not otherwise affiliated or associated with such beneficial owner.

(iii) Subject to the Certificate of Incorporation, Section 2.11(a)(iv) and applicable law, only persons nominated in accordance with procedures stated in this Section 2.11 shall be eligible for election as and to serve as members of the Board and the only business that shall be conducted at an annual meeting of stockholders is the business that has been brought before the meeting in accordance with the procedures set forth in this Section 2.11. The chair of the meeting shall have the power and the duty to determine whether a nomination or any proposal has been made according to the procedures stated in this Section 2.11 and, if any nomination or proposal does not comply with this Section 2.11, unless otherwise required by law, the nomination or proposal shall be disregarded.

(iv) All provisions of this Section 2.11 are subject to, and nothing in this Section 2.11 shall in any way limit the exercise, or the method or timing of the exercise of, the rights of any person granted by this Corporation to nominate directors, which rights may be exercised without compliance with the provisions of this Section 2.11.

(v) Without limiting any other provisions and requirements of this Section 2.11, unless otherwise required by law, if (A) any stockholder provides notice pursuant to Rule 14a-19(b) under the Exchange Act (for the avoidance of doubt, such notice must be delivered within the time period provided for in Section 2.11(a)(ii) to be considered timely) and (B) such stockholder subsequently either (1) notifies this Corporation that such stockholder no longer intends to solicit proxies in support of director nominees other than this Corporation's nominees in accordance with Rule 14a-19 under the Exchange Act or (2) fails to comply with the requirements of Rule 14a-19(a)(2) or Rule 14a-19(a)(3) under the Exchange Act, then such stockholder's nominations shall be deemed null and void and this Corporation shall disregard any proxies or votes solicited for such stockholders' nominees. Upon request by this Corporation, if any stockholder provides notice pursuant to Rule 14a-19(b) under the Exchange Act, such stockholder shall deliver to this Corporation, no later than five (5) business days prior to the applicable meeting, reasonable evidence that it has met the requirements of Rule 14a-19(a)(3) under the Exchange Act.

(vi) Any stockholder directly or indirectly soliciting proxies from other stockholders must use a proxy card color other than white, which shall be reserved for exclusive use by this Corporation.

(b) Special Meetings of Stockholders. Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting pursuant to this Corporation's notice of meeting. Nominations of persons for election to the Board may be made at a special meeting of stockholders at which directors are to be elected pursuant to this Corporation's notice of meeting (i) by or at the direction of the Board or any committee thereof which the Board has authorized to do so or (ii) provided that the Board has determined that directors shall be elected at such meeting, by any stockholder of this Corporation who is a stockholder of record at the time the notice provided for in this Section 2.11 is delivered to the Secretary of this Corporation, who is entitled to vote at the meeting upon such election and who complies with the notice procedures set forth in this Section 2.11. In the event this Corporation calls a special meeting of stockholders for the purpose of electing one or more directors to the Board, any such stockholder entitled to vote in such election of directors may nominate a person or persons (as the case may be) for election to such position(s) as specified in this Corporation's notice of meeting, if the stockholder's notice required by Section 2.11(a)(ii) shall be delivered to the Secretary at the principal office of this Corporation not earlier than the close of business on the one hundred twentieth (120th) day prior to such special meeting and not later than the close of business on the later of the ninetieth (90th) day prior to such special meeting or the tenth (10th) day following the day on which public announcement is first made of the date of the special meeting and of the nominees proposed by the Board to be elected at such meeting. In no event, however, may the number of nominees a stockholder may nominate for election at any such special meeting of stockholders exceed the number of directors to be elected at such special meeting. In addition, in no event shall the public announcement of an adjournment or postponement of a special meeting commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above.

(c) Submission of Questionnaire, Representation and Agreement. To be eligible to be a nominee for election or reelection as a director of this Corporation, the candidate for nomination must have previously delivered (in accordance with the time periods prescribed for delivery of notice under this Section 2.11 or Section 2.14, as applicable, with respect to any director nominee nominated for election by a stockholder), to the Secretary at the principal office of this Corporation, (i) a completed written questionnaire (in a form provided by this Corporation) with respect to the background, qualifications, stock ownership and independence of such proposed nominee and (ii) a written representation and agreement (in a form provided by this Corporation) that such candidate for nomination (A) is not and, if elected as a director during his or her term of office, will not become a party to (1) any agreement, arrangement or understanding with, and has not given and will not give any commitment or assurance to, any person or entity as to how such proposed nominee, if elected as a director of this Corporation, will act or vote on any issue or question (a "Voting Commitment") that has not been disclosed to this Corporation or (2) any Voting Commitment that could limit or interfere with such proposed nominee's ability to comply, if elected as a director of this Corporation, with such proposed nominee's fiduciary duties under applicable law, (B) is not, and will not become a party to, any agreement, arrangement or understanding with any person or entity other than this Corporation with respect to any direct or indirect compensation or reimbursement for service as a director that has not been disclosed therein, (C) if elected as a director of this Corporation, will comply with all applicable corporate governance, conflict of interest, confidentiality, stock ownership and trading and other policies and guidelines of this Corporation applicable to directors and in effect during such person's term in office as a director (and, if requested by any candidate for nomination, the Secretary of this Corporation shall provide to such candidate for nomination all such policies and guidelines then in effect) and (D) consents (if applicable) to being named as a nominee in any proxy statement relating to the special meeting, and currently intends to serve as a director for the full term for which such person is standing for election.

(d) General.

(i) Except as otherwise expressly provided in any applicable rule or regulation promulgated under the Exchange Act, only such persons who are nominated in accordance with the procedures set forth in this Section 2.11 or in Section 2.14 shall be eligible to be elected at an annual or special meeting of stockholders of this Corporation to serve as directors and only such business shall be conducted at a meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in this Section 2.11. Except as otherwise provided by law, the chair of the meeting shall have the power and duty (A) to determine whether a nomination or any business proposed to be brought before the meeting was made or proposed, as the case may be, in accordance with the foregoing procedures (including whether the stockholder or beneficial owner, if any, on whose behalf the nomination or proposal is made solicited (or is part of a group which solicited) or did not so solicit, as the case may be, proxies or votes in support of such stockholder's nominee or proposal in compliance with such stockholder's representation as required by Section 2.11(a)(ii)(C)(7)) and (B) if any proposed nomination or business was not made or proposed in compliance with this Section 2.11 or 2.14, as applicable, to

declare that such nomination shall be disregarded or that such proposed business shall not be transacted. Notwithstanding the foregoing provisions of this Section 2.11, unless otherwise required by law, if the stockholder does not provide the information with respect to which such stockholder represented under Section 2.11(a)(ii)(C) it would notify this Corporation in writing within five (5) business days after the record date for the meeting of stockholders or if the stockholder (or a qualified representative of the stockholder) does not appear at the annual or special meeting of stockholders of this Corporation to present a nomination or proposed business, such nomination shall be disregarded and such proposed business shall not be transacted, notwithstanding that proxies in respect of such vote may have been received by this Corporation. For purposes of this Section 2.11, to be considered a qualified representative of the stockholder, a person must be a duly authorized officer, manager or partner of such stockholder or must be authorized by a writing executed by such stockholder or an electronic transmission delivered by such stockholder to act for such stockholder as proxy at the meeting of stockholders and such person must produce such writing or electronic transmission, or a reliable reproduction of the writing or electronic transmission, at the meeting of stockholders prior to the making of such nomination or proposal at such meeting.

(ii) For purposes of this Section 2.11, "public announcement" shall include disclosure in a press release reported by the Dow Jones News Service, Associated Press or comparable national news service or in a document publicly filed by this Corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the Exchange Act and the rules and regulations promulgated thereunder.

(iii) Notwithstanding the foregoing provisions of this Section 2.11, a stockholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder with respect to the matters set forth in this Section 2.11 (including, where applicable, Rule 14a-19 of the Exchange Act); provided, however, that any references in these Bylaws to the Exchange Act or the rules and regulations promulgated thereunder are not intended to and shall not limit any requirements applicable to nominations or proposals as to any other business to be considered pursuant to this Section 2.11 (including Section 2.11(a)(i)(C) and (b)), and compliance with paragraphs Section 2.11(a)(i)(C) and (b) shall be the exclusive means for a stockholder to make nominations or submit other business (other than business other than nominations brought properly under and in compliance with Rule 14a-8 of the Exchange Act, as may be amended from time to time, and other than as provided in Section 2.14). Nothing in this Section 2.11 shall be deemed to affect any rights (A) of stockholders to request inclusion of proposals or nominations in this Corporation's proxy statement pursuant to applicable rules and regulations promulgated under the Exchange Act or (B) of the holders of any series of Preferred Stock to elect directors pursuant to any applicable provisions of the Certificate of Incorporation.

**2.12** ***Conduct of Meetings***. The date and time of the opening and the closing of the polls for each matter upon which the stockholders will vote at a meeting shall be announced at the meeting by the person presiding over the meeting. The Board may adopt by resolution such rules and regulations for the conduct of the meeting of stockholders as it shall deem appropriate. Except to the extent inconsistent with such rules and regulations as adopted by the Board, the person

presiding over any meeting of stockholders shall have the right and authority to postpone, convene and (for any reason or no reason) to recess and/or adjourn the meeting, to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such presiding person, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the Board or prescribed by the presiding person over the meeting, may include, without limitation, the following: (a) the establishment of an agenda or order of business for the meeting; (b) rules and procedures for maintaining order at the meeting and the safety of those present (including, without limitation, rules and procedures for removal of disruptive persons from the meeting); (c) limitations on attendance at or participation in the meeting to stockholders entitled to vote at the meeting, their duly authorized and constituted proxies or such other persons as the presiding person of the meeting shall, in his or her discretion, determine; (d) restrictions on entry to the meeting after the time fixed for the commencement thereof; and (e) limitations on the time allotted to questions or comments by participants. The presiding person at any meeting of stockholders, in addition to making any other determinations that may be appropriate to the conduct of the meeting (including, without limitation, determinations with respect to the administration and/or interpretation of any of the rules, regulations or procedures of the meeting, whether adopted by the Board or prescribed by the person presiding over the meeting), shall, if the facts warrant, determine and declare to the meeting that a matter or business was not properly brought before the meeting and if such presiding person should so determine, such presiding person shall so declare to the meeting and any such matter or business not properly brought before the meeting shall not be transacted or considered. Unless and to the extent determined by the Board or the person presiding over the meeting, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure.

**2.13** ***Organization***. Meetings of stockholders shall be presided over by the Board Chair, or in his or her absence by the Board Vice Chair, if any, or in his or her absence, by the Chief Executive Officer or, in his or her absence, by a person designated by the Board, or in the absence of such designation by a person chosen by a majority vote of the stockholders present in person or represented by proxy at the meeting. The Secretary shall act as secretary of the meeting, but in his or her absence the person presiding over the meeting may appoint any person to act as secretary of the meeting.

**2.14** ***Proxy Access***.

(a) Inclusion of Nominee in Proxy Materials. Whenever the Board solicits proxies with respect to the election of directors at an annual meeting of stockholders, subject to the provisions of this Section 2.14, this Corporation shall include in its proxy materials for such annual meeting, in addition to any persons nominated for election by the Board or a committee appointed by the Board, the name, together with the Required Information (as defined below), of any person nominated for election (a "Stockholder Nominee") to the Board by a stockholder, or by a group of no more than twenty (20) stockholders, that has satisfied (individually or, in the case of a group, collectively) all applicable conditions and has complied with all applicable procedures set forth in this Section 2.14 (an "Eligible Stockholder," which shall include an eligible stockholder group), and that expressly elects at the time of providing the notice required by this Section 2.14 (the "Nomination Notice") to have its nominee included in this Corporation's proxy materials for such annual meeting pursuant to this Section 2.14.

(b) Required Information. For purposes of this Section 2.14, the "Required Information" that this Corporation will include in its proxy materials is (i) the information concerning the Stockholder Nominee and the Eligible Stockholder that is required to be disclosed in this Corporation's proxy statement by the rules and regulations of the Securities and Exchange Commission promulgated under the Exchange Act; and (ii) if the Eligible Stockholder so elects, a Supporting Statement (as defined below).

(c) Delivery of Nomination Notice. To be timely, a stockholder's Nomination Notice must be delivered to, or mailed to and received by, the Secretary at the principal office of this Corporation, not later than the close of business on the one hundred twentieth (120th) day nor earlier than the one hundred fiftieth (150th) day prior to the first anniversary of the release date of this Corporation's proxy materials for its most recent annual meeting of stockholders (provided, however, that in the event that the date of the annual meeting is more than thirty (30) days before or more than seventy (70) days after the first anniversary of the preceding year's annual meeting), or if no annual meeting was held in the preceding year, to be timely, the Nomination Notice must be so delivered, or mailed and received, not earlier than the one hundred fiftieth (150th) day prior to the date of such annual meeting and not later than the close of business on the later of the one hundred twentieth (120th) day prior to the date of such annual meeting or the tenth (10th) day following the day on which public disclosure of the date of such annual meeting was first made by this Corporation. In no event shall any adjournment or postponement of an annual meeting or any public announcement thereof commence a new time period (or extend any time period) for the giving of a Nomination Notice as described above.

(d) Maximum Number of Stockholder Nominees.

(i) The maximum aggregate number of Stockholder Nominees nominated by all Eligible Stockholders that will be included in this Corporation's proxy materials with respect to an annual meeting of stockholders shall not exceed the greater of (i) two or (ii) twenty percent (20%) of the number of directors in office as of the last day on which a Nomination Notice may be delivered pursuant to this Section 2.14, or if such amount is not a whole number, the closest whole number below twenty percent (20%); provided, however, that this number shall be reduced by (1) any Stockholder Nominee whose name was submitted by an Eligible Stockholder for inclusion in this Corporation's proxy materials pursuant to this Section 2.14 but either is subsequently withdrawn or that the Board decides to nominate for election and (2) the number of incumbent directors who were Stockholder Nominees at any of the preceding two annual meetings (including any individual covered under clause (1) above) and whose election at the upcoming annual meeting is being recommended by the Board. In the event that one or more vacancies for any reason occurs on the Board after the deadline set forth in Section 2.14(c) above but before the date of the annual meeting and the Board resolves to reduce the size of the Board in connection therewith, the maximum number shall be calculated based on the number of directors in office as so reduced.

(ii) Any Eligible Stockholder submitting more than one Stockholder Nominee for inclusion in this Corporation's proxy materials pursuant to this Section 2.14 shall rank such Stockholder Nominees based on the order in which the Eligible Stockholder desires such Stockholder Nominees be selected for inclusion in this Corporation's proxy materials.

In the event that the number of Stockholder Nominees submitted by Eligible Stockholders pursuant to this Section 2.14 exceeds the maximum number of nominees provided for pursuant to subsection (d)(i) above, the highest ranking Stockholder Nominee who meets the requirements of this Section 2.14 of each Eligible Stockholder will be selected for inclusion in this Corporation's proxy materials until the maximum number is reached, going in order by the number (largest to smallest) of shares of common stock of this Corporation each Eligible Stockholder disclosed as Owned (as defined below) in its respective Nomination Notice submitted to this Corporation pursuant to this Section 2.14. If the maximum number is not reached after the highest ranking Stockholder Nominee who meets the requirements of this Section 2.14 of each Eligible Stockholder has been selected, this process will continue with the next highest ranked nominees as many times as necessary, following the same order each time, until the maximum number is reached.

(e) Ownership. For purposes of this Section 2.14, an Eligible Stockholder shall be deemed to "Own" only those outstanding shares of common stock of this Corporation as to which the stockholder possesses both (i) the full voting and investment rights pertaining to the shares and (ii) the full economic interest in (including the opportunity for profit and risk of loss on) such shares; provided that the number of shares calculated in accordance with clauses (i) and (ii) shall not include any shares (x) sold by such stockholder or any of its affiliates in any transaction that has not been settled or closed, including any short sale, (y) borrowed by such stockholder or any of its affiliates for any purpose, or purchased by such stockholder or any of its affiliates subject to an agreement to resell, or (z) subject to any option, warrant, forward contract, swap, contract of sale, or other derivative or similar agreement entered into by such stockholder or any of its affiliates, whether any such instrument or agreement is to be settled with shares or with cash based on the notional amount or value of shares of common stock of this Corporation, in any such case which instrument or agreement has, or is intended to have, or if exercised would have, the purpose or effect of (1) reducing in any manner, to any extent or at any time in the future, such stockholder's or its affiliates' full right to vote or direct the voting of any such shares, and/or (2) hedging, offsetting or altering to any degree any gain or loss realized or realizable from maintaining the full economic ownership of such shares by such stockholder or affiliate. A stockholder shall "Own" shares held in the name of a nominee or other intermediary so long as the stockholder retains the right to instruct how the shares are voted with respect to the election of directors and possesses the full economic interest in the shares. A stockholder's Ownership of shares shall be deemed to continue during any period in which (i) the person has loaned such shares, provided that the person has the power to recall such loaned shares on no longer than five (5) business days' notice and includes with the Nomination Notice an agreement that it (A) will promptly recall such loaned shares upon being notified by this Corporation that any of its Stockholder Nominees will be included in this Corporation's proxy materials and (B) will continue to hold such recalled shares through the date of the annual meeting; or (ii) the person has delegated any voting power by means of a proxy, power of attorney or other instrument or arrangement that is revocable at any time by the person. The terms "Owned," "Owning" and other variations of the word "Own" shall have correlative meanings. Whether outstanding shares of common stock of this Corporation are "Owned" for purposes of this Section 2.14 shall be determined by the Board or any committee thereof, which determination shall be conclusive and binding on this Corporation and its stockholders. For purposes of this Section 2.14, the term "affiliate" or "affiliates" shall have the meaning ascribed thereto under the rules and regulations of the Securities and Exchange Commission promulgated under the Exchange Act.

(f) Eligible Stockholder. In order to make a nomination pursuant to this Section 2.14, an Eligible Stockholder or group of up to twenty (20) Eligible Stockholders must have Owned (as defined above) continuously for at least three (3) years at least the number of shares of common stock of this Corporation that shall constitute three percent (3%) or more of the voting power of the outstanding common stock of this Corporation (the "Required Shares") as of (i) the date on which the Nomination Notice is delivered to, or mailed to and received by, the Secretary in accordance with this Section 2.14, (ii) the record date for determining stockholders entitled to vote at the annual meeting, and (iii) the date of the annual meeting. For purposes of this Section 2.14, two or more funds or trusts that are (A) under common management and investment control, (B) under common management and funded primarily by the same employer, or (C) a "group of investment companies," as such term is defined in Section 12(d)(1)(G)(ii) of the Investment Company Act of 1940, as amended (each, a "Qualifying Fund"), shall be treated as one stockholder or beneficial owner.

No person may be a member of more than one group of persons constituting an Eligible Stockholder under this Section 2.14. If a group of stockholders aggregates Ownership of shares in order to meet the requirements under this Section 2.14, (i) all shares held by each stockholder constituting their contribution to the foregoing three percent (3%) threshold must have been held by that stockholder continuously for at least three (3) years and through the date of the annual meeting, and evidence of such continuous Ownership shall be provided as specified in subsection 2.14(g) below, (ii) each provision in this Section 2.14 that requires the Eligible Stockholder to provide any written statements, representations, undertakings, agreements or other instruments or to meet any other conditions shall be deemed to require each stockholder (including each individual fund) that is a member of such group to provide such statements, representations, undertakings, agreements or other instruments and to meet such other conditions (except that the members of such group may aggregate their shareholdings in order to meet the three percent (3%) Ownership requirement of the "Required Shares" definition) and (iii) a breach of any obligation, agreement or representation under this Section 2.14 by any member of such group shall be deemed a breach by the Eligible Stockholder.

(g) Information to be Provided by Eligible Stockholder. Within the time period specified in this Section 2.14 for providing the Nomination Notice, an Eligible Stockholder making a nomination pursuant to this Section 2.14 must provide the following information in writing to the Secretary at the principal office of this Corporation:

(i) one or more written statements from the Eligible Stockholder (and from each other record holder of the shares and intermediary through which the shares are or have been held during the requisite three (3)-year holding period) specifying the number of shares of common stock of this Corporation that the Eligible Stockholder Owns, and has continuously Owned for three (3) years preceding the date of the Nomination Notice, and the Eligible Stockholder's agreement to provide, within five (5) business days after the later of the record date for the annual meeting and the date on which the record date is first publicly disclosed by this Corporation, written statements from the Eligible Stockholder, record holder and intermediaries verifying the Eligible Stockholder's continuous Ownership of the Required Shares through the record date, provided that statements meeting the requirements of Schedule 14N will be deemed to fulfill this requirement;

(ii) the written consent of each Stockholder Nominee to being named in the proxy statement as a nominee and to serving as a director if elected, together with the information and representations that would be required to be set forth in a stockholder's notice of a nomination pursuant to Section 2.11;

(iii) a copy of the Schedule 14N that has been or is concurrently being filed by such Eligible Stockholder with the Securities and Exchange Commission as required by Rule 14a-18 under the Exchange Act, as such rule may be amended;

(iv) the details of any relationship that existed within the past three (3) years and that would have been described pursuant to Item 6(e) of Schedule 14N (or any successor item) if it existed on the date of submission of Schedule 14N;

(v) a representation and undertaking (1) that the Eligible Stockholder (A) did not acquire, and is not holding, securities of this Corporation for the purpose or with the effect of influencing or changing control of this Corporation, (B) has not nominated and will not nominate for election to the Board at the annual meeting any person other than the Stockholder Nominee(s) being nominated by it pursuant to this Section 2.14, (C) has not engaged and will not engage in, and has not and will not be a "participant" in another person's, "solicitation" within the meaning of Rule 14a-1(l) under the Exchange Act in support of the election of any individual as a director at the annual meeting other than its Stockholder Nominee(s) or a nominee of the Board, (D) has not distributed and will not distribute to any stockholder any form of proxy for the annual meeting other than the form distributed by this Corporation, and (E) will Own the Required Shares through the date of the annual meeting of stockholders; (2) that the facts, statements and other information in all communications with this Corporation and its stockholders are and will be true and correct in all material respects and do not and will not omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and (3) as to whether or not the Eligible Stockholder intends to maintain qualifying Ownership of the Required Shares (as set forth in Section 2.14(f)) for at least one year following the annual meeting;

(vi) in the case of a nomination by a group of stockholders that together is an Eligible Stockholder, the designation by all group members of one group member that is authorized to receive communications, notices and inquiries from this Corporation and to act on behalf of all such members with respect to the nomination and all matters related thereto, including any withdrawal of the nomination, and the acceptance by such group member of such designation;

(vii) an undertaking that the Eligible Stockholder agrees to (A) assume all liability stemming from any legal or regulatory violation arising out of the Eligible Stockholder's communications with the stockholders of this Corporation or out of the information that the Eligible Stockholder provided to this Corporation, (B) indemnify and hold harmless this Corporation and each of its directors, officers and employees individually against any liability, loss or damages in connection with any threatened or pending action, suit or proceeding, whether legal, administrative or investigative, against this Corporation or any of its directors, officers or employees arising out of any nomination,

solicitation or other activity by the Eligible Stockholder in connection with its efforts to elect the Stockholder Nominee(s) pursuant to this Section 2.14, (C) comply with all other laws, rules and regulations applicable to any actions taken pursuant to this Section 2.14, including the nomination and any solicitation in connection with the annual meeting of stockholders, and (D) with respect to any shares held or controlled by the Eligible Stockholder, to the extent that cumulative voting would otherwise be permitted, agrees not to cumulate votes in favor of the election of any Stockholder Nominee(s) nominated by such Eligible Stockholder; and

(viii) in the case of a Qualifying Fund whose share Ownership is counted for purposes of qualifying as an Eligible Stockholder, documentation from the Qualifying Fund reasonably satisfactory to the Board that demonstrates that it meets the requirements of a Qualifying Fund set forth in Section 2.14(f) above.

(h) Supporting Statement. The Eligible Stockholder may provide to the Secretary, at the time the information required by this Section 2.14 is provided, a written statement for inclusion in this Corporation's proxy statement for the annual meeting of stockholders, not to exceed five hundred (500) words, in support of the Stockholder Nominee(s)' candidacy (the "Supporting Statement"). Notwithstanding anything contained in this Section 2.14 to the contrary, this Corporation may omit from its proxy materials any information or Supporting Statement (or portion thereof) that it, in good faith, believes (i) is not true in all material respects or omits a material statement necessary to make such information or Supporting Statement (or portion thereof) not misleading; (ii) directly or indirectly impugns the character, integrity or personal reputation of, or directly or indirectly makes charges concerning improper, illegal or immoral conduct or associations, without factual foundation, with respect to, any person; or (iii) would violate any applicable law, rule, regulation or listing standard. Nothing in this Section 2.14 shall limit this Corporation's ability to solicit against and include in its proxy materials its own statements relating to any Eligible Stockholder or Stockholder Nominee.

(i) Representations and Agreement of the Stockholder Nominee. Within the time period specified in this Section 2.14 for delivering the Nomination Notice, a Stockholder Nominee must deliver to the Secretary the questionnaire and all representations and agreements required by a candidate for nomination pursuant to Section 2.11(c). This Corporation may request such additional information (a) as may be reasonably necessary to permit the Board or any committee thereof to determine if each Stockholder Nominee is independent under the listing standards of the principal U.S. exchange upon which this Corporation's common stock is listed, any applicable rules of the Securities and Exchange Commission and any publicly disclosed standards used by the Board in determining and disclosing the independence of this Corporation's directors (the "Applicable Independence Standards") and otherwise to determine the eligibility of each Stockholder Nominee to serve as a director of this Corporation, or (b) that could be material to a reasonable stockholder's understanding of the independence, or lack thereof, of each Stockholder Nominee.

(j) True, Correct and Complete Information. In the event that any information or communications provided by any Eligible Stockholder or Stockholder Nominee to this Corporation or its stockholders is not, when provided, or thereafter ceases to be, true, correct and complete in all material respects (including omitting a material fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading), such Eligible Stockholder or Stockholder Nominee, as the case may be, shall promptly notify the Secretary and provide the information that is required to make such information or communication true, correct, complete and not misleading; it being understood that providing any such notification shall not be deemed to cure any such defect or limit this Corporation's right to omit a Stockholder Nominee from its proxy materials pursuant to this Section 2.14. In addition, any person providing any information to this Corporation pursuant to this Section 2.14 shall further update and supplement such information, if necessary, so that all such information shall be true and correct as of the record date for the annual meeting and as of the date that is ten (10) business days prior to the annual meeting or any adjournment or postponement thereof, and such update and supplement (or a written certification that no such updates or supplements are necessary and that the information previously provided remains true and correct as of the applicable date) shall be delivered to, or mailed to and received by, the Secretary at the principal office of this Corporation not later than five (5) business days after the later of the record date for the annual meeting and the date on which the record date is first publicly disclosed by this Corporation (in the case of any update and supplement required to be made as of the record date), and not later than seven (7) business days prior to the date of the annual meeting or any adjournment or postponement thereof (in the case of any update and supplement required to be made as of ten (10) business days prior to the annual meeting).

(k) Limitation on Stockholder Nominees. Any Stockholder Nominee who is included in this Corporation's proxy materials for a particular annual meeting of stockholders, but withdraws from or becomes ineligible or unavailable for election at such annual meeting, will be ineligible to be a Stockholder Nominee pursuant to this Section 2.14 for the next two (2) annual meetings of stockholders.

(l) Exceptions. Notwithstanding anything in this Section 2.14 to the contrary, this Corporation shall not be required to include, pursuant to this Section 2.14, any Stockholder Nominee in its proxy materials for any meeting of stockholders (i) if the Eligible Stockholder who has nominated such Stockholder Nominee has engaged in or is currently engaged in, or has been or is a "participant" in another person's, "solicitation" within the meaning of Rule 14a-1(l) under the Exchange Act in support of the election of any individual as a director at the meeting other than its Stockholder Nominee(s) or a nominee of the Board, (ii) if this Corporation receives notice pursuant to Section 2.14 that any stockholder intends to nominate any nominee for election to the Board at such meeting, (iii) who is not independent under the Applicable Independence Standards, as determined by the Board or any committee thereof, (iv) whose nomination or election as a member of the Board would cause this Corporation to be in violation of these Bylaws, the Certificate of Incorporation, the rules and listing standards of the principal exchanges upon which this Corporation's shares of common stock are listed or traded, or any applicable law, rule or regulation, (v) who is or has been, within the past three (3) years, an officer or director of a competitor, as defined in Section 8 of the Clayton Antitrust Act of 1914, (vi) who is a named subject of a pending criminal proceeding (excluding traffic violations and other minor offenses) or has been convicted in such a criminal proceeding within the past ten (10) years, (vii) who is subject to any order of the type specified in Rule 506(d) of Regulation D promulgated under the Securities Act of 1933, as amended, (viii) if such Stockholder Nominee or the applicable Eligible Stockholder shall have provided information to this Corporation in respect to such nomination that was untrue in any material respect or omitted to state a material fact necessary in order to make

the statement made, in light of the circumstances under which it was made, not misleading, as determined by the Board, (ix) if such Stockholder Nominee or the applicable Eligible Stockholder otherwise contravenes any of the agreements or representations made by such Stockholder Nominee or Eligible Stockholder or fails to comply with its obligations pursuant to this Section 2.14, or (x) if the applicable Eligible Stockholder ceases to be an Eligible Stockholder for any reason, including but not limited to not Owning the Required Shares through the date of the applicable annual meeting of stockholders.

(m) Disqualifications. Notwithstanding anything in this Section 2.14 to the contrary, if (i) a Stockholder Nominee is determined not to satisfy the eligibility requirements of this Section 2.14 or any other provision of this Corporation's Bylaws, Certificate of Incorporation, Corporate Governance Guidelines or other applicable regulation at any time before the annual meeting (whether or not already included in this Corporation's proxy materials for the annual meeting), (ii) a Stockholder Nominee and/or the applicable Eligible Stockholder shall have breached any of its obligations, agreements or representations or fails to comply with its obligations under this Section 2.14, (iii) the applicable Eligible Stockholder (or a qualified representative thereof) does not appear at the annual meeting of stockholders to present any nomination pursuant to this Section 2.14, (iv) a Stockholder Nominee dies, becomes disabled or otherwise becomes ineligible or unavailable for election at the annual meeting, or (v) the applicable Eligible Stockholder otherwise ceases to be an Eligible Stockholder for any reason, including but not limited to not Owning the Required Shares through the date of the applicable annual meeting of stockholders, in each of clauses (i) through (v) as determined by the Board, any committee thereof or the person presiding at the annual meeting, (x) this Corporation may omit or, to the extent feasible, remove the information concerning such Stockholder Nominee and the related Supporting Statement from its proxy materials and/or otherwise communicate to its stockholders that such Stockholder Nominee will not be eligible for election at the annual meeting, (y) this Corporation shall not be required to include in its proxy materials any successor or replacement nominee proposed by the applicable Eligible Stockholder or any other Eligible Stockholder and (z) the Board or the person presiding at the annual meeting shall declare such nomination to be invalid and such nomination shall be disregarded notwithstanding that proxies in respect of such vote may have been received by this Corporation.

(n) Filing Obligation. The Eligible Stockholder (including any person who Owns shares of common stock of this Corporation that constitute part of the Eligible Stockholder's Ownership for purposes of satisfying Section 2.14(e) hereof) shall file with the Securities and Exchange Commission any solicitation or other communication with this Corporation's stockholders relating to the meeting at which the Stockholder Nominee will be nominated, regardless of whether any such filing is required under Regulation 14A of the Exchange Act or whether any exemption from filing is available for such solicitation or other communication under Regulation 14A of the Exchange Act.

## ARTICLE III
## Board of Directors

**3.1** ***General Powers***. Subject to the requirements of the General Corporation Law, the property, business and affairs of this Corporation shall be managed by the Board.

**3.2** ***Number and Term of Office***. The Board shall consist of one or more directors, the number thereof to be determined from time to time by resolution of the Board. Directors need not be stockholders. Each of the directors of this Corporation shall hold office until his or her successor shall have been duly elected and shall qualify or until he or she shall resign or shall have been removed in the manner provided in these Bylaws.

**3.3** ***Election of Directors***.

(a) The Governance Committee of the Board shall recommend to the Board, Board nominees for election and/orre-election to the Board at the annual meeting of stockholders and candidates to fill vacancies on the Board in between annual meetings of stockholders. The Board of Directors shall consider the candidates recommended by the Governance Committee of the Board when recommending to the stockholders Board nominees for election and/or re-election to the Board at the annual meeting of stockholders and when filling vacancies on the Board in between annual stockholder meetings.

(b) The directors shall be elected annually by the stockholders of this Corporation. Except as otherwise provided in Section 3.5 below, each director shall be elected by the vote of a majority of the votes cast with respect to such director's election at any annual or special meeting for the election of directors at which a quorum is present. If, however, as of the tenth (10th) day preceding the date the notice of the meeting is first mailed for such meeting to the stockholders of this Corporation, the number of nominees exceeds the number of directors to be elected (a "Contested Election"), the nominees receiving the greatest number of votes of the shares represented in person or by proxy at the meeting and entitled to vote on the election of directors, up to the number of directors to be elected, shall be the directors. For purposes of this Section 3.3, a "majority of the votes cast" means that the number of shares voted "for" a nominee must exceed the number of votes cast "against" that nominee (with "abstentions" and "broker non-votes" not counted as a vote cast either "for" or "against" that director's election).

(c) If an incumbent director is not reelected but would otherwise remain in office until his or her successor is elected and qualified, the director shall offer to tender his or her resignation to the Board, which may be conditioned upon acceptance of such resignation by the Board. If a resignation is so conditioned, the Governance Committee of the Board, or such other committee designated by the Board pursuant to Section 3.15 below, will evaluate any such resignation in light of the best interests of this Corporation and its stockholders and will make a recommendation to the Board on whether to accept or reject such resignation or whether other action should be taken with respect thereto. In making its recommendation, such committee may consider any factors it deems relevant, including the director's qualifications, the director's past and expected future contributions to this Corporation, the overall composition of the Board and whether accepting the tendered resignation would cause this Corporation to fail to satisfy or otherwise comply with any applicable rule or regulation (including listing requirements of The Nasdaq Stock Market LLC and the federal securities laws). The Board will act on the resignation, taking into account the recommendation of such committee, and this Corporation will publicly disclose (by a press release and filing an appropriate disclosure with the Securities and Exchange Commission) the Board's decision regarding the resignation and, if such resignation is rejected, the rationale behind the decision within ninety (90) days from the date of the certification of the election results. The director who tenders his or her resignation will not participate in the decision of the Board or Board committee.

(d) If the Board accepts a director's resignation pursuant to this Bylaws, or if a nominee for director is not elected and the nominee is not an incumbent director, then the Board may fill the resulting vacancy in accordance with the provisions of these Bylaws or may decrease the size of the Board in accordance with the provisions of these Bylaws.

(e) If no directors receive the requisite majority vote at an annual or special meeting held for the election of directors that is not a Contested Election, the incumbent Board will nominate a new slate of directors and hold a special meeting for the purpose of electing those nominees within one hundred eighty (180) days after the certification of the stockholder vote at the prior meeting. In this circumstance, the incumbent Board will continue to serve until new directors are duly elected and qualified.

**3.4** ***Resignations***. Any director of this Corporation may resign at any time by giving notice in writing or by electronic transmission to the Board or to the Secretary of this Corporation. Any such resignation shall take effect at the time specified therein, or, if the time be not specified, it shall take effect immediately upon its receipt by the Board or the Secretary; and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

**3.5** ***Vacancies***. Except as otherwise provided in the Certificate of Incorporation, any vacancy in the Board, whether because of death, resignation, disqualification, an increase in the number of directors, or any other cause, may be filled by vote of the majority of the remaining directors, although less than a quorum, or by a plurality of the votes cast at a meeting of stockholders. Each director so chosen to fill a vacancy shall hold office until his or her successor shall have been elected and shall qualify or until he or she shall resign or shall have been removed in the manner provided in these Bylaws. If there are no directors in office, then an election of directors may be held in the manner provided by the General Corporation Law.

**3.6** ***Place of Meeting, Etc***. The Board may hold any of its meetings at such place or places within or without the State of Delaware as the Board may from time to time by resolution designate or as shall be designated by the person or persons calling the meeting or in the notice or a waiver of notice of any such meeting. Directors may participate in any regular or special meeting of the Board by means of conference telephone or other communications equipment pursuant to which all persons participating in the meeting of the Board can hear each other, and such participation shall constitute presence in person at such meeting.

**3.7** ***Annual Meeting***. The Board shall meet as soon as practicable after each annual election of directors and notice of such first meeting shall not be required, provided a quorum shall be present; or such meeting may be held at such time and place as shall be specified in a notice given as hereinafter provided for special meetings of the Board, or as shall be specified in a waiver given by each person entitled to notice.

**3.8** ***Regular Meetings***. Regular meetings of the Board shall be held at such times and places as the Board shall from time to time by resolution determine. If any day fixed for a regular meeting shall be a legal holiday at the place where the meeting is to be held, then the meeting shall be held at the same time and place on the next succeeding business day not a legal holiday.

**3.9** ***Special Meetings; Notice***. Special meetings of the Board for any purpose or purposes may be called at any time by the Board Chair, the Chief Executive Officer, the Secretary or any two directors. Notice of a special meeting of the Board shall be given by the person or persons calling the meeting at least twenty-four (24) hours before the special meeting. Except as otherwise provided herein or permitted by applicable law, notices to any director may be in writing and delivered personally or may be given by telephone or by any means of electronic transmission (including, without limitation, electronic mail or calendar invitation by electronic mail) directed to an address for receipt by such director of electronic transmissions appearing on the books of this Corporation. Unless otherwise stated in the notice thereof, any and all business may be transacted at a special meeting of the Board.

**3.10** ***Quorum and Manner of Acting***. Except as otherwise provided in these Bylaws, the Certificate of Incorporation or by law, the presence of a majority of the authorized number of directors shall be required to constitute a quorum for the transaction of business at any meeting of the Board, and all matters shall be decided at any such meeting, a quorum being present, by the affirmative votes of a majority of the directors present.

In the absence of a quorum, a majority of directors present at any meeting may adjourn the same from time to time until a quorum shall be present. Notice of any adjourned meeting need not be given. The directors shall act only as a Board, and the individual directors shall have no power as such.

**3.11** ***Action by Consent***. Any action required or permitted to be taken at any meeting of the Board or of any committee thereof may be taken without a meeting if all members of the Board or of such committee, as the case may be, consent thereto in writing or by electronic transmission. Any such consent may be documented, signed and delivered in any manner permitted by Section 116 of the General Corporation Law. After any such action is taken, the consent or consents relating thereto shall be filed with the minutes of proceedings of the Board or committee in the same paper or electronic form as the minutes are maintained.

**3.12** ***Removal of Directors***. Except as otherwise provided by the Certificate of Incorporation or applicable law, any director may be removed at any time, either with or without cause, by the affirmative vote of the stockholders then entitled to vote at an election of directors having a majority of the voting power of this Corporation given at an annual meeting or a special meeting of the stockholders called for such purpose.

**3.13** ***Compensation***. The directors shall receive only such compensation for their services as directors as may be allowed by resolution of the Board. The Board may also provide that this Corporation shall reimburse each such director for any expense incurred by such director on account of his or her attendance at any meetings of the Board or committees of the Board. Neither the payment of such compensation nor the reimbursement of such expenses shall be construed to preclude any director from serving this Corporation or its subsidiaries in any other capacity and receiving compensation therefor.

**3.14** ***Board Chair and Board Vice Chair.*** This Corporation shall have a Board Chair and, at its discretion, a Board Vice Chair. Any such Board Chair or Board Vice Chair may be an officer of this Corporation if determined by the Board in its discretion. The Board Chair, and in his or her absence the Board Vice Chair, shall preside at all meetings of the stockholders and of the Board. The Board Chair or Board Vice Chair shall have other such other powers and duties as may be from time to time be assigned to him or her by the Board or as may be prescribed by the Bylaws.

**3.15** ***Committees***.

(a) The Board may appoint one or more committees, each consisting of one or more directors, and delegate to such committees any of the authority of the Board permitted by law except with respect to:

(i) the approval or adoption, or the making of a recommendation to the stockholders with respect to, any action or matter that is required under the General Corporation Law to be submitted to the stockholders;

(ii) the filling of vacancies on the Board or on any committee;

(iii) except as otherwise required by law or the rules and regulations of any nationally recognized securities exchange on which shares of this Corporation's stock are traded, the fixing of compensation of the directors for serving on the Board or on any committee;

(iv) the amendment or repeal of these Bylaws or the adoption of new Bylaws;

(v) the amendment or repeal of any resolution of the Board which by its express terms is not amendable or repealable;

(vi) distribution to the stockholders of this Corporation except at a rate or in a periodic amount or within a price range determined by the Board; or

(vii) the appointment of other committees of the Board or the members thereof.

(b) Any such committee must be appointed by resolution adopted by the Board and may be designated an Executive Committee or by such other name as the Board shall specify. The Board may designate one or more directors as alternate members of any committee, who may replace any absent member at any meeting of the committee. The Board shall have the power to prescribe the manner in which proceedings of any such committee shall be conducted. In the absence of any such prescription, such committee shall have the power to prescribe the manner in which its proceedings shall be conducted. Unless the Board or such committee shall provide, the regular and special meetings of any such committee shall be governed by the provisions of this Article applicable to meetings and actions of the Board. Minutes shall be kept of each meeting of such committee and filed with the Secretary of this Corporation.

**3.16** ***Executive Committee***. The passage of any resolution of the committee designated by the Board as the Executive Committee shall, in addition to any other limitations prescribed by the Board in accordance with the provisions of Section 3.15, require the affirmative vote of a majority of directors present and voting on such resolution who are not employees of this Corporation.

**3.17** ***Rights of Inspection***. Every director shall have the right to examine this Corporation's stock ledger, a list of its stockholders and its other books and records for a purpose reasonably related to the director's position as a director. The Court of Chancery of the State of Delaware is vested with the exclusive jurisdiction to determine whether a director is entitled to the inspection sought.

**3.18** ***Organization***. Meetings of the Board shall be presided over by the Board Chair, or in his or her absence by the Board Vice Chair, if any, or in his or her absence by the Chief Executive Officer if such person is a member of the Board, or in his or her absence by a chair chosen at the meeting. The Secretary shall act as secretary of the meeting, but in his or her absence the chair of the meeting may appoint any person to act as secretary of the meeting.

## ARTICLE IV
## Officers

**4.1** ***Corporate Officers***.

(a) The officers of this Corporation shall consist of a Chief Executive Officer, a Secretary and a Chief Financial Officer. At the discretion of the Board, the Board Chair may be an officer of this Corporation.

(b) In addition to the officers specified in Section 4.1(a), the Board may appoint such additional officers as the Board may deem necessary or desirable, including a President, one or more Vice Presidents, one or more Assistant Secretaries, a Treasurer and one or more Assistant Treasurers, each of whom shall hold office for such period, have such authority and perform such duties as the Board may from time to time determine. The Board may delegate to any officer of this Corporation or any committee of the Board the power to appoint, remove (with or without cause) and prescribe the term and duties of any officer provided for in this Section 4.1(b).

(c) One person may hold two or more offices, except that the Secretary may not hold the office of Chief Executive Officer.

**4.2** ***Appointment and Term of Office***. Each officer shall serve at the pleasure of the Board and shall hold office until a successor shall have been appointed or until such officer's death, disqualification, resignation or removal. Any officer may be removed, either with or without cause, by the Board or, except in case of an officer appointed by the Board, by any officer upon whom such power of removal may be conferred by the Board.

**4.3** ***Resignations***. Any officer may resign at any time by giving notice in writing or by electronic transmission of such officer's resignation to this Corporation. Any such resignation shall take effect at the time specified therein, or, if the time be not specified, upon receipt thereof by this Corporation. Unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

**4.4** ***Vacancies***. A vacancy in any office because of death, resignation, removal or disqualification or other event, may be filled in the manner prescribed in these Bylaws for regular appointments to such office.

**4.5** ***Chief Executive Officer***. The Chief Executive Officer shall have, subject to the control of the Board, general and active supervision, direction and control of the business of this Corporation and its officers, agents and employees, and shall perform all duties as may from time to time be assigned to him or her by the Board.

**4.6** ***Secretary***. The Secretary shall keep or cause to be kept, at the principal office of this Corporation or at such other place as the Board may order, a book of minutes of all meetings of the stockholders, the Board and its committees, the time and place, if any, of holding such meetings, whether regular or special, and, if special, how authorized, the notice thereof given, the names of those present at Board and committee meetings, the number of shares present or represented at stockholder meetings and the proceedings thereof. The Secretary shall keep, or shall cause to be kept, at the principal office or at the office of this Corporation's transfer agent or registrar, a share register, or a duplicate share register, showing the names of stockholders and their addresses, the number and classes of shares of stock held by each, the number and date of certificates representing such shares and the number and date of cancellation of every certificate surrendered for cancellation. The Secretary shall give, or shall cause to be given, in conformity with these Bylaws, notice of all meetings of the stockholders and of the Board and of any committees thereof requiring notice. The Secretary shall keep the seal of this Corporation in safe custody and shall have such other powers and shall perform such other duties as may from time to time be assigned to him or her by the Board. In the event of the absence, inability or refusal to act of the Secretary, any Assistant Secretary shall perform the duties and exercise the powers of the Secretary.

**4.7** ***Chief Financial Officer***. The Chief Financial Officer shall keep and maintain, or shall cause to be kept and maintained, adequate and correct accounts of the properties and business transactions of this Corporation, and shall send or shall cause to be sent to the stockholders of this Corporation such financial statements and reports as are by law or by these Bylaws required to be sent to them. The books of account shall at all reasonable times be open to inspection by any director. The Chief Financial Officer shall render to the Chief Executive Officer and directors, whenever they request it, an account of all transactions as Chief Financial Officer and of the financial condition of this Corporation, and shall have such other powers and perform such other duties as may from time to time be assigned to him or her by the Board.

**4.8** ***Compensation***. To the extent required by applicable listing requirements of The Nasdaq Stock Market LLC, the compensation of those officers appointed by the Board pursuant to Section 4.1(a) or (b) of these Bylaws shall be fixed from time to time by the Board or a committee of the Board delegated with such authority. No officer shall be prevented from receiving compensation by reason of the fact that such officer is also a director of this Corporation or any of its subsidiaries. Nothing contained herein shall preclude any officer from serving this Corporation or any of its subsidiaries, in any other capacity and receiving compensation therefor.

## ARTICLE V
## Contracts, Checks, Drafts, Bank Accounts, Etc.

**5.1** ***Execution of Contracts***. The Board, except as in these Bylaws otherwise provided, may authorize any officer or officers, agent or agents, to enter into any contract or execute any instrument in the name of and on behalf of this Corporation, and such authority may be general or confined to specific instances. Unless so authorized by the Board or by these Bylaws, no officer, agent or employee shall have any power or authority to bind this Corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or in any amount.

**5.2** ***Checks, Drafts, Etc***. All checks, drafts or other orders for payment of money, notes or other evidence of indebtedness, issued in the name of or payable to this Corporation, shall be signed or endorsed by such person or persons and in such manner as, from time to time, shall be determined by resolution of the Board. Each authorized person shall give such bond, if any, as the Board may require.

**5.3** ***Deposits***. All funds of this Corporation not otherwise employed shall be deposited from time to time to the credit of this Corporation in such banks, trust companies and other depositories as the Board may select, or as may be selected by any officer or officers, assistant or assistants, agent or agents, or attorney or attorneys of this Corporation to whom such power shall have been delegated by the Board. For the purpose of deposit and for the purpose of collection for the account of this Corporation, the Chief Executive Officer, the President, the Chief Financial Officer and any Treasurer appointed in accordance with Section 4.1(b) (or any other officer or officers, assistant or assistants, agent or agents, or attorney or attorneys of this Corporation who shall from time to time be determined by the Board) may each endorse, assign and deliver checks, drafts and other orders for the payment of money which are payable to the order of this Corporation.

**5.4** ***General and Special Bank Accounts***. The Board may from time to time authorize the opening and keeping of general and special bank accounts with such banks, trust companies or other depositories as the Board may select or as may be selected by any officer or officers, assistant or assistants, agent or agents, or attorney or attorneys of this Corporation to whom such power shall have been delegated by the Board. The Board may make such special rules and regulations with respect to such bank accounts, not inconsistent with the provisions of these Bylaws, as it may deem expedient.

## ARTICLE VI
## Shares and Their Transfer

**6.1** ***Certificates of Stock; Uncertificated Shares***.

(a) The shares of stock of this Corporation shall be represented by certificates, provided that the Board may provide by resolution or resolutions that some or all of any or all classes or series of its stock shall be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to this Corporation. Notwithstanding the adoption of any resolution providing for uncertificated shares, every holder of stock represented by certificates and upon request every holder of uncertificated shares shall be

entitled to have a certificate, in such form as the Board shall prescribe, signed by, or in the name of this Corporation by any two authorized officers of this Corporation (it being understood that each of the Board Chair, the Board Vice Chair, the Chief Executive Officer, the Chief Financial Officer, the President, a Vice President, the Treasurer, an Assistant Treasurer, the Secretary or an Assistant Secretary shall be an authorized officer for such purpose), representing the number of shares registered in certificate form. Any of or all of the signatures on the certificates may be by facsimile. In case any officer, transfer agent or registrar who has signed, or whose facsimile signature has been placed upon, any such certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, such certificate may nevertheless be issued by this Corporation with the same effect as though the person who signed such certificate, or whose facsimile signature shall have been placed thereupon, were such officer, transfer agent or registrar at the date of issue.

(b) A record shall be kept of the respective names of the persons, firms or corporations owning the stock represented by certificates or registered in uncertificated form, the number and class of shares represented by such certificates or registered in uncertificated form, and in case of cancellation, the respective dates of cancellation. Every certificate surrendered to this Corporation for exchange or transfer shall be cancelled, and, where the shares are to be represented by certificates, no new certificate or certificates shall be issued in exchange for any existing certificate until such existing certificate shall have been so cancelled, except in cases provided for in Section 6.4. Uncertificated shares shall be cancelled and issuance of new equivalent uncertificated shares shall be made to the person entitled thereto and the transaction shall be recorded upon the books of this Corporation.

**6.2** ***Transfers of Stock***. Shares of capital stock of this Corporation shall be transferable in the manner prescribed by law and in these Bylaws. Shares of capital stock of this Corporation shall only be transferred on the books of this Corporation by the holder of record thereof or by such holder's attorney duly authorized in writing, upon surrender to this Corporation of the certificate or certificates representing such shares endorsed by the appropriate person or persons (or, with respect to uncertificated shares, by delivery of duly executed instructions or in any other manner permitted by applicable law), with such evidence of the authenticity of such endorsement or execution, transfer, authorization, and other matters as this Corporation may reasonably require, and accompanied by all necessary stock transfer stamps.

**6.3** ***Regulations***. Subject to the provisions of the Certificate of Incorporation and these Bylaws, the Board may make such additional rules and regulations as it may deem expedient concerning the issue, transfer and registration of certificates representing shares of the stock of this Corporation or uncertificated shares.

**6.4** ***Lost, Stolen, Destroyed, and Mutilated Certificates***. In any case of loss, theft, destruction, or mutilation of any certificate of stock, another may be issued in its place upon proof of such loss, theft, destruction, or mutilation and upon the giving of a bond of indemnity to this Corporation in such form and in such sum as the Board may direct; provided, however, that a new certificate may be issued without requiring any bond when, in the judgment of the Board, it is proper to do so.

**ARTICLE VII**
**Indemnification**

**7.1** ***Scope of Indemnification***. This Corporation shall indemnify and hold harmless, to the fullest extent permitted by applicable law as it presently exists or may hereafter be amended, any person (a "Covered Person") who was or is made or is threatened to be made a party or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (a "proceeding"), by reason of the fact that he or she, or a person for whom he or she is the legal representative, is or was a director or officer of this Corporation or, while a director or officer of this Corporation, is or was serving at the request of this Corporation as a director, officer, member, manager, partner, employee or agent of another corporation or of a partnership, limited liability company, joint venture, trust, other enterprise or nonprofit entity, including service with respect to employee benefit plans, against all liability and loss suffered and expenses (including attorneys' fees) actually and reasonably incurred by such Covered Person in connection with such proceeding. Notwithstanding the preceding sentence, except as otherwise provided in Section 7.6, this Corporation shall be required to indemnify a Covered Person pursuant to this Article VII in connection with a proceeding (or part thereof) commenced by such Covered Person only if the commencement of such proceeding (or part thereof) by the Covered Person was authorized in the specific case by the Board.

**7.2** ***Advancement of Expenses***. This Corporation shall to the fullest extent not prohibited by applicable law pay the expenses (including attorneys' fees) incurred by a Covered Person in defending any proceeding in advance of its final disposition, provided, however, that, to the extent required by law, such payment of expenses in advance of the final disposition of the proceeding shall be made only upon receipt of an undertaking by the Covered Person to repay all amounts advanced if it should be ultimately determined that the Covered Person is not entitled to be indemnified under this Article VII or otherwise.

**7.3** ***Other Rights and Remedies***. The rights conferred on any Covered Person by this Article VII shall not be exclusive of any other rights which such Covered Person may have or hereafter acquire under any statute, provision of the Certificate of Incorporation, these Bylaws, agreement, vote of stockholders or disinterested directors or otherwise.

**7.4** ***Continuation of Indemnification and Advancement of Expenses***. The indemnification and advancement of expenses provided by, or granted pursuant to, this Article VII shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a director or officer and shall inure to the benefit of the heirs, executors and administrators of such a person.

**7.5** ***Insurance***. Upon resolution passed by the Board, this Corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of this Corporation or, while a director, officer, employee or agent of this Corporation, is or was serving at the request of this Corporation as a director, officer, member, manager, partner, employee or agent of another corporation, partnership, limited liability company, joint venture, trust or other enterprise against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not this Corporation would have the power to indemnify such person against such liability under the provisions of this Article. For purposes of this Section 7.5, insurance shall include any insurance provided directly or indirectly (including pursuant to any fronting or reinsurance arrangement) by or through a captive insurance company in accordance with the requirements of Section 145(g) of the General Corporation Law.

**7.6** ***Claims***. If a claim for indemnification (following the final disposition of such action, suit or proceeding) under this Article VII is not paid in full within forty-five (45) days after a written claim therefor by the Covered Person has been received by this Corporation or if a claim for any advancement of expenses under this Article VII is not paid in full within thirty (30) days after this Corporation has received a statement or statements requesting such amounts to be advanced, the Covered Person shall thereupon (but not before) be entitled to file suit to recover the unpaid amount of such claim and, if successful in whole or in part, shall be entitled to be paid the expense of prosecuting such claim to the fullest extent permitted by law. In any such action, this Corporation shall have the burden of proving that the Covered Person is not entitled to the requested indemnification or advancement of expenses under applicable law.

**7.7** ***Amendment or Repeal***. Any right to indemnification and advancement of expenses of any person covered by the provisions of this Article VII arising hereunder shall not be eliminated or impaired by an amendment to or repeal of these Bylaws after the occurrence of the act or omission that is the subject of the proceeding for which indemnification or advancement of expenses is sought.

**7.8** ***Other Indemnification and Advancement of Expenses***. This Article VII shall not limit the right of this Corporation, to the extent and in the manner permitted by law, to indemnify and to advance expenses to persons other than Covered Persons when and as authorized by appropriate corporate action.

## ARTICLE VIII
## Miscellaneous

**8.1** ***Fiscal Year***. The fiscal year of this Corporation shall be determined by resolution of the Board.

**8.2** ***Seal***. The Board shall adopt a corporate seal, which shall be in the form of a circle and shall bear the name of this Corporation and words and figures showing that this Corporation was incorporated in the State of Delaware and the year of incorporation.

**8.3** ***Waiver of Notices***. Any waiver of notice, given by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting (whether in person or by proxy in the case of a meeting of stockholders) shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at nor the purpose of any regular or special meeting of the stockholders, directors, or members of a committee of directors need be specified in a waiver of notice.

**8.4** ***Form of Records***. Any records maintained by this Corporation in the regular course of its business, including its stock ledger, books of account, and minute books, may be kept on, or by means of, or be in the form of, any information storage device or method, or one or more electronic networks or databases (including one or more distributed networks or databases), provided that the records so kept can be converted into clearly legible paper form within a reasonable time.

**8.5** ***Amendments***. These Bylaws may be altered, amended or repealed, and new Bylaws may be adopted, (i) by the Board, by vote of a majority of the number of directors then in office as directors, or (ii) by the stockholders, provided that notice of such proposed amendment, modification, repeal or adoption is given in the notice of the meeting of the stockholders called for the purpose of acting upon any proposed amendment, modification, release or adoption. To the extent permitted by law, any Bylaws made or altered by the stockholders may be altered or repealed by either the Board or the stockholders.

**8.6** ***Representation of Other Corporations***. The Chief Executive Officer, the President, any Vice President, or the Secretary or any Assistant Secretary of this Corporation are each authorized to vote, represent and exercise on behalf of this Corporation all rights incident to any and all shares of or other equity interests in any other corporation or entity standing in the name of this Corporation. The authority herein granted to said officers to vote or represent on behalf of this Corporation any and all shares or equity interests held by this Corporation in any other corporation or entity may be exercised either by such officers in person or by any person authorized so to do by proxy or power of attorney duly executed by said officers.

**8.7** ***Electronic Signatures, Etc***. Any document, including, without limitation, any consent, agreement, certificate or instrument, required by the General Corporation Law, the Certificate of Incorporation or these Bylaws to be executed by any officer, director, stockholder, employee or agent of this Corporation may be executed using a facsimile or other form of electronic signature to the fullest extent permitted by applicable law. All other contracts, agreements, certificates or instruments to be executed on behalf of this Corporation may be executed using a facsimile or other form of electronic signature to the fullest extent permitted by applicable law.

**8.8** ***Reliance on Books, Reports and Records***. Each director and each member of any committee designated by the Board shall, in the performance of his or her duties, be fully protected in relying in good faith upon the books and records of this Corporation and upon such information, opinions, reports or statements presented to this Corporation by any of its officers, agents or employees, or committees of the Board so designated, or by any other person or entity as to matters which such director or committee member reasonably believes are within such other person's or entity's professional or expert competence and that has been selected with reasonable care by or on behalf of this Corporation.

**Exhibit 10.1**

FORM OF TRANSITION SERVICES AGREEMENT

This Transition Services Agreement (together with the Service Schedules hereto, the "TSA" or "Agreement"), is made as of **[•]** (the "Effective Date"), by and between Western Digital Corporation, a Delaware corporation ("WDC"), and Sandisk Corporation, a Delaware corporation (together with its successors and assigns, "Spinco"). Each of WDC and Spinco are hereinafter referred to as a "Party" and are collectively the "Parties" to this Agreement.

W I T N E S S E T H:

WHEREAS, WDC, directly and indirectly through its wholly owned Subsidiaries, is engaged in the Flash Business;

WHEREAS, WDC and Spinco have entered into a Separation and Distribution Agreement, dated as of **[•]** (as amended, modified or supplemented from time to time in accordance with its terms, the "SDA"), pursuant to which, and on the terms and conditions of which, among other things, (i) WDC has agreed to transfer to Spinco, and Spinco has agreed to receive and assume, certain assets and liabilities of the Flash Business and (ii) following such transfer and the other transactions specified in the SDA, WDC has agreed to effect the Distribution, all as more specifically described in, and subject to the terms of, the SDA;

WHEREAS, prior to the Separation Time, the Flash Business received certain services from WDC and certain of its Affiliates, and WDC and certain of its Affiliates received certain services from the Flash Business; and

WHEREAS, WDC and Spinco each desire that certain of these services continue to be provided after the Distribution upon the terms and conditions set forth in this TSA.

NOW THEREFORE, in consideration of the mutual covenants and agreements contained in this TSA, and intending to be legally bound, and for other good and valuable consideration, the receipt and sufficiency which are hereby acknowledged, WDC and Spinco hereby agree as follows:

SECTION 1. Definitions Incorporated. All capitalized terms used but not otherwise defined in this TSA have the meanings ascribed to them in the SDA.

SECTION 2. Additional Definitions. Unless the context otherwise requires, the following terms, in their singular or plural forms, used in this TSA shall have the meanings set forth below:

2.1 "Early Termination Costs" means, without duplication of any Fees or Out-of-Pocket Costs paid or payable hereunder, any third-party costs or expenses incurred or paid by Service Provider, or that Service Provider is or will be obligated to pay pursuant to any commitments, purchase orders, work orders or any agreements entered into in good faith with third parties in order to provide such

Service, including non-refundable prepayments to vendors or termination penalties payable pursuant to such agreements, to the extent such costs or expenses could not be reasonably avoided and would otherwise not have been incurred if the applicable Service had not been terminated prior to its scheduled Service Term.

2.2 "Excluded Service" means a service set forth on a schedule of excluded services that is attached to this TSA.

2.3 "Fees" means the fees set forth in a Service Schedule to be paid to Service Provider and its Affiliates in connection with providing Services to Service Recipient.

2.4 "Governance Framework" means the document attached as Exhibit A to this TSA.

2.5 "Legal Requirement" shall mean any federal, state, local, municipal, foreign or other law, statute, constitution, treaty, principle of common law, resolution, ordinance, code, edict, decree, rule, regulation, ruling, injunction, judgment, order, assessment, writ or other legal requirement, administrative policy or official guidance issued, enacted, adopted, promulgated, implemented or otherwise put into effect by or under the authority of any Governmental Authority.

2.6 "Losses" means direct losses, damages, costs and expenses; *provided* that "Losses" shall not include any (A) punitive, exemplary or special damages or (B) any indirect, incidental or consequential damages.

2.7 "Service Provider" means a Party in its capacity as a provider of Services hereunder.

2.8 "Service Recipient" means a Party in its capacity as a recipient of Services hereunder.

2.9 "Service Schedule" means a schedule for Services that is attached to this TSA.

2.10 "Service Term" means the period of time during which Service Provider will provide each individual Service to Service Recipient. Unless stated otherwise in the Service Schedule, all Service Terms commence immediately following the Distribution.

2.11 "Services" means the services to be provided by Service Provider or an Affiliate of Service Providerto Service Recipient set forth in a Service Schedule.

2.12 "Tax" or "Taxes" has the meaning set forth in the Tax Matters Agreement.

2.13 "WDC Business" means the businesses of WDC and its Subsidiaries at Closing (for the avoidance of doubt, other than the Flash Business).

SECTION 3. Services Provided.

3.1 Agreement to Provide Services.

3.1.1 Services. Pursuant to the terms and conditions of this TSA and the applicable Service Schedules, Service Provider will, or will, in accordance with Section 6.5, cause one or more of its Affiliates or third-party contractors to, provide the Services described in each Service Schedule to Service Recipient in accordance with the service standards set forth in Section 6.1. Unless otherwise agreed by the Parties in a Service Schedule, Service Provider shall not be required to provide any Service in a location other than where such Service was performed as of immediately prior to the Closing. Service Recipient agrees that the Services are for the sole use and benefit of Service Recipient and its Affiliates, in each case, solely with respect to the Flash Business or the WDC Business, as applicable, conducted at Closing. Service Recipient shall not resell any of the Services to any Person whatsoever and shall not permit the receipt or use of the Services by any Person other than for the conduct of the Flash Business or the WDC Business, as applicable, in the ordinary course consistent with past practice. Subject to Section 3.1.2, for the avoidance of doubt, except as set forth in a Service Schedule executed by each Party, neither Service Provider nor any of its Affiliates shall be obligated to provide any other services to Service Recipient or any of its Affiliates.

3.1.2 Omitted Services. If either Party (a) identifies a service that (i) WDC provided to the Flash Business as of immediately prior to Closing that Spinco reasonably needs in order for the Flash Business to continue to operate in substantially the same manner in which the Flash Business operated as of immediately prior to Closing and such service was not set forth on the Service Schedules (other than an Excluded Service) or (ii) the Flash Business provided to WDC as of immediately prior to Closing that WDC reasonably needs in order for the WDC Business to continue to operate in substantially the same manner in which the WDC Business operated as of immediately prior to Closing, and such service was not set forth on the Service Schedules (other an Excluded Service); *provided* that in each case of (i) and (ii), the requesting Party or its Affiliates do not have the ability or resources to perform the service or to obtain such service from a third party without undue hardship or expense (the services referenced in clause (i) and clause (ii), the "Omitted Services"), and (b) provides a written change request (in the form agreed by the Parties) to the other Party requesting such Omitted Service within ninety (90) days after the Closing, then such other Party shall negotiate in good faith to provide such Omitted Service, as applicable; *provided* that the actual Fees associated with any such Omitted Services will be determined in a manner consistent with the manner used to determine the compensation for similar Services; *provided, however*, that neither Party shall be obligated to provide any Omitted Service if it does not, in its reasonable judgment, have adequate resources to provide such Omitted Service. Without limiting the foregoing, Service Recipient shall bear all of Service Provider's internal and external fully burdened costs and expenses, including Out-of-Pocket Costs, incurred in connection with the provision of the Omitted Services. The Parties shall document any such addition of an Omitted Service in

a Service Schedule. Such Service Schedule shall describe in reasonable detail the nature, scope, Service Term and other terms applicable for any such Omitted Services. Each such Service Schedule shall be deemed part of this TSA as of the date of such agreement and the Omitted Services set forth therein shall be deemed "Services" provided under this TSA, in each case subject to the terms and conditions of this TSA.

3.1.3 Service Adjustments. After the Distribution, if Service Provider or Service Recipient desires to adjust any Services or change the manner in which Services are provided (such adjustments and changes other than the addition of Omitted Services, "Service Adjustments"), then such Service Provider or Service Recipient, as applicable, will provide a written change request (in the form agreed to by the Parties) to the other Party, and the Parties shall negotiate in good faith to make such Service Adjustments; *provided, however*, that Service Provider shall not be obligated to provide any Service Adjustment if the Service Provider and Service Recipient are unable to reach agreement on the terms thereof (including with respect to compensation therefor) unless such Service Adjustment is required by a change in any Legal Requirements applicable to such Services. If the Parties agree to any Service Adjustment, then the Parties shall document such terms in an amendment to the applicable Service Schedule. Each amended Service Schedule, as agreed to in writing by the Parties, shall be deemed part of this TSA as of the date of such agreement and the Service Adjustments set forth therein shall be deemed "Services" provided under this TSA, in each case subject to the terms and conditions of this TSA.

3.2 Points of Contact; Disputes.

3.2.1 Points of Contact. With respect to the Services on a Service Schedule, each of Service Provider and Service Recipient has named a point of contact on such Service Schedule. Such points of contact shall be the initial points of contact with respect to any matters with respect to the day-to-day provision of such Services, including attempting to resolve any issues that may arise during the performance of such Services. Any reference in this TSA to the cooperation of the Parties, or the use of good faith efforts to negotiate between the Parties or any other contact or communication between the Parties, shall be deemed to be an obligation of such points of contact on behalf of the Parties and for communication to be, in the first instance, between the respective points of contact of Service Provider and Service Recipient and, if requested by a Party, the applicable functional leaders of each Party shall participate in such negotiation (e.g., if the Services subject to the Dispute (as defined below) concern IT, then the functional heads of the Parties for such IT services shall participate). The Parties' points of contact and functional leaders shall perform their responsibilities as described above in a manner consistent with the Governance Framework, including with respect to governance structure, responsibilities, meeting cadence and reporting. If a material dispute arises that the points of contacts are not able to resolve within ten (10) Business Days (or such longer period as the points of contact may mutually agree), the terms in Section 3.2.2 shall apply. The points of contact may delegate authority to other Service Provider or Service Recipient personnel (as applicable) to act as initial points of contact with respect to certain Services or categories of Services as appropriate; *provided* that such personnel shall be of sufficient authority to be able to make decisions in the ordinary course under this Agreement and to serve as an effective channel for escalations.

3.2.2 Disputes. Subject to and without prejudice to either Party's right to seek immediate specific performance at any time, in the event of any material dispute between the Parties relating to the Services or this TSA that is not resolved by the Parties' respective points of contact ("Dispute"), the points of contact may escalate the Dispute to senior management of the Parties, which for WDC shall initially be **[•]**, and for Spinco shall initially be **[•]**. Within five (5) Business Days of the receipt by a Party of a notice from the other Party of the existence of a Dispute (the "Dispute Notice"), the receiving Party shall submit a written response to the other Party (the "Dispute Response"). Both the Dispute Notice and the Dispute Response shall include (i) a statement of the disputing Party's position with regard to the Dispute and a summary of arguments supporting that position; and (ii) the name and title of the senior executive who will represent that Party in attempting to resolve the Dispute pursuant to this Section 3.2.2. Within five (5) Business Days of receipt of the Dispute Response, the designated executives shall meet (including by teleconference or video conference) and attempt to resolve the Dispute. All communications made in connection with this clause shall be protected to the same extent as provided in Rule 408 of the Federal Rules of Evidence, confidential and shall not be referred to, or admissible for any purpose, in any subsequent proceedings. If any Dispute is not resolved within twenty (20) Business Days of receipt of the Dispute Notice (or within such longer period as to which the Parties have agreed in writing), then the Parties may pursue all available remedies in accordance with Section 12.5. Each Party agrees that it will, unless otherwise directed or if rendered impracticable by the other Party, continue performing its other undisputed obligations under this TSA while any dispute is being resolved until the expiration or termination of the Agreement Term, and any disputed Service shall continue to be provided by the Service Provider unless suspended for non-payment in accordance with Section 4.5 or an act or omission of Service Recipient directly or indirectly renders such disputed Service impracticable to reasonably perform.

SECTION 4. Compensation.

4.1 Compensation for Services. Subject to the terms and conditions in this TSA, the compensation to be paid by Service Recipient to Service Provider for each Service set forth in a Service Schedule during the Agreement Term (as defined below) shall equal the Fees set forth in the applicable Service Schedule with respect to such Service. Subject to any thresholds set forth in the Service Schedules, a Party may request that Fees for a particular Service (less any administrative mark-up or, if applicable, extension-related escalator) be adjusted to more closely reflect the actual costs being incurred to provide such Service. The Parties shall discuss such request in good faith, but Fees shall not be adjusted unless mutually agreed by the Parties. Except as otherwise set forth in a Service Schedule, for any Service where the price for the Service is expressed as a time-based rate (such as a specified dollar amount per month), if such Services are provided for only a portion of the specified time period, the Services will be deemed provided for the full time period for purposes of determining the Fees under this TSA.

4.2 Out-of-Pocket Costs and Expenses. Unless otherwise set forth on a Service Schedule, the Fees set forth in the Service Schedules are exclusive of any third-party costs that may be incurred by Service Provider or any of its Affiliates to provide such Services in the ordinary course. Such third-party costs may include (a) expenses related to travel (including long-distance and local transportation, accommodation and meal expenses and other incidental expenses) of Service Provider's or its Affiliates' personnel incurred to provide the Services to the extent such expenses are reimbursable under the then-existing policies of Service Provider or its Affiliates, (b) all third-party consultant and third-party service provider fees incurred to provide the Services and (c) any other incremental out-of-pocket, third-party costs incurred to provide the Services (collectively, such incremental out-of-pocket costs, the "Out-of-Pocket Costs"). All of the foregoing shall be charged and invoiced by Service Provider to Service Recipient on a straight pass-through basis, monthly in arrears in accordance with Section 4.4; *provided, however*, that the aggregate amount of any third-party costs, including Out-of-Pocket Costs, payable by Service Recipient hereunder shall not exceed $50,000 per month without the prior written consent of Service Recipient, which consent shall not be unreasonably withheld, conditioned or delayed.

4.3 Taxes. The Fees set forth in the Service Schedules are exclusive of Taxes. Service Recipient will pay and be liable for any and all sales, service, value added or similar Taxes imposed on, sustained, incurred, levied and measured by: (a) the cost, value or price of Services provided by Service Provider under this TSA; or (b) Service Provider's cost in acquiring property or services used or consumed by Service Provider in providing Services under this TSA (collectively, the "Sales and Service Taxes"); *provided, however*, that (a) in the case of any value-added Taxes, Service Recipient shall not be obligated to pay such Taxes unless Service Provider has issued to Service Recipient a valid value-added Tax invoice in respect thereof, and (b) in the case of all Sales and Service Taxes, Service Recipient shall not be obligated to pay such Taxes if and to the extent Service Recipient has provided any valid exemption certificates or other applicable documentation that would eliminate or reduce the obligation to collect or pay such Taxes, to the extent permitted by applicable law. Sales and Service Taxes payable by Service Recipient but required to be remitted by Service Provider shall be reimbursed by Service Recipient to Service Provider (who shall remit such amounts to the appropriate taxing authority) in accordance with Section 4.4 or as otherwise mutually agreed in writing by the Parties. At Service Recipient's reasonable request and at Service Recipient's expense, the Parties shall cooperate in good faith to reduce or eliminate any Sales and Service Taxes; *provided, further*, that, (x) Service Provider will, at Service Recipient's reasonable request and at Service Recipient's expense, reasonably cooperate with Service Recipient in Service Recipient's pursuit of the refund of any Sales and Service Taxes, and (y) in the event that Service Provider receives a refund of any Sales and Service Taxes previously remitted to an appropriate taxing authority, Service Provider shall promptly surrender such refund to Service Recipient.

4.3.1 Each of Service Provider and Service Recipient shall pay and be responsible for all other Taxes applicable to each of them, including Taxes based on their own respective net income or profits or assets.

4.3.2 Payments for Services or other amounts under this TSA shall be made net of any required withholding, and to the extent such required amount is withheld or deducted and paid over to the applicable taxing authority, such amount shall be treated for all purposes of this TSA as having been paid to the Person in respect of which such withholding or deduction was made. Notwithstanding the foregoing, if Service Provider reasonably believes that a reduced rate of withholding applies or Service Provider is exempt from withholding, then Service Provider will notify Service Recipient and Service Recipient will, to the extent permitted by applicable law, apply such reduced rate of withholding or no withholding at such time as Service Provider has provided Service Recipient with evidence reasonably satisfactory to Service Recipient that a reduced rate of or no withholding is required (and that all necessary administrative provisions or requirements have been completed). The Parties shall cooperate in good faith to reduce or eliminate the need to withhold with respect to payments under this TSA. Service Recipient shall timely remit any amounts withheld to the appropriate taxing authority and shall provide Service Provider with a receipt or other documentation evidencing such payment, including the amount paid and the applicable taxing authority to which payment was made. Service Recipient shall not be required in any circumstances to pursue any refund of Taxes withheld and paid over to a taxing authority; *provided, however*, that (a) Service Recipient will, at Service Provider's reasonable request and at Service Provider's expense, cooperate with Service Provider in Service Provider's pursuit of such refund of Taxes, and (b) in the event that Service Recipient receives a refund of any amounts previously withheld from payments to Service Provider and remitted, Service Recipient shall promptly surrender such refund to Service Provider.

4.3.3 Each of Service Provider and Service Recipient shall promptly notify the other of any deficiency claim or similar notice by a taxing authority with respect to Sales and Service Taxes or withholding on any amount payable under this TSA, and shall provide the other with such information as reasonably requested from time to time, and shall fully cooperate with the Service Provider or Service Recipient, as applicable, in connection with: (a) the reporting of such Sales and Service Taxes or withholding; (b) any audit relating to such Sales and Service Taxes or withholding; and (c) any assessment, refund, claim or proceeding relating to such Sales and Service Taxes or withholding.

4.3.4 Except as otherwise specifically provided in this TSA, Tax matters shall be exclusively governed by the Tax Matters Agreement, and in the event of any inconsistency between the Tax Matters Agreement and this TSA, the Tax Matters Agreement shall control. The procedures relating to indemnification for Tax matters shall be exclusively governed by the Tax Matters Agreement.

4.4 Terms of Payment. Within fifteen (15) days following the end of each month where Services are provided, Service Provider will invoice Service Recipient for the applicable Fees of each Service provided in such month according to the Fee schedule set forth in the applicable Service Schedule together with, subject to the last sentence of Section 4.2, any Out-of-Pocket Costs, and, subject to Section 4.3, Sales and Service Taxes. Service Provider shall include in such invoices, in reasonable detail, the additional amounts, such as Sales and Service Taxes and/or Out-of-Pocket Costs incurred in such month, that are payable in addition to the prices for the Services. Within ninety (90) days after receipt of an invoice submitted in good faith or, if the Service Recipient issues payments on a monthly basis ("Monthly Payment Cycle"), on the date of the next Monthly Payment Cycle following ninety (90) days after receipt of such invoice, Service Recipient shall pay the undisputed amounts in such invoice by wire transfer in immediately available funds (or such other means as the Parties may mutually agree in writing). All amounts due for Services rendered pursuant to this TSA shall be billed and paid in United States dollars or the applicable currency for such Services set forth on the applicable Service Schedule hereto.

4.5 Late Payment. In the event that Service Recipient fails to timely pay any invoiced amounts not subject to a pending dispute pursuant to and in accordance with Section 4.4, Service Provider may suspend performance of the particular Service (and, if applicable, its related Bundled Services) for which payment has not been timely received after providing twenty (20) Business Days' written notice of non-payment, such notice to be provided to Service Recipient senior management set forth in Section 3.2.2. In the event a good faith dispute is raised by Service Recipient during such twenty (20) Business Days period, the provisions of Section 3.2.1 and Section 3.2.2 shall apply. Service Provider's right to suspend performance of a particular Service for failure to make timely payment in accordance with Section 4.4 and this Section 4.5 are in addition to the rights set forth in Section 5.5.

SECTION 5. Term and Termination.

5.1 Term of TSA and Services. Except as expressly provided otherwise in this Section 5 or elsewhere in this TSA or in the Service Schedule, the term of this TSA shall commence at the Effective Time and end at 11:59 p.m. Pacific Time on the date that is two (2) years after the Effective Date (such period, the "Agreement Term"). Service Provider (or its Affiliates) shall provide each of the Services for the Service Term set forth in the Service Schedule for such Service (plus any extension pursuant to Section 5.2). If the Service Schedule for a Service does not set forth a Service Term, the Service Term for such Service shall end on the date that is six (6) months after the Effective Date. For the avoidance of doubt, in no event will Service Provider or any of its Affiliates be required to provide a Service beyond its Service Term (as it may be extended in accordance with Section 5.2). The Parties acknowledge and agree that it is their objective to have all Services and all related transition activities completed as soon as possible, with the stated goal of accelerating transition activities, where practical.

5.2 Service Term Extension. Notwithstanding anything to the contrary in this TSA, or the Service Schedules, in no event shall Service Provider or any of its Affiliates have any obligation to provide any Services beyond the Agreement Term. Subject to the foregoing, Service Recipient may upon written notice of no less than sixty (60) days (or, solely with respect to Services with initial Service Terms that are three (3) months or less, thirty (30) days) prior to the end of the then-current Service Term request an extension of such Service Term. Upon receipt of a timely request for the extension of a Service Term in accordance with this Section 5.2, solely for any Service which is not designated as "Non-extendable" in the Service Schedules, the applicable Service Term shall be extended for a single extension period of three (3) months or such shorter period set forth in such request; *provided* that (a) as set forth on the Service Schedules, a surcharge shall be added to the Fees payable by Service Recipient for such extended Service, (b) any consents required in connection with extending a Service shall be sought by Service Provider in accordance with this TSA and (c) if Service Recipient requests to extend a Service that is interdependent with other Services, as indicated in the Service Schedule for such Service (any Services so indicated in their respective Service Schedules as being interdependent, "Bundled Services"), then Service Recipient must also extend such interdependent Services, to the extent necessary.

5.3 Termination of Individual Services by Service Recipient for Convenience Service Recipient may, at any time after the Effective Date, terminate any individual Service provided under this TSA on a Service-by-Service basis upon written notice to Service Provider identifying the particular Service or Bundled Services to be terminated and the effective date of such termination ("Termination Notice"), which date shall not be earlier than sixty (60) days after Service Provider's receipt of such Termination Notice, unless Service Provider otherwise agrees in writing. Notwithstanding the foregoing, except with the prior written consent of Service Provider, Service Recipient shall not be able to terminate any individual Service that is a Bundled Service or for which there are any other Bundled Services, without also terminating its Bundled Services. If Service Recipient has requested termination of any particular Service or Bundled Services and has not withdrawn such request pursuant to Section 5.3.1, Service Provider shall have no obligation to provide such Service or Bundled Services after the applicable date of termination of such Service or Bundled Services.

5.3.1 Service Recipient shall reimburse Service Provider for Early Termination Costs, if any, and if and to the extent set forth on the Service Schedules, resulting from any such early termination, and Service Provider shall use commercially reasonable efforts to mitigate any such Early Termination Costs; *provided* that, within thirty (30) days after Service Recipient's written request identifying the applicable Services and expected termination dates, Service Provider shall provide to Service Recipient a good faith estimate of the amounts of Early Termination Costs resulting from such early termination of such Services and Service Recipient may withdraw its request to terminate such Services no later than five (5) days after Service Provider provides such estimate.

5.4 Termination of Agreement. This TSA shall terminate on the earliest to occur of: (a) the last date of the Agreement Term; (b) the date on which the provision of all Services have been completed or terminated pursuant to Section 5.3; and (c) the date on which this TSA is terminated pursuant to Section 5.6.

5.5 Termination for Cause. Subject to Section 6.3, if either Party materially breaches this TSA and such Party does not cure such breach within twenty (20) Business Days after the later of (a) receiving reasonably detailed written notice thereof from the non-breaching Party and (b) completion of a dispute resolution procedure with respect to such breach in accordance with Section 3.2.2, the non-breaching Party may terminate this TSA, in whole or in part with respect to the Service(s) to which the breach relates and any Bundled Service(s), immediately following the expiration of such twenty (20)-day period by providing written notice of termination to the Party in breach. Notwithstanding the foregoing, if any such material breach is not reasonably curable within twenty (20) Business Days, but the breaching Party has (i) provided, within the twenty (20) Business Days period after written notice has been delivered, a remedial plan to cure such breach that is reasonably satisfactory to the non-breaching Party, and (ii) is making a bona fide effort to cure such breach in accordance with such plan; then such termination may be delayed upon mutual agreement for a time period to be agreed by both Parties in order to permit the breaching Party a reasonable period of time to cure such breach. In connection with any breach or alleged breach due to late payment, this Section 5.5 shall not limit the provisions of Sections 4.4–4.5.

5.6 Termination Upon Insolvency. This TSA may be terminated, effective immediately upon written notice, by either Party if the other Party files, or has filed against it, a petition for voluntary or involuntary bankruptcy or pursuant to any other insolvency law or makes or seeks to make a general assignment for the benefit of its creditors or applies for or consents to the appointment of a trustee, receiver or custodian for it or a substantial part of its property.

5.7 Effect of Termination; Survival. In the event of the expiration or any termination of this TSA, Service Provider shall be entitled to all amounts due for the provision of Services rendered prior to the date of termination and such amounts will be determined in accordance with the prices set forth in the applicable Service Schedule(s) and will be invoiced and paid by Service Recipient in accordance with the terms in this TSA. The following Sections shall survive the termination or expiration of this TSA: Section 1 and Section 2 (in each case as necessary to interpret any surviving provision hereunder), Section 4 (solely with respect to amounts accrued prior to the termination or expiration of this TSA), thisSection 5.7, Section 6.8, Section 6.10, Section 6.13, Section 8.2, Section 9, Section 10, Section 11, and Section 12.

SECTION 6. Certain Covenants.

6.1 Standard for Service. Subject to the terms and conditions of this TSA (includingSection 6.3), Service Provider agrees (a) to perform (or to cause its applicable Affiliate(s) or third-party service provider(s) to perform) any Services that it provides hereunder at substantially the same levels as those Services were

provided by Service Provider as of immediately prior to the Closing without giving effect to modification of business practice due to preparation for the Separation and with substantially the same quality of service, degree of care and level of service at which the same or similar services were provided by or on behalf of such Service Provider as of immediately prior to Closing or, if not so previously provided, then substantially similar to those which are applicable to similar services provided to Service Provider's Affiliates or other business units and (b) upon receipt of written notice from Service Recipient identifying any outage, interruption or other failure of a Service, to respond to such outage, interruption or other failure of such Service in a manner that is substantially similar to the manner in which such Service Provider or its Affiliates responds with respect to internally provided services. The Parties acknowledge that an outage, interruption or other failure of any Service shall not be deemed a breach of this Section 6.1 so long as the applicable Service Provider complies with the foregoing clause (b).

6.2 No Violation of Laws. Neither Service Provider nor its Affiliates (nor third-party service providers) shall be required to provide all or any part of any particular Service or Services to the extent that providing such Service or Services would require (based on the advice of counsel) Service Provider or its Affiliates to violate any applicable Legal Requirements. If Service Provider is or becomes aware of any such potential violation (as determined based on the advice of counsel) on the part of such Service Provider, such Service Provider shall promptly send a written notice to Service Recipient of any such potential violation. Upon Service Recipient's request and at Service Recipient's cost and expense, Service Provider shall use commercially reasonable efforts to try to perform the affected Service in a manner that would not violate the applicable Legal Requirement.

6.3 Cooperation. It is understood that it will require significant efforts of all Parties to implement this TSA and to ensure performance hereunder at the agreed-upon level and on the agreed-upon timeframe (subject to all the terms and conditions of this TSA). The Parties will reasonably cooperate (acting in good faith) to effect a smooth and orderly transition of the performance of the Services provided hereunder from Service Provider and its Affiliates to Service Recipient and/or its Affiliates (including, as may be agreed by the Parties, with respect to the assignment or transfer of the rights and obligations under any third-party contracts relating to the Services). Such cooperation shall include the provision of such reasonable access to each Party to the other Party's personnel and records as shall be reasonably necessary to facilitate the transition of the Services, including reasonable administrative support and general assistance with knowledge transfer from Service Provider and at the Service Recipient's cost (or if such conduct or activity is included in a Service, then at the cost set forth therefor in the Service Schedule). In addition, Service Recipient and its Affiliates shall not take any action (or fail to take any action) that would interfere with the ability of Service Provider or its Affiliates to provide the Services or that would materially increase the Fees therefor (without an undertaking by the Service Recipient to cover such increase). If a failure of Service Recipient to act in accordance with this Section 6.3 prevents or inhibits the provision of a Service hereunder, Service Provider or its Affiliates shall be relieved of its obligations to provide such Service, to the extent affected until the failure has been remedied.

6.4 Means of Providing Services.

6.4.1 Subject to Section 3.1.3 and Section 6.1 and Service Provider's obligation to perform the Services in accordance with the terms of this TSA and the Service Schedule, Service Provider shall determine the means and resources used to provide the Services. Without limiting the foregoing, Service Provider or its Affiliates may elect to modify or replace at any time (a) its policies and procedures; (b) any Affiliates and/or third parties that provide any Services; (c) the location from which any Service is provided; or (d) the intellectual property rights, information technology, products and services used to provide the Services.

6.4.2 Service Recipient acknowledges that Service Provider may be providing similar services, and/or services that involve the same resources as those used to provide the Services, to its internal organizations, Affiliates and to third parties, and the provision of such similar services, in and of itself, shall in no way be deemed to be a breach of Service Provider's obligations hereunder.

6.4.3 Subject to Section 6.1 and any limitations with respect to outages specified in any Service Schedule, Service Provider or its Affiliates may suspend the provision of the Services (or any part thereof), from time to time, to enable the performance of routine or emergency maintenance to the assets used in connection with the provision of the Services that are required to provide the Services; *provided* that (a) Service Provider shall provide Service Recipient with reasonable prior notice of such suspension and the anticipated duration of the suspension, in each case to the extent practicable; and (b) Service Provider shall use commercially reasonable efforts to carry out the applicable maintenance and resume the provision of the applicable Services as soon as reasonably practicable.

6.5 Authorized Service Providers. Except as otherwise specified in a Service Schedule with respect to the Services under such Service Schedule, but without limiting the obligations of the Service Provider under Section 6.1, Service Provider or any of its Affiliates may, as it deems necessary or appropriate in providing the Services, (a) use the personnel of Service Provider or its Affiliates (it being understood that such personnel can perform the Services on behalf of Service Provider or its Affiliates on a full-time or part-time basis, as reasonably determined by Service Provider or its Affiliates in accordance with the obligations under this TSA relating to the provision of the Services, including Section 6.1); (b) employ the services of third parties who are in the business of providing such Services; *provided* that (i) Service Provider's use of a third party to perform the Services does not relieve Service Provider of its obligations pursuant to this TSA including with respect to Section 6.1, even during any transition of Services from Service Provider to such third party and (ii) Service Provider shall use the same degree of care in selecting any such third party as it would if such third party were being retained to provide similar services to Service Provider, but in no event less than a reasonable degree of care; or (c) require the assignee or transferee of Service Provider or its Affiliates of the relevant personnel or assets pursuant to Section 12.8 to provide the applicable Services.

6.5.1 In performing the Services, employees and representatives of Service Provider and its Affiliates shall, as between the Parties, be under the direction, control and supervision of Service Provider or its Affiliates (and not Service Recipient) and, as between the Parties, Service Provider or its Affiliates shall have the sole right and obligation to exercise all authority and control with respect to the employment (including termination of employment), assignment and compensation of such employees and representatives. Service Recipient acknowledges and agrees that, except as set forth on the Service Schedules, it has no right hereunder to require that Service Provider or its Affiliates perform the Services hereunder with specifically identified employees or, subject to clause (b) of Section 6.5, above, third parties and that the assignment of employees or, subject toclause (b) of Section 6.5, above, third parties to perform such Services shall be determined in the sole discretion of Service Provider; *provided* that if Service Provider intends to transition performance of a Service to a third party that is being performed by its or its Subsidiaries' employees, Service Provider shall provide Service Recipient ten (10) Business Days' prior written notice of such transition; *provided, further*, that Service Provider will use commercially reasonable efforts to limit the disruption to Service Recipient in the transition of the Services to different personnel (whether employees or third parties).

6.6 Relationship of the Parties. Nothing contained in this TSA shall be construed as creating a partnership, joint venture, joint employer, agency, trust or similar relationship among or between the Parties, each Party being individually responsible only for its obligations as set forth in this TSA. Service Provider and its Affiliates shall provide the Services hereunder in the capacity of an independent contractor and not as an employee, agent or joint venture counterparty of Service Recipient. Without limiting the foregoing, (a) Service Recipient shall not have, or hold itself out as having, any power or authority to bind Service Provider to any contract, undertaking or other engagement with any third party and (b) Service Provider shall not have, or hold itself out as having, any power or authority to bind Service Recipient to any contract, undertaking or other engagement with any third party.

6.7 Treatment of Employees.

6.7.1 Except as set forth in any Service Schedule, the Employee Matters Agreement or any other Ancillary Agreement, employees of Service Recipient involved in the receipt of the Services shall remain as the employees of Service Recipient, and Service Recipient shall be solely responsible for the payment and provision of all wages, bonuses, severance, workers' compensation insurance, unemployment insurance, employment taxes, commissions and employee benefit plans, programs or arrangements relating to such employees.

6.7.2 Except as set forth in the Employee Matters Agreement or any other Ancillary Agreement, employees of Service Provider and its Affiliates involved in the provision and administration of the Services shall remain as the employees of Service Provider and its Affiliates, and Service Provider and its Affiliates shall be solely responsible for the payment and provision of all wages, bonuses, severance, workers' compensation insurance, unemployment insurance, employment taxes, commissions and employee benefit plans, programs or arrangements relating to such employees.

6.8 No Violation of Third-Party Agreements. If Service Provider reasonably believes that the provision of any Services will result in a violation of any third-party agreement or that a third party's consent, authorization or approval is necessary to provide the Services, then Service Provider will notify Service Recipient and the Parties shall cooperate in good faith to procure for Service Recipient, at Service Recipient's cost and expense, any applicable licenses, enter into any appropriate agreement or obtain the necessary consent, authorization or approval in order to allow the Services to be provided in accordance with the terms set forth herein. All costs incurred as a result of the cooperation of the Parties pursuant to the immediately preceding sentence shall be borne by Service Recipient, except for any costs associated with any third-party consent, approval, license, agreement or other authorization that Service Provider reasonably should have known prior to Closing would be necessary (which costs shall be borne by Service Provider).

6.9 Information Provided by Service Recipient. Service Recipient will provide (or will cause to be provided) to Service Provider complete and accurate data and information to the extent available to the Service Recipient and to the extent necessary for Service Provider or its Affiliates to provide the Services. Service Provider and its Affiliates may rely on the completeness and accuracy of such data and information in connection with the provision of the Services to Service Recipient. Neither Service Provider nor its Affiliates will be liable or responsible for any failure to provide a Service in compliance with this TSA as a result of such data or information provided by Service Recipient being incomplete or inaccurate and Service Recipient will be responsible and liable therefor.

6.10 No License. Without limiting any rights granted under the SDA (or any Ancillary Agreement other than this TSA thereunder), Service Provider and its Affiliates are not granting, and nothing hereunder shall be deemed to grant, any license under any intellectual property or proprietary rights of Service Provider and its Affiliates, and Service Provider and its Affiliates shall retain all right, title and interest in and to all such intellectual property and proprietary rights.

6.11 Import/Export.

6.11.1 With respect to all transactions for which Service Provider will provide Services pursuant to this TSA, Service Recipient shall be solely responsible for compliance by it with respect to the carrying out of its obligations hereunder with all applicable U.S. and non-U.S. laws and regulations relating to export controls, sanctions and imports, including the Export Administration Regulations ("EAR") maintained by the

U.S. Department of Commerce's Bureau of Industry and Security, sanctions laws administered by the U.S. Department of the Treasury's Office of Foreign Assets Control or by the U.S. Department of State, and import regulations administered by U.S. Customs and Border Protection. Service Recipient and Service Provider shall use commercially reasonable means to supply each other on a timely basis with documentation and assistance required to complete the export and/or importation process associated with the provision or receipt of Services, as applicable. Any performance obligation arising under this TSA is contingent upon prior receipt by Service Recipient and/or its Affiliates of all necessary government authorization, and Service Provider shall not be liable for any breach, non-performance or delay in performance resulting from the failure by Service Recipient or its Affiliates to obtain any such authorization. Notwithstanding the terms of Section 10 of this TSA, Service Recipient agrees to reimburse Service Provider for reasonable and documented out-of-pocket expenses actually incurred by Service Provider for responding to any government-initiated audit related to export and/or import transactions, including the cross-border provision of services under this TSA. Notwithstanding Section 10, Service Recipient shall be liable for any surcharges, penalties or damages assessed or incurred for violations of sanctions, export and/or import-related laws and regulations applicable to transactions for which Service Provider will provide Services under this TSA, except for violations caused by any deliberate and willful act or omissions of Service Provider.

6.11.2 Notwithstanding the foregoing, Service Provider shall not be required to undertake or perform any obligation set forth in Section 6.11.1 if Service Provider (or one of its Affiliates) did not undertake or perform the applicable activity prior to Closing and Service Provider shall not be responsible for undertaking or performing any such obligation to a greater degree and extent than, or for incurring any expenses in connection therewith greater than, that undertaken, performed or incurred prior to Closing.

6.12 Transition Planning. Service Recipient shall, as soon as reasonably practicable following the Effective Date, and in any event no later than **[•]**, provide in writing to Service Provider a draft transition plan with respect to transfer or termination of the Services (the "Transition Plan"), which Transition Plan shall describe Service Recipient's proposed transition activities and any transition assistance Service Recipient requests from Service Provider in connection with such transfer or termination. Service Provider will review and comment on the Transition Plan and the Parties shall reasonably cooperate with each other to create a final Transition Plan. The Transition Plan shall provide for a completion date that is no later than the last date of the Agreement Term. Without limiting the obligations of the Service Provider under an applicable Service Schedule, the Service Provider shall reasonably cooperate with and offer such commercially reasonable assistance to the Service Recipient at Service Recipient's cost as set forth therefor in the Service Schedule (or if not set forth in the Service Schedule, then at Service Recipient's cost), as is necessary to implement the Service Recipient's final Transition Plan and the transfer of responsibility for the provision of the Services to Service Recipient or a new provider.

6.13 Ownership of Business Data. For the purposes of this TSA, the term "Business Data" shall mean any and all business, accounting, personnel and customer-related data or other similar records, data and information, in each case, to the extent exclusively related to the business of Service Recipient that is generated, collected or serviced in connection with the Services (including data that is associated with the services set forth on a Service Schedule). The Parties hereby agree that any and all such Business Data shall be owned exclusively by the Service Recipient, and Service Provider (on its own behalf and on behalf of each of its Affiliates who may provide Services hereunder) hereby assigns and agrees to assign (and shall cause each Affiliate who provides Services hereunder) to Service Recipient all Intellectual Property Rights in such Business Data. Service Provider and its Affiliates shall not make any use of Business Data for any reason other than to provide Services hereunder or as required by applicable Legal Requirements.

SECTION 7. Force Majeure. Except for the obligation to pay for Services already provided, neither Party nor any of their respective Affiliates (nor any Person acting on its or their behalf) shall bear any responsibility or liability for any Losses arising out of any delay, inability to perform or interruption of its performance of obligations under this TSA due to events beyond the reasonable control of such Party, including acts of God, acts of Governmental Authority, acts of the public enemy or due to terrorism, war, epidemic, pandemic, riot, flood, civil unrest, insurrection, strike or labor difficulty, severe weather conditions, lack of or shortage of electrical power, systemic malfunctions of equipment or software programs or any other similar event outside of the reasonable control of Service Provider or its Affiliates or any applicable third-party service provider (any such cause or event, hereinafter referred to as a "Force Majeure Event"). In such event, the obligations hereunder of such Party in providing the impacted Service or performing its obligations under this TSA shall be suspended for such time as its performance is suspended or delayed on account thereof but only to the extent that the Force Majeure Event prevents such Party or its Affiliates from performing its duties and obligations hereunder. During the duration of the Force Majeure Event, such Party shall use all commercially reasonable efforts to avoid or remove such Force Majeure Event and shall use all commercially reasonable efforts to resume its performance under this TSA with the least practicable delay. A Force Majeure Event shall not toll or otherwise extend the Agreement Term. Service Recipient shall not be obligated to pay Service Provider for Services with respect to the period when Service Provider is not providing such Services due to a Force Majeure Event and Service Recipient waives all claims for damages related thereto.

SECTION 8. Representations and Warranties.

8.1 Authorization. Each of WDC and Spinco represents and warrants that (a) it has the requisite power and authority to execute and deliver this TSA and to perform the transactions contemplated hereby; (b) all corporate or limited liability company, as the case may be, action on the part of such party necessary to approve or to authorize the execution and delivery of this TSA and the performance

of the transactions contemplated hereby to be performed by it has been duly taken; and (c) assuming the due execution hereof by the other Party hereto, this TSA is a valid and binding obligation of such party, enforceable in accordance with its terms, subject to the effect of principles of equity and the applicable bankruptcy, insolvency or other similar laws, now or hereafter in effect, affecting creditors' rights generally and other customary qualifications.

8.2 DISCLAIMER. EXCEPT AS EXPRESSLY SET FORTH HEREIN OR IN ANY OTHER TRANSACTION DOCUMENT, EACH PARTY (ON BEHALF OF ITSELF AND ITS AFFILIATES) (A) ACKNOWLEDGES AND AGREES THAT THE SERVICES ARE PROVIDED "AS IS," (B) ASSUMES ALL RISKS AND LIABILITIES ARISING FROM OR RELATING TO ITS USE OF, AND RELIANCE UPON, THE SERVICES, AND (C) ACKNOWLEDGES AND AGREES THAT EXCEPT AS EXPRESSLY SET FORTH HEREIN OR IN ANY OTHER TRANSACTION DOCUMENT, SERVICE PROVIDER MAKES NO REPRESENTATIONS OR WARRANTIES IN RESPECT OF THE SERVICES OR ANY FACILITIES, RESOURCES OR ITEMS TO BE DELIVERED OR PROVIDED TO SERVICE RECIPIENT OF ANY KIND, NATURE OR DESCRIPTION, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, AND SERVICE PROVIDER HEREBY EXPRESSLY DISCLAIMS THE SAME.

SECTION 9. Indemnification.

9.1 Service Recipient Indemnification Obligation. Subject to Section 10 of this TSA, Service Recipient shall defend, indemnify and hold harmless Service Provider and its Affiliates, and its and their respective directors, partners, officers, employees and agents (each, a "Service Provider Indemnified Party"), against any and all Losses suffered, sustained, incurred or paid arising from or relating to breach by Service Recipient of its obligations under this TSA.

9.2 Service Provider Indemnification Obligation. Subject to Section 10 of this TSA, Service Provider shall defend, indemnify and hold harmless Service Recipient and its Affiliates, and its and their respective directors, partners, officers, employees and agents (each, a "Service Recipient Indemnified Party"), against any and all Losses suffered, sustained, incurred or paid arising from or relating to breach by Service Provider of its obligations under this TSA.

9.3 Indemnification Notice and Procedures. The indemnification procedures set forth in [Sections 4.6–4.8 andSections 4.10-11] of the SDA and the Tax Matters Agreement shall apply *mutatis*, *mutandis* to the indemnified and indemnifying parties hereunder as if fully set forth herein.

SECTION 10. Limitation of Liability.

10.1 NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS TSA, EXCEPT FOR LOSSES ARISING FROM (A) ACTUAL AND INTENTIONAL FRAUD, GROSS NEGLIGENCE AND WILLFUL MISCONDUCT, AND (B) KNOWING AND INTENTIONAL VIOLATION OF APPLICABLE LAWS, NO PARTY (INCLUDING ITS RESPECTIVE AFFILIATES AND SUBCONTRACTORS, AS APPLICABLE) SHALL BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES (INCLUDING LOST OR ANTICIPATED REVENUES, LOSS OF PROFITS, LOST OR ANTICIPATED SAVINGS, LOSS OF BUSINESS OPPORTUNITY OR INJURY TO GOODWILL RELATING TO THE SAME AND ATTORNEY'S FEES) ARISING FROM ANY CLAIM RELATING TO THIS AGREEMENT OR ANY OF THE SERVICES TO BE PROVIDED HEREUNDER OR THE PERFORMANCE OF OR FAILURE TO PERFORM ITS OBLIGATIONS UNDER THIS AGREEMENT, WHETHER SUCH CLAIM IS BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY) OR OTHERWISE, AND REGARDLESS OF WHETHER SUCH DAMAGES ARE FORESEEABLE OR AN AUTHORIZED REPRESENTATIVE OF THE OTHER PARTY IS ADVISED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES.

10.2 NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT AND EXCLUDING AMOUNTS DUE UNDER SECTION 4, EXCEPT FOR LOSSES ARISING FROM (A) ACTUAL AND INTENTIONAL FRAUD, GROSS NEGLIGENCE AND WILLFUL MISCONDUCT, (B) KNOWING AND INTENTIONAL VIOLATION OF APPLICABLE LAWS, (C) BREACHES OF SECTION 11 (*CONFIDENTIALITY*), AND (D) INDEMNIFICATION OBLIGATIONS UNDER SECTION 9 (*INDEMNIFICATION*), NO PARTY'S TOTAL LIABILITY (INCLUDING ITS RESPECTIVE AFFILIATES AND SUBCONTRACTORS' LIABILITY, AS APPLICABLE) FOR LOSSES ARISING UNDER THIS TSA SHALL EXCEED THE AGGREGATE AMOUNT OF FEES PAID UNDER THIS AGREEMENT, REGARDLESS OF WHETHER SUCH DAMAGES ARE FORESEEABLE OR AN AUTHORIZED REPRESENTATIVE OF THE OTHER PARTY IS ADVISED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES.

SECTION 11. Confidentiality.

11.1 Duty of Confidentiality. With respect to any non-public information disclosed by a Party (or its Affiliates or representatives) (the "Disclosing Party") to the other Party (or its Affiliates or representatives) (the "Receiving Party") after Closing for the purpose of this TSA which non-public information is either marked or otherwise identified as confidential or proprietary or would reasonably be considered confidential or proprietary in light of the nature of the information (collectively, the "TSA Confidential Information"), the Receiving Party agrees that (i) it will keep such TSA Confidential Information confidential, using at least the

same degree of care used to protect its own confidential or proprietary information, but not less than reasonable care, to prevent the disclosure or accessibility to others of the Disclosing Party's TSA Confidential Information and (ii) it will use the Disclosing Party's TSA Confidential Information only for the purpose of performing its obligations under this TSA. The Receiving Party shall limit dissemination of and access to the Disclosing Party's TSA Confidential Information to only such of its Affiliates, advisers, employees, agents or contactors (including, in the case of Service Provider, any third party engaged to provide the Services hereunder) or consultants who have a need to know for the purpose of this TSA; *provided* that (1) any third party to which TSA Confidential Information is provided by a Receiving Party is subject to confidentiality and non-use obligations with respect to such TSA Confidential Information at least as protective as the obligations set forth herein and (2) the Receiving Party shall be responsible for any breach of such obligations by any such third party to the same extent as if the Receiving Party had breached its confidentiality and non-use obligations hereunder. The Parties' confidentiality obligations with respect to non-public information of one Party in the possession of the other Party as of Closing shall be governed by the SDA and not this Section 11 of the TSA.

11.2 Exclusions. Specifically excluded from the foregoing obligations is any and all information that the Receiving Party can show: (a) is already known to the Receiving Party at the time of disclosure and is not subject to a confidentiality obligation; (b) was independently developed by the Receiving Party prior to disclosure, without breach of this TSA and without use of or reference to TSA Confidential Information in any way; (c) is already in the public domain at the time of disclosure, or thereafter becomes publicly known other than as the result of a breach by the Receiving Party of its obligations under this TSA; or (d) is rightfully obtained by the Receiving Party from a third party authorized to make such disclosure without restriction.

11.3 Required Disclosures. If, upon advice of counsel, any Disclosing Party's TSA Confidential Information is required to be disclosed by applicable Legal Requirements by the Receiving Party, then the Receiving Party shall promptly notify the Disclosing Party and, insofar as is permissible and reasonably practicable, give the Disclosing Party an opportunity to appear and to object to such production before producing the requested information. Any such production shall be limited to that portion of the TSA Confidential Information required to be disclosed.

11.4 Destruction of TSA Confidential Information. Upon the termination or expiration of this TSA, or upon written request of a Party, other than as required by applicable Legal Requirements, each Party, as a Receiving Party, shall return or destroy the TSA Confidential Information of the Disclosing Party in such Receiving Party's possession and provide a written certification of destruction (as applicable) with respect thereto to such Disclosing Party; *provided, however*, that neither Party shall be liable for breach of its obligations hereunder to the extent it cannot, as Service Provider, reasonably provide any Services without such TSA

Confidential Information so requested by the other Party under this Section 11.4 to be destroyed. Notwithstanding the foregoing, a Party may retain copies of TSA Confidential Information stored in back-up/archival storage in accordance with its retention policies,*provided* that such Party shall continue to be bound by the obligations of confidentiality and non-use hereunder with respect to such TSA Confidential Information while it is in its possession.

11.5 System Security.

(a) In connection with the performance of its obligations or receipt of Services under this TSA, each Party shall comply with all requirements of applicable Privacy Laws (as such term is defined in the SDA) and any contractual obligations, binding industry standards and rules, self-regulatory standards that relate to privacy, information security or data protection in relation to this TSA.

(b) If either Party or its Affiliate (as the "Accessing Party") is given access to the other Party's or its Affiliates' (the 'Network Owner") computer systems, networks, email systems, software, servers, routers, hubs, circuits, switches, data communications lines, storage, firmware, hardware, databases, Internet websites and all other equipment and systems (collectively, the "Systems") in connection with the applicable Services, the Accessing Party shall comply with all of the Network Owner's privacy and information security policies, procedures and requirements (collectively, "Security Regulations"), and shall not tamper with, compromise or circumvent any security or audit measures employed by the Network Owner. Further, the Accessing Party shall not convey, copy, license, sublicense, modify, translate, reverse engineer, decompile, disassemble, tamper with or create any derivative work based on such Systems, or transmit any data that contains software viruses, time bombs, worms, Trojan horses, spyware, disabling devices or any other malicious or unauthorized code to or through the Systems. The Accessing Party shall access and use only those Systems of the Network Owner for which it has been granted the right to access and use and shall use such Systems solely as necessary to provide or receive, as applicable, the Services hereunder.

(c) The Accessing Party shall ensure that only those personnel of the Accessing Party who are specifically authorized to have access to the Systems gain such access and prevent unauthorized access, use, destruction, alteration or loss of information, including Personal Data (as such term is defined in the SDA), contained therein, including notifying such personnel of the restrictions set forth in this TSA and the Security Regulations.

(d) If, at any time, an Accessing Party determines that any such personnel has sought to circumvent, or has circumvented, the Security Regulations, that any unauthorized personnel has or has had access to the Systems, or that any such personnel has engaged in activities that may lead to the unauthorized access, use, destruction, alteration or loss of data, information or software of a Network Owner, the Accessing Party shall immediately terminate any such Person's access to the Systems and immediately notify the Network Owner. In addition, a Network Owner shall have the right to deny personnel of an Accessing Party access to the Systems upon notice to the Accessing Party

in the event that the Network Owner reasonably believes that such personnel have engaged in any of the activities set forth above in this Section 11.5(d) or otherwise pose a security concern. Each Accessing Party shall cooperate with the applicable Network Owner in investigating any unauthorized access to the Systems.

(e) To the extent that a Party Processes Personal Data (as such terms are defined in the SDA) of or on behalf of the other Party, the Accessing Party shall not sell, retain, use or disclose the Personal Data for any purpose other than for the specific purposes for which access was granted, including retaining, using, or disclosing the Personal Data for a commercial purpose other than the purpose for which access was granted.

(f) Without prejudice to a Party's obligations under Privacy Laws (as such term is defined in the SDA), each Party shall promptly, and in any event within [•], notify the other Party by email and by telephone to the other Party's designated point of contact following the discovery of any Security Breach (as such term is defined in the SDA) that has materially impacted, or that the notifying Party reasonably expects will materially impact, the other Party. The notifying Party shall provide periodic, reasonable updates on the current status of the Security Breach and the remediation efforts taken by the notifying Party to resolve the Security Breach.

(g) The provisions of the **[**Data Processing Addendum**]** attached as Schedule **[•]** hereto shall govern the **[**Processing**]** of the **[**TSA Personal Data**]** (as such terms are defined in Schedule **[•]**) of the other Party in connection with the provision of the Services hereunder.

SECTION 12. Miscellaneous.

12.1 Notices. All notices and other communications hereunder shall be in writing and shall be deemed duly delivered: (a) four (4) Business Days after being sent by registered or certified mail, return receipt requested, postage prepaid; (b) one (1) Business Day after being sent for next Business Day delivery, fees prepaid, via a reputable nationwide overnight courier service; (c) if sent by email transmission prior to 6:00 p.m. recipient's local time, upon transmission when receipt is confirmed; or (d) if sent by email transmission after 6:00 p.m. recipient's local time, the Business Day following the date of transmission when receipt is confirmed:

If to WDC:

c/o Western Digital Corporation
**[**Address**]**
Attn: **[•]**
Email: **[•]**

with a copy to (which shall not constitute notice):

Skadden, Arps, Slate, Meagher & Flom LLP
525 University Avenue Suite 1400
Palo Alto, CA 94301
Attn: Thomas J. Ivey and Christopher J. Bors
Email: thomas.ivey@skadden.com and
christopher.bors@skadden.com

If to Spinco prior to the Distribution Date:

c/o Western Digital Corporation
**[**Address**]**
Attn: **[•]**
Email: **[•]**

with a copy to (which shall not constitute notice):

Skadden, Arps, Slate, Meagher & Flom LLP
525 University Avenue Suite 1400
Palo Alto, CA 94301
Attn: Thomas J. Ivey and Christopher J. Bors
Email: thomas.ivey@skadden.com and
christopher.bors@skadden.com

If to Spinco on or after the Distribution Date:

c/o Sandisk Corporation
**[**Address**]**
Attn: **[•]**
Email: **[•]**

with a copy to (which shall not constitute notice):

**[•]**

12.2 Entire Agreement. This TSA, including any schedules and amendments hereto and thereto, and the other agreements and documents referred to herein and therein, shall together constitute the entire agreement between the Parties with respect to the subject matter hereof and thereof and shall supersede all prior negotiations, agreements and understandings, both written and oral, between the Parties with respect to such subject matter hereof and thereof. The Service Schedules to this TSA shall be deemed incorporated in this TSA and shall form a part of it.

12.3 Amendment and Waivers.

12.3.1 This TSA may be amended or supplemented in any and all respects and any provision of this TSA may be waived and any such waiver shall be binding upon a Party, only if such waiver is set forth in a writing executed by such waiving Party bound thereby, and any such amendment or supplement shall be effective only if set forth in a writing executed by each of the Parties; and any such waiver, amendment or supplement shall not be applicable or have any effect except in the specific instance in which it is given. No course of dealing between or among any Persons having any interest in this TSA shall be deemed effective to modify, amend or discharge any part of this TSA or any rights or obligations of any Party under or by reason of this TSA.

12.3.2 Notwithstanding the foregoing, no failure on the part of any Party to exercise any power, right, privilege or remedy under this TSA, and no delay on the part of any Party hereto in exercising any power, right, privilege or remedy under this TSA, shall operate as a waiver of such power, right, privilege or remedy; and no single or partial exercise of any such power, right, privilege or remedy shall preclude any other or further exercise thereof or of any other power, right, privilege or remedy. The rights and remedies hereunder are cumulative and not exclusive of any rights or remedies that any Party would otherwise have. Any waiver, permit, consent or approval of any kind or character of any breach or default under this TSA or any such waiver of any provision of this TSA must satisfy the conditions set forth in Section 12.3.1 and shall be effective only to the extent in such writing specifically set forth.

12.4 Severability. Any term or provision of this TSA which is invalid or unenforceable in any situation in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this TSA in any other jurisdiction or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction. If any provision of this TSA is so broad as to be unenforceable, such provision shall be interpreted to be only so broad as is enforceable. If a final judgment of a court of competent jurisdiction declares that any term or provision of this TSA is invalid or unenforceable, the Parties agree that the court making such determination shall have the power to limit such term or provision, to delete specific words or phrases or to replace such term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision, and this TSA shall be valid and enforceable as so modified. In the event such court does not exercise the power granted to it in the prior sentence, the Parties agree to replace such invalid or unenforceable term or provision with a valid and enforceable term or provision that will achieve, to the extent possible, the economic, business and other purposes of such invalid or unenforceable term or provision.

12.5 Governing Law; Specific Performance; Forum; Waiver of Jury Trial.

12.5.1 This TSA and the consummation of the transactions contemplated hereby, and any Action (whether at law, in contract, in tort or otherwise) arising out of or relating to this TSA and the consummation of the transactions contemplated hereby, or the negotiation, validity, interpretation, performance, breach or termination of this TSA and the consummation of the transactions contemplated hereby, shall be governed by and construed in accordance with the internal law of the State of Delaware regardless of the law that might otherwise govern under applicable principles of conflicts of law thereof. In addition, each of the Parties irrevocably agrees that, subject (except in the case of any legal action or proceeding seeking specific performance) to prior compliance with Section 3.2, any legal action or proceeding with respect to this TSA and the rights and obligations arising hereunder, or for recognition and enforcement of any judgment in respect of this TSA and the rights and obligations arising hereunder, brought by any other Party or its respective successors or assigns, shall be brought and determined exclusively in the Delaware Court of Chancery and any state appellate court therefrom within the State of Delaware (or, if the Delaware Court of Chancery declines to accept jurisdiction over a particular matter, any state or federal court within the State of Delaware). Each of the Parties hereby irrevocably submits with regard to any such action or proceeding for itself and in respect of its property, generally and unconditionally, to the personal jurisdiction of the aforesaid courts and agrees that it will not bring any action relating to this TSA or any of the transactions contemplated by this TSA in any court other than the aforesaid courts. Each of the Parties hereby irrevocably waives, and agrees not to assert, by way of motion, as a defense, counterclaim or otherwise, in any action or proceeding with respect to this TSA: (a) any claim that it is not personally subject to the jurisdiction of the above named courts for any reason other than the failure to serve in accordance with this Section 12.5; (b) any claim that it or its property is exempt or immune from jurisdiction of any such court or from any legal process commenced in such courts (whether through service of notice, attachment prior to judgment, attachment in aid of execution of judgment, execution of judgment or otherwise); and (c) to the fullest extent permitted by applicable Legal Requirements, any claim that: (i) the suit, action or proceeding in such court is brought in an inconvenient forum; (ii) the venue of such suit, action or proceeding is improper; or (iii) this TSA, or the subject matter hereof, may not be enforced in or by such courts (other than by reason of, except in the case of any action or proceeding for specific performance, needing to first comply with the provisions of Section 3.2). The Parties agree that service of any court paper may be made in any manner as may be provided under the applicable Legal Requirements or court rules governing service of process in such court. The Parties agree that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by applicable Legal Requirements. EACH OF THE PARTIES HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY ACTION OR LEGAL PROCEEDING (WHETHER AT LAW, IN CONTRACT, IN TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS TSA OR THE TRANSACTIONS CONTEMPLATED HEREBY.

12.5.2 Each of the Parties acknowledges and agrees that any other Party to this TSA would be damaged irreparably and suffer unreasonable hardship in the event that any term or provision of this Agreement is not performed in accordance with its specific terms or is otherwise breached or violated. Accordingly, each of the Parties agrees that, any other Party may, by posting a bond or other undertaking, without regard to compliance with Section 3.2, seek an injunction or injunctions to prevent breaches or violations of the provisions of this TSA and to seek to enforce specifically this TSA and the terms and provisions hereof and thereof in any claim instituted in any court with jurisdiction over the Parties or their assets in addition to any and all other rights and other remedies at law or in equity and all such rights and remedies will be cumulative.

12.6 Construction.

12.6.1 For purposes of this TSA, whenever the context requires: (i) the singular number shall include the plural, and vice versa; (ii) the masculine gender shall include the feminine and neuter genders; (iii) the feminine gender shall include the masculine and neuter genders; and (iv) the neuter gender shall include masculine and feminine genders.

12.6.2 The Parties agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in the construction or interpretation of this TSA.

12.6.3 As used in this TSA, the words “include” and “including,” and variations thereof, shall not be deemed to be terms of limitation, but rather shall be deemed to be followed by the words “without limitation.”

12.6.4 As used in this TSA, the words “hereof,” “herein,” “hereto” and “hereunder” and words of similar import shall refer to this TSA as a whole and not to any particular provision of this TSA.

12.6.5 The measure of a period of one (1) month or year for purposes of this TSA will be the date of the following month or year corresponding to the starting date; and, if no corresponding date exists, then the end date of such period being measured will be the next actual date of the following month or year (for example, one month following February 18 is March 18 and one month following March 31 is May 1).

12.6.6 As used in this TSA, the word “extent” in the phrase “to the extent” shall mean the degree to which a subject or other thing extends, and such phrase shall not mean simply “if.”

12.6.7 As used in this TSA, the word “will” shall be deemed to have the same meaning and effect as the word “shall.”

12.6.8 As used in this TSA, the terms “or,” “any” or “either” are not exclusive and shall be deemed to be “and/or.”

12.6.9 As used in this TSA, references to “written” or “in writing” include in electronic form.

12.6.10 As used in this TSA, references to the “date hereof” are to the date of this TSA.

12.6.11 Except as otherwise indicated, all references in this TSA to “Sections,” “Articles” and “Schedules” are intended to refer to Sections or Articles of this TSA and Schedules to this TSA.

12.6.12 The section and other headings and subheadings contained in this TSA are for convenience of reference only, shall not be deemed to be a part of this TSA and shall not be referred to in connection with the construction, meaning or interpretation of this TSA. The preamble and the recitals set forth at the beginning of this TSA are incorporated by reference into and made a part of this TSA.

12.6.13 Unless otherwise stated in the Service Schedules, any payment to be made pursuant hereto shall be made in U.S. dollars and by wire transfer of immediately available funds.

12.6.14 As used in this Agreement, references to “U.S. dollars” and “$” in this report are to the lawful currency of the United States of America.

12.7 Counterparts. This TSA may be executed in several counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument and shall become effective when counterparts have been signed by each of the Parties and delivered to the other Parties, it being understood that all Parties need not sign the same counterpart. This TSA may be executed and delivered by facsimile transmission, by electronic mail in “portable document format” (“.pdf”) form or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, or by combination of such means. The exchange of a fully executed agreement (in counterparts or otherwise) by facsimile or electronic transmission shall be treated in all manner and respects as an original agreement and shall be considered to have the same binding legal effects as if it were the original signed version thereof delivered in person.

12.8 Assignability; Binding Effect. This TSA shall be binding upon, and shall be enforceable by and inure solely to the benefit of, the Parties and their respective successors and permitted assigns. Neither this TSA nor any Party’s rights, interests or obligations hereunder may be assigned or delegated by any such Party, in whole or in part (whether by operation of law or otherwise), without the prior written consent of the other Parties; *provided, however*, that (a) Service Provider may freely assign its rights under this TSA, in whole or in part, and its rights and obligations hereunder (x) to an Affiliate of Service Provider, or (y) in connection with a sale or restructuring of any of its businesses or assets to which this TSA relates, (b) the rights of Service Recipient hereunder may be assigned in part for a relevant

Service to its Affiliate who is the intended recipient of such Services and (c) any Party may assign this TSA in whole in connection with a merger transaction in which such party is not the surviving entity. Except as set forth in the preceding sentence, any attempted assignment or delegation of this TSA or any of such rights or obligations by any Party without the prior written consent of the other Party shall be void and of no effect. Except as set forth in Section 12.9, nothing in this TSA, express or implied, is intended to or shall confer upon any Person (other than the Parties and their permitted successors and assigns) any power, right, privilege or remedy of any nature whatsoever under or by reason of this TSA.

12.9 No Third-Party Beneficiaries. Except for the provisions of Section 9 with respect to indemnification of indemnified parties, which is intended to benefit and be enforceable by the Persons specified therein as indemnified parties, this TSA is solely for the benefit of the Parties and their respective successors and permitted assigns, and is not intended, and shall not be deemed, to (x) create any agreement of employment with any person, (y) confer on third parties (including any employee of the Flash Business, the Service Recipient or Service Provider) any remedy, claim, reimbursement, claim of action or other right in addition to those existing without reference to this TSA, or (z) otherwise create any third-party beneficiary hereto.

**[**SIGNATURE PAGES FOLLOW**]**

WITNESS WHEREOF, the duly authorized officers or representatives of the parties to this TSA have duly executed this TSA as of the date first written above.

Western Digital Corporation

By: _____
Name:
Title:

Sandisk Corporation

By: _____
Name:
Title:

**Exhibit 10.2**

FORM OF

# TAX MATTERS AGREEMENT

by and between

Western Digital Corporation

and

Sandisk Corporation

Dated as of [•]

**TABLE OF CONTENTS**

EXHIBITS

**TAX MATTERS AGREEMENT**

This TAX MATTERS AGREEMENT (this "Agreement"), is entered into as of [•], between Western Digital Corporation, a Delaware corporation ("WDC") and Sandisk, a Delaware corporation ("Spinco" and, together with WDC, the "Parties"). Capitalized terms used in this Agreement and not otherwise defined herein shall have the meanings ascribed to such terms in the Separation and Distribution Agreement, dated as of the date hereof, by and between the Parties (the "Separation Agreement").

**R E C I T A L S**

WHEREAS, WDC, directly and indirectly through its wholly owned Subsidiaries, is engaged in the Flash Business;

WHEREAS, the board of directors of WDC (the "WDC Board") has determined that it is in the best interests of WDC and WDC's stockholders to separate the Flash Business from the other businesses of WDC (the "Separation" and such other businesses, collectively, the "Non-Flash Business") and divest the Flash Business in the manner contemplated by the Separation Agreement and Ancillary Agreements;

WHEREAS, Spinco has been incorporated for these purposes and has not engaged in activities except those incidental to its formation and in preparation for the Separation;

WHEREAS, in order to effect the Separation, WDC has undertaken and will undertake the Internal Restructuring and, in connection therewith, effect the Spinco Contribution and, in exchange therefor, Spinco shall (i) issue to WDC additional shares of Spinco Common Stock and (ii) pay the Spinco Dividend to WDC;

WHEREAS, on the terms and subject to the conditions set forth in the Separation Agreement, following the completion of the Internal Restructuring and Spinco Contribution and payment of the Spinco Dividend, WDC shall own all of the issued and outstanding shares of Spinco Common Stock and shall effect the distribution of 80.1% of such outstanding shares of Spinco Common Stock to the holders of WDC Common Stock in accordance with Section 3.1 of the Separation Agreement (the "Distribution");

WHEREAS, following the Distribution, WDC shall undertake one or more Subsequent Distributions with respect to the Retained Stock, each as defined and set forth in the Separation Agreement;

WHEREAS, for U.S. federal income Tax purposes, (i) it is intended that the Spinco Contribution, taken together with the Distribution, qualifies for non-recognition of gain and loss pursuant to Sections 355, 361 and 368(a)(1)(D) of the Code and (ii) the Separation Agreement constitutes a "plan of reorganization" within the meaning of Section 368 of the Code and Treasury Regulations § 1.368-2(g); and

WHEREAS, the Parties desire to (a) provide for the payment of Tax liabilities and entitlement to refunds thereof, allocate responsibility for, and cooperation in, the filing of Tax Returns, and provide for certain other matters relating to Taxes and (b) set forth certain covenants and indemnities relating to the preservation of the Tax-Free Status of the Transactions.

NOW, THEREFORE, in consideration of the mutual agreements, provisions and covenants contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

## ARTICLE I

## DEFINITIONS

1.1 General. As used in this Agreement, the following terms shall have the following meanings:

"Accounting Firm" shall have the meaning set forth in Section 9.1.

"Action" shall have the meaning set forth in the Separation Agreement.

"Active Trade or Business" shall mean the active conduct (as defined in Section 355(b)(2) of the Code and the Treasury Regulations thereunder) of the Flash Business conducted by the Specified Spinco Group Member that is relied upon in the Tax Opinions for purposes of qualifying the Distribution, the First Internal Distribution, the Second Internal Distribution and the Third Internal Distribution as tax-free pursuant to Section 355 of the Code as set forth on Exhibit B hereto.

"Adjustment" shall mean an adjustment of any item of income, gain, loss, deduction, credit or any other item affecting Taxes of a taxpayer pursuant to a Final Determination.

"Affiliate" shall have the meaning set forth in the Separation Agreement.

"Agreement" shall have the meaning set forth in the preamble hereto.

"Ancillary Agreement" shall have the meaning set forth in the Separation Agreement.

"Business Day" shall have the meaning set forth in the Separation Agreement.

"Closing of the Books Method" means the apportionment of items between portions of a Tax Period based on a closing of the books and records on the close of the Distribution Date (in the event that the Distribution Date is not the last day of the Tax Period, as if the Distribution Date were the last day of the Tax Period), subject to adjustment for items accrued on the Distribution Date that are properly allocable to the Tax Period following the Distribution, except that in the case of any such Taxes attributable to an equity interest in any partnership or other "flowthrough" entity, the Taxes of the relevant owner of such equity interest shall be determined as if the Tax Period of such partnership or other "flowthrough" entity ended as of the close of business on the Distribution Date; provided that exemptions, allowances or deductions that are calculated on an annual basis (including, but not limited to, depreciation and amortization deductions) will be allocated between the period ending at the close of the Distribution Date and the period beginning after the Distribution Date in proportion to the number of days in each Tax Period.

"Code" shall mean the Internal Revenue Code of 1986, as amended.

"Controlling Party" shall mean, with respect to a Tax Contest, the Party entitled to control such Tax Contest pursuant toSections 6.2 and 6.3 of this Agreement.

"Distribution" shall have the meaning set forth in the recitals.

"Distribution Date" shall have the meaning set forth in the Separation Agreement.

"Distribution Taxes" means any Taxes incurred solely as a result of the failure of all or any portion of the Internal Restructuring, the Spinco Contribution or the Distribution to qualify for the Tax-Free Status of the Transactions.

"Employee Matters Agreement" shall have the meaning set forth in the Separation Agreement.

"Employment Tax" shall mean those Liabilities (as defined in the Separation Agreement) for Taxes which are allocable pursuant to the provisions of the Employee Matters Agreement.

"Excluded Asset" shall have the meaning set forth in the Separation Agreement.

"Excluded Liability" shall have the meaning set forth in the Separation Agreement.

"Final Determination" shall mean the final resolution of liability for any Tax for any Tax Period, by or as a result of (a) a final decision, judgment, decree or other order by any court of competent jurisdiction that can no longer be appealed, (b) a final settlement with the IRS, a closing agreement or accepted offer in compromise under Sections 7121 or 7122 of the Code, or a comparable agreement under the Laws of other jurisdictions, which resolves the entire Tax liability for any Tax Period, (c) any allowance of a refund or credit in respect of an overpayment of Tax, but only after the expiration of all periods during which such refund or credit may be recovered by the jurisdiction imposing the Tax, or (d) any other final resolution, including by reason of the expiration of the applicable statute of limitations or the execution of a pre-filing agreement with the IRS or other Taxing Authority.

"Flash Business" shall have the meaning set forth in the Separation Agreement.

"Group" shall mean either the Spinco Group or the WDC Group, as the context requires.

"Indemnifying Party" shall have the meaning set forth in Section 5.2.

"Indemnitee" shall have the meaning set forth in Section 5.2.

"Internal Restructuring" shall have the meaning set forth in the Separation Agreement.

"IRS" shall mean the United States Internal Revenue Service or any successor thereto, including, but not limited to its agents, representatives, and attorneys.

"Joint Return" shall mean any Tax Return that actually includes, by election or otherwise, one or more members of the WDC Group together with one or more members of the Spinco Group.

"Law" shall have the meaning set forth in the Separation Agreement.

"Non-Controlling Party" shall mean, with respect to a Tax Contest, the Party that is not entitled to control such Tax Contest pursuant to Sections 6.2 and 6.3 of this Agreement.

"Non-Flash Business" shall have the meaning set forth in the recitals hereto.

"Parties" shall have the meaning set forth the in preamble hereto.

"Past Practices" shall have the meaning set forth in Section 3.5.

"Person" shall have the meaning set forth in the Separation Agreement.

"Post-Distribution Period" shall mean any Tax Period (or portion thereof) beginning after the Distribution Date, including for the avoidance of doubt, the portion of any Straddle Period beginning after the Distribution Date.

"Post-Distribution Ruling" shall mean a favorable private letter ruling from a Taxing Authority (including the IRS) to the effect that a transaction will not affect the Tax-Free Status of the Transactions.

"Pre-Distribution Period" shall mean any Tax Period (or portion thereof) ending on or before the Distribution Date, including for the avoidance of doubt, the portion of any Straddle Period ending at the end of the day on the Distribution Date.

"Preparing Party" shall mean, with respect to a Tax Return, the Party that is required to prepare and file any such Tax Return pursuant to this Agreement.

"Proposed Acquisition Transaction" shall mean a transaction or series of transactions (or any agreement, understanding or arrangement, within the meaning of Section 355(e) of the Code and Treasury Regulation Section 1.355-7, or any other regulations promulgated thereunder, to enter into a transaction or series of transactions), whether such transaction is supported by Spinco management or shareholders, is a hostile acquisition, or otherwise, as a result of which Spinco (or any successor thereto) would merge or consolidate with any other Person or as a result of which one or more Persons would (directly or indirectly) acquire, or have the right to acquire, from Spinco (or any successor thereto) and/or one or more holders of stock of Spinco, respectively, any amount of stock of Spinco, that would, when combined with any other direct or indirect changes in ownership of the stock of Spinco pertinent for purposes of Section 355(e) of the Code and the Treasury Regulations promulgated thereunder, comprise fifty percent (50%) or more of (i) the value of all outstanding shares of Spinco as of the date of such transaction, or in the case of a series of transactions, the date of the last transaction of such series, or (ii) the total combined voting power of all outstanding shares of voting stock of Spinco as of the date of the such transaction, or in the case of a series of transactions, the date of the last transaction of such series. For purposes of determining whether a transaction constitutes an indirect acquisition, any

recapitalization or other transaction resulting in a shift of voting power or any redemption of shares of stock shall be treated as an indirect acquisition of shares of stock by the non-exchanging shareholders. This definition and the application thereof is intended to monitor compliance with Section 355(e) of the Code and the Treasury Regulations promulgated thereunder and shall be interpreted accordingly. Any clarification of, or change in, the statute or Treasury Regulations promulgated under Section 355(e) of the Code shall be incorporated in this definition and its interpretation.

"Refund" shall mean any refund (or credit in lieu thereof) of Taxes (including any overpayment of Taxes that can be refunded or, alternatively, applied against other Taxes payable), including any interest paid on or with respect to such refund of Taxes; provided, however, that the amount of any refund of Taxes shall be net of any Taxes imposed by any Taxing Authority on, related to, or attributable to, the receipt of or accrual of such refund, and shall further be net of all accounting, legal and other professional fees, and court costs incurred in connection with obtaining such refund, as well as any other out-of-pocket costs incurred in connection with obtaining such refund.

"Restricted Period" shall mean the period which begins with the Distribution Date and ends two (2) years thereafter.

"Reverse Carve-out Transaction" shall mean any sale, transfer, distribution, conveyance, assumption or other disposition of any Excluded Asset or Excluded Liability from any member of the Spinco Group to or by any member of the WDC Group pursuant to the Separation Plan.

"Reviewing Party" shall mean, with respect to a Tax Return, the Party that is not the Preparing Party.

"Separate Return" shall mean a WDC Separate Return or a Spinco Separate Return, as the case may be.

"Separation" shall have the meaning set forth in the recitals.

"Separation Agreement" shall have the meaning set forth in the preamble hereto.

"Separation Plan" shall have the meaning set forth in the Separation Agreement.

"Separation Time" shall have the meaning set forth in the Separation Agreement.

"Specified Spinco Group Member" shall mean SanDisk Storage Malaysia Sdn. Bhd.

"Spinco" shall have the meaning set forth in the preamble hereto.

"Spinco Common Stock" shall have the meaning set forth in the Separation Agreement.

"Spinco Contribution" shall have the meaning set forth in the Separation Agreement.

"Spinco Disqualifying Action" means (a) any action (or the failure to take any action) by any member of the Spinco Group after the Distribution (including entering into any agreement, understanding or arrangement or any negotiations with respect to any transaction or series of transactions), (b) any event (or series of events) after the Distribution involving the capital stock of Spinco or any assets of any member of the Spinco Group or (c) any breach by any member of the Spinco Group after the Distribution of any representation, warranty or covenant made by them in this Agreement, that, in each case, would adversely affect the Tax-Free Status of the Transactions; provided, however, that the term "Spinco Disqualifying Action" shall not include any action required by any Ancillary Agreement (other than this Agreement) or that is undertaken pursuant to the Internal Restructuring, Spinco Contribution or Distribution.

"Spinco Dividend" shall have the meaning set forth in the Separation Agreement.

"Spinco Group" shall mean Spinco and each Person that will be a Subsidiary of Spinco as of immediately after the consummation of the Distribution.

"Spinco Separate Return" shall mean any Tax Return of or including any member of the Spinco Group (including any consolidated, combined or unitary return) that does not include any member of the WDC Group.

"Straddle Period" shall mean any taxable year or other Tax Period that begins on or before the Distribution Date and ends after the Distribution Date.

"Subsidiary" shall have the meaning set forth in the Separation Agreement.

"Tax" or "Taxes" shall mean (i) all taxes, charges, fees, duties, levies, imposts, rates or other assessments or governmental charges of any kind imposed by any federal, state, local or non-United States Taxing Authority, including, without limitation, income, gross receipts, employment, estimated, excise, severance, stamp, occupation, premium, windfall profits, environmental, custom duties, property, sales, use, license, capital stock, transfer, franchise, registration, payroll, withholding, social security, unemployment, disability, value added, alternative or add-on minimum or other taxes, whether disputed or not, and including any interest, penalties, charges or additions attributable thereto, (ii) liability for the payment of any amount of the type described in clause (i) above arising as a result of being (or having been) a member of any group or being (or having been) included or required to be included in any Tax Return related thereto, and (iii) liability for the payment of any amount of the type described in clauses (i) or (ii) above as a result of any express or implied obligation to indemnify or otherwise assume or succeed to the liability of any other Person.

"Tax Attribute" shall mean net operating losses, capital losses, research and experimentation credit carryovers, investment tax credit carryovers, earnings and profits, foreign tax credit carryovers, overall foreign losses, overall domestic losses, previously taxed income, separate limitation losses and any other losses, deductions, credits or other comparable items that could affect a Tax liability for a past or future Tax Period.

"Tax Certificates" shall mean any certificates of officers of WDC and/or Spinco, provided to Skadden, Arps, Slate, Meagher & Flom LLP or any other law or accounting firm in connection with any Tax Opinion issued in connection with the Internal Restructuring, Spinco Contribution or Distribution.

"Tax Contest" shall have the meaning set forth in Section 6.1.

"Tax-Free Status of the Transactions" shall mean the qualification of (i) the Spinco Contribution and the Distribution, taken together, (a) as a reorganization described in Sections 368(a)(1)(D) and 355(a) of the Code, (b) as a transaction in which the stock distributed thereby is "qualified property" for purposes of Sections 355(c) and 361(c) of the Code, (c) as a transaction in which WDC will recognize no income or gain for U.S. federal income tax purposes with respect to the receipt of the Spinco Dividend by reason of Sections 355 and 361 of the Code, except to the extent the amount of the Spinco Dividend exceeds WDC's adjusted tax basis in Spinco Common Stock and assuming WDC transfers to creditors or distributes to shareholders the cash received in the Spinco Dividend in pursuance of the plan of reorganization within the meaning of Section 361(b)(1) of the Code and (d) as a transaction in which WDC, Spinco and the holders of WDC Common Stock recognize no income or gain for U.S. federal income tax purposes pursuant to Sections 355, 361 and 1032 of the Code, other than, in the case of WDC and Spinco, intercompany items or excess loss accounts taken into account pursuant to the Treasury Regulations promulgated pursuant to Section 1502 of the Code and (ii) the transactions described on Exhibit B for the Tax treatment set forth therein.

"Tax-Free Status Tax Contest" shall have the meaning set forth in Section 6.4.

"Tax Item" shall mean any item of income, gain, loss, deduction, expense, or credit, or other attribute that may have the effect of increasing or decreasing any Tax.

"Tax Law" shall mean the law of any Taxing Authority or political subdivision thereof relating to any Tax.

"Tax Materials" shall have the meaning set forth in Section 4.1(a).

"Tax Matter" shall have the meaning set forth in Section 7.1.

"Tax Opinion" shall mean any written opinion of Skadden, Arps, Slate, Meagher & Flom LLP or any other law or accounting firm delivered to WDC, regarding certain tax consequences of certain transactions executed as part of the Internal Restructuring, Spinco Contribution and Distribution.

"Tax Period" shall mean, with respect to any Tax, the period for which the Tax is reported as provided under the Code or other applicable Tax Law.

"Tax Records" shall have the meaning set forth in Section 8.1.

"Tax-Related Losses" shall mean (i) all federal, state, local and foreign Taxes imposed pursuant to any settlement, Final Determination, judgment or otherwise; (ii) all accounting, legal and other professional fees, and court costs incurred in connection with such Taxes, as well as any other out-of-pocket costs incurred in connection with such Taxes; and (iii) all costs, expenses and damages associated with stockholder litigation or controversies and any amount paid by WDC (or any of its Affiliates) or Spinco (or any of its Affiliates) in respect of the liability of shareholders, whether paid to shareholders or to the IRS or any other Taxing Authority, in each case, resulting from the failure of the Internal Restructuring, Spinco Contribution, Distribution, or any transaction associated therewith to qualify for the Tax-Free Status of the Transactions.

"Tax Return" shall mean any return, report, certificate, form or similar statement or document (including any related supporting information or schedule attached thereto and any information return, amended tax return, claim for refund or declaration of estimated tax) supplied to or filed with, or required to be supplied to or filed with, a Taxing Authority, or any bill for or notice related to ad valorem or other similar Taxes received from a Taxing Authority, in each case, in connection with the determination, assessment or collection of any Tax or the administration of any laws, regulations or administrative requirements relating to any Tax.

"Taxing Authority" shall mean any governmental authority or any subdivision, agency, commission or entity thereof or any quasi-governmental or private body having jurisdiction over the assessment, determination, collection or imposition of any Tax (including the IRS).

"Transaction Taxes" shall mean all (i) sales, use, transfer, real property transfer, intangible, recordation, registration, documentary, stamp or similar Taxes imposed with respect to the Internal Restructuring, Spinco Contribution or Distribution and (ii) any income Taxes imposed with respect to the steps taken pursuant to the Separation Plan, including in each case, any withholding in respect of such Taxes; provided, however, that Transaction Taxes shall not include any Taxes incurred as a result of (x) Spinco's breach of any obligation under the Separation Agreement, this Agreement, or any Ancillary Agreement, (y) Spinco undertaking any action described in Section 4.2(a) or Section 4.2(b), without regard to whether an Unqualified Tax Opinion or Post-Distribution Ruling may have been provided or whether WDC consented to any such action, or (z) a Spinco Disqualifying Action. For the avoidance of doubt, "Transaction Taxes" shall not include any value added, goods and services or similar Taxes.

"Transactions" shall have the meaning set forth in the Separation Agreement.

"Transfer Pricing Adjustment" shall mean any proposed or actual allocation by a Taxing Authority of any Tax Item between or among any member of the WDC Group and any member of the Spinco Group with respect to any Tax Period ending prior to or including the Distribution Date.

"Treasury Regulations" shall mean the regulations promulgated from time to time under the Code as in effect for the relevant Tax Period.

"Unqualified Tax Opinion" shall mean a "will" opinion, without substantive qualifications, of a nationally recognized law or accounting firm, to the effect that a transaction will not affect the Tax-Free Status of the Transactions.

"WDC" shall have the meaning set forth in the preamble hereto.

"WDC Common Stock" shall have the meaning set forth in the Separation Agreement.

"WDC Consolidated Tax Return" shall mean any U.S. federal income Tax Return required to be filed by WDC (or any member of the WDC Group) as the "common parent corporation" of an "affiliated group" (in each case, within the meaning of Section 1504 of the Code and the Treasury Regulations promulgated thereunder) filing a U.S. federal consolidated income Tax Return.

"WDC Group" shall mean WDC and each Person that is a Subsidiary of WDC (other than Spinco and any other member of the Spinco Group).

"WDC Separate Return" shall mean any Tax Return of or including any member of the WDC Group (including any consolidated, combined or unitary return) that does not include any member of the Spinco Group.

## ARTICLE II

## PAYMENTS AND TAX REFUNDS

2.1 Allocation of Tax Liabilities. Except as otherwise provided in this Article II and Section 5.1 or as set forth on Exhibit A, Taxes shall be allocated as follows:

(a) Allocation of Taxes Relating to Joint Returns.

(i) In the case of any Joint Return that relates solely to a Pre-Distribution Period, Spinco and WDC shall each pay and be responsible for fifty percent (50%) of any and all Taxes that are due with respect to or required to be reported on any such Joint Return (including any increase in such Taxes as a result of a Final Determination).

(ii) In the case of any Joint Return that relates to a Straddle Period and with respect to which a member of the WDC Group is the common parent: (A) Spinco shall pay and be responsible for fifty percent (50%) of any and all Taxes that are (I) due with respect to or required to be reported on any such Joint Return and (II) allocable to a Pre-Distribution Period in accordance with Section 2.1(c) (including any increase in such Taxes as a result of a Final Determination), and (B) WDC shall pay and be responsible for all other Taxes that are due with respect to or required to be reported on any such Joint Return (including any increase in such Taxes as a result of a Final Determination).

(iii) In the case of any Joint Return that relates to a Straddle Period and with respect to which a member of the Spinco Group is common parent: (A) WDC shall pay and be responsible for fifty percent (50%) of any and all Taxes that are (I) due with respect to or required to be reported on any such Joint Return and (II) allocable to a Pre-Distribution Period in accordance with Section 2.1(c) (including any increase in such Taxes as a result of a Final Determination), and (B) Spinco shall pay and be responsible for all other Taxes that are due with respect to or required to be reported on any such Joint Return (including any increase in such Taxes as a result of a Final Determination).

(iv) Notwithstanding anything herein to the contrary, in the case of any Joint Return that relates to a Straddle Period with respect to which (A) a member of the WDC Group is the common parent, WDC shall be responsible for one hundred percent (100%) of any Taxes reflected on such Joint Return that are imposed with respect to amounts required to be included in income under Section 951(a) or Section 951A of the Code; and (B) a member of the Spinco Group is the common parent, Spinco shall be responsible for one hundred percent (100%) of any Taxes reflected on such Joint Return that are imposed with respect to amounts required to be included in income under Section 951(a) or Section 951A of the Code.

(b) Allocation of Taxes Relating to Separate Returns. Except as otherwise provided herein:

(i) Spinco shall pay and be responsible for any and all Taxes due with respect to or required to be reported on any Spinco Separate Return (including any increase in such Taxes as a result of a Final Determination) for all Tax Periods.

(ii) WDC shall pay and be responsible for any and all Taxes due with respect to or required to be reported on any WDC Separate Return (including any increase in such Taxes as a result of a Final Determination) for all Tax Periods.

(c) In the case of any Joint Return for any Straddle Period:

(i) The amount of any Tax with respect to such Straddle Period that is based on or measured by income, sales, use, receipts, or other similar items shall be allocated between the Pre-Distribution Period and Post-Distribution Period based on the Closing of the Books Method.

(ii) The amount of any Tax with respect to a Straddle Period other than Taxes described in Section 2.2(c)(i) shall be allocated between the Pre-Distribution Period and the Post-Distribution Period by multiplying the total amount of such Tax for the entire Straddle Period by a fraction, the numerator of which is the number of calendar days in the Straddle Period ending on, and including, the Distribution Date, and the denominator of which is the number of calendar days in the entire Straddle Period, and allocating the result to the Pre-Distribution Period and the remainder of such Tax to the Post-Distribution Period.

(d) The amount of Taxes allocable to Spinco or WDC pursuant to Section 2.1(a) with respect to any Joint Return for any Tax Period shall not be less than zero. For the avoidance of doubt, WDC shall not be required to make any payment to Spinco, nor shall Spinco be required to make any payment to WDC, to the extent that Tax Items of a member of the WDC Group or of the Spinco Group, as the case may be, may reduce the aggregate Taxes owed with respect to any Joint Return.

(e) Taxes described on Exhibit A shall be allocable among WDC and Spinco in the manner set forth therein.

2.2 Certain Transaction Taxes. Notwithstanding the provisions set forth in Sections 2.1, (i) Spinco shall pay and be responsible for any Transaction Taxes resulting from or attributable to a Reverse Carve-Out Transaction, and (ii) WDC shall pay and be responsible for all other Transaction Taxes.

2.3 Allocation of Employment Taxes. Liability for Employment Taxes shall be determined pursuant to the Employee Matters Agreement.

2.4 Tax Refunds.

(a) To the extent that a Party is allocated the liability for a given Tax pursuant to Exhibit A, such Party shall be entitled to any Refunds arising in a Pre-Distribution Period directly or indirectly from the Adjustment giving rise to the liability for such Tax, computed on a "with and without" basis.

(b) Except as set forth in Section 2.4(a), WDC shall be entitled to all Refunds of Taxes the liability for which is allocated to WDC pursuant to this Agreement, and Spinco shall be entitled to all Refunds of Taxes the liability for which is allocated to Spinco pursuant to this Agreement. This Section 2.4(b) shall be applied looking solely to the allocation of the Tax for which a Refund is received, regardless of whether an Adjustment to a separate Tax may have impacted the presence or amount of such Refund.

(c) Spinco shall pay to WDC any Refund received by Spinco or any member of the Spinco Group that is allocable to WDC pursuant to this Section 2.4 no later than fifteen (15) Business Days after the receipt of such Refund. WDC shall pay to Spinco any Refund received by WDC or any member of the WDC Group that is allocable to Spinco pursuant to this Section 2.4 no later than fifteen (15) Business Days after the receipt of such Refund. For purposes of this Section 2.4, any Refund that arises as a result of an offset, credit, or other similar benefit in respect of Taxes other than a receipt of cash shall be deemed to be received on the earlier of (i) the date on which a Tax Return is filed claiming such offset, credit, or other similar benefit and (ii) the date on which payment of the Tax which would have otherwise been paid absent such offset, credit, or other similar benefit is due (determined without taking into account any applicable extensions).

(d) In the event that Refund received after the date hereof is later disallowed or reduced in whole or in part, resulting in a Tax liability, such Tax shall be allocated amongst the Parties in the same manner as such underlying Refund was allocated.

2.5 Prior Agreements. Except as set forth in this Agreement and in consideration of the mutual indemnities and other obligations of this Agreement, any and all prior Tax sharing or allocation agreements or practices between any member of the WDC Group and any member of the Spinco Group shall be terminated with respect to the Spinco Group and the WDC Group as of the Distribution Date. No member of either the Spinco Group or the WDC Group shall have any continuing rights or obligations under any such agreement.

## ARTICLE III

## PREPARATION AND FILING OF TAX RETURNS

3.1 WDC's Responsibility. WDC shall prepare and file when due (taking into account any applicable extensions), or shall cause to be prepared and filed, all Joint Returns for which a member of the WDC Group is the common parent and all WDC Separate Returns, including any amended Joint Returns or amended WDC Separate Returns. WDC shall be the "Preparing Party" with respect to Tax Returns described in this Section 3.1.

3.2 Spinco's Responsibility. Spinco shall prepare and file when due (taking into account any applicable extensions), or shall cause to be prepared and filed, all Tax Returns required to be filed by or with respect to members of the Spinco Group other than those Tax Returns which WDC is required to prepare and file under Section 3.1, including any amended Tax Returns. Spinco shall be the "Preparing Party" with respect to Tax Returns described in this Section 3.2.

3.3 Right to Review Tax Returns. To the extent that the positions taken on any Tax Return (i) reasonably relate to matters for which the Reviewing Party has an indemnification obligation to the Preparing Party or (ii) would reasonably be expected to materially affect the Tax position of the Reviewing Party, the Preparing Party shall (x) prepare the portions of such Tax Return that relate to such indemnification obligation or Tax position and (y) provide a draft of such portion of such Tax Return to the Reviewing Party for its review and comment at least thirty (30) Business Days prior to the due date for such Tax Return. The Reviewing Party shall thereafter have fifteen (15) Business Days to review such portion of such Tax Return and provide reasonable comments, if any, on such portion of such Tax Return to the Preparing Party, provided, however, that the Reviewing Party shall provide any comments it may have to the Preparing Party no later than two (2) Business Days prior to the due date for such Tax Return (taking into account any applicable extensions). The Parties shall negotiate in good faith to resolve any disputes relating to the review of a Tax Return pursuant to this Section 3.3. Any disputes that the Parties are unable to resolve shall be resolved by the Accounting Firm pursuant to Article IX. In the event that any dispute is not resolved (whether pursuant to good faith negotiations among the Parties or by the Accounting Firm) prior to the due date for the filing of any Tax Return (taking into account any applicable extensions), such Tax Return shall be timely filed by the Preparing Party and the Parties shall amend such Tax Return as necessary to reflect the resolution of such dispute in a manner consistent with such resolution. Notwithstanding the foregoing, in the case of a WDC Consolidated Tax Return, the covenants and obligations set forth in this Section 3.3 shall not apply.

3.4 Cooperation. The Parties shall provide, and shall cause their Affiliates to provide, assistance and cooperation to one another in accordance with Article VII with respect to the preparation and filing of Tax Returns, including providing information required to be provided in Article VIII. Notwithstanding anything to the contrary in this Agreement, WDC shall not be required to disclose to Spinco any consolidated, combined, unitary, or other similar Joint Return of which a member of the WDC Group is the common parent or any information related to such a Joint Return other than information relating solely to the Spinco Group; provided that WDC and Spinco shall each provide such additional information to the other Party as is reasonably required for such other Party to determine the Taxes for which it is liable pursuant to Article II.

3.5 Tax Reporting Practices. Except as provided in Section 3.6 or as otherwise agreed among the Parties, with respect to any Separate Return including matters for which the Reviewing Party has an indemnification obligation to the Preparing Party, such Tax Return shall be prepared in a manner consistent with past practices, accounting methods, elections and conventions ("Past Practices") used with respect to the Tax Returns in question, and to the extent any items are not covered by Past Practices, in accordance with reasonable Tax accounting practices selected by the Preparing Party.

3.6 Reporting of the Transactions. The Tax treatment of any step in or portion of the Internal Restructuring, Spinco Contribution, and Distribution shall be reported on each applicable Tax Return consistently with the Tax-Free Status of the Transactions, taking into account the jurisdiction in which such Tax Returns are filed. If WDC determines, in its sole discretion, that a protective election under Section 336(e) of the Code shall be made with respect to the Distribution, Spinco agrees to take any such action that is necessary to effect such election, including any corresponding election with respect to any of its Subsidiaries, as determined by WDC. If such a protective election is made, this Agreement shall be amended in such a manner as is determined by WDC in its good faith discretion to compensate WDC for any Tax benefits realized by Spinco as a result of such election.

3.7 Payment of Taxes.

(a) With respect to any Tax Return required to be filed pursuant to this Agreement, the Preparing Party shall remit or cause to be remitted to the applicable Taxing Authority in a timely manner any Taxes due in respect of any such Tax Return.

(b) In the case of any Tax Return for which the Party that is not the Preparing Party is obligated pursuant to this Agreement to pay all or a portion of the Taxes reported as due on such Tax Return, the Preparing Party shall notify the other Party, in writing, of its obligation to pay such Taxes and, in reasonably sufficient detail, its calculation of the amount due by such other Party and the Party receiving such notice shall pay such amount to the Preparing Party upon the later of five (5) Business Days prior to the date on which such payment is due and fifteen (15) Business Days after the receipt of such notice.

(c) With respect to any estimated Taxes, the Party that is or will be the Preparing Party with respect to any Tax Return that will reflect (or otherwise give credit for) such estimated Taxes shall remit or cause to be remitted to the applicable Taxing Authority in a timely manner any estimated Taxes due. In the case of any estimated Taxes for which the Party that is not the Preparing Party is obligated pursuant to this Agreement to pay all or a portion of the Taxes that will be reported as due on any Tax Return that will reflect (or otherwise give credit for) such estimated Taxes, the Preparing Party shall notify the other Party, in writing, of its obligation to pay such estimated Taxes and, in reasonably sufficient detail, its calculation of the amount due by such other Party and the Party receiving such notice shall pay such amount to the Preparing Party upon the later of five (5) Business Days prior to the date on which such payment is due and fifteen (15) Business Days after the receipt of such notice.

3.8 Amended Returns and Carrybacks.

(a) Spinco shall not, and shall not permit any member of the Spinco Group to, file or allow to be filed any request for an Adjustment for any Tax Period (or portion thereof) ending on or before the Distribution Date (including for the avoidance of doubt, the portion of any Straddle Period ending at the end of the day on the Distribution Date) without the prior written consent of WDC, such consent to be exercised in WDC's sole discretion.

(b) Spinco shall, and shall cause each member of the Spinco Group to, make any available elections to waive the right to carry back any Tax Attribute (i) from a Tax Period or portion thereof ending after the Distribution Date to a Joint Return in respect of a Tax Period or portion thereof ending on or before the Distribution Date and (ii) from a Tax Period or portion thereof ending after the Distribution Date to a Joint Return in respect of a Tax Period or portion thereof ending on or before the Distribution Date.

(c) Spinco shall not, and shall cause each member of the Spinco Group not to, without the prior written consent of WDC, make any affirmative election to carry back any Tax Attribute (i) from a Tax Period or portion thereof ending after the Distribution Date to a Joint Return in respect of a Tax Period or portion thereof ending on or before the Distribution Date or (ii) from a Tax Period or portion thereof ending after the Distribution Date to a Joint Return in respect of a Tax Period or portion thereof ending on or before the Distribution Date, in each case, such consent to be exercised in WDC's sole discretion.

(d) Receipt of consent by Spinco or a member of the Spinco Group from WDC pursuant to the provisions of thisSection 3.8 shall not limit or modify Spinco's continuing indemnification obligation pursuant to Article V.

3.9 Tax Attributes. WDC shall in good faith advise Spinco in writing of the amount, if any of any Tax Attributes, which WDC determines, in its good faith discretion, shall be allocated or apportioned to the Spinco Group under applicable Law. Spinco and all members of the Spinco Group shall prepare all Tax Returns in accordance with such written notice. Spinco agrees that it shall not dispute WDC's allocation or apportionment of Tax Attributes. For the avoidance of doubt, WDC shall not be required to create or cause to be created any books and records or reports or other documents based thereon (including, without limitation, "earnings & profits studies," "basis studies" or similar determinations) that it does not maintain or prepare in the ordinary course of business in order to comply with this Section 3.9.

## ARTICLE IV

## TAX-FREE STATUS OF THE DISTRIBUTION

4.1 Representations and Warranties.

(a) WDC, on behalf of itself and all other members of the WDC Group, hereby represents and warrants that (i) it has examined the Tax Opinion, the Tax Certificates, the Separation Plan, and any other materials delivered or deliverable in connection with the rendering of the Tax Opinion (collectively, the "Tax Materials") and (ii) the facts presented and representations that have been or will be made therein, to the extent descriptive of or otherwise relating to WDC or any member of the WDC Group or the Non-Flash Business, were or will be, at the time presented or represented and from such time until and including the Distribution Date, true, correct, and complete in all material respects. WDC, on behalf of itself and all other members of the WDC Group, hereby confirms and agrees to comply with any and all covenants and agreements in the Tax Materials applicable to WDC or any member of the WDC Group or the Non-Flash Business.

(b) Spinco, on behalf of itself and all other members of the Spinco Group, hereby represents and warrants that (i) it has examined the Tax Materials and (ii) the facts presented and representations that have been or will be made therein, to the extent descriptive of or otherwise relating to Spinco or any member of the Spinco Group or the Flash Business, were or will be, at the time presented or represented and from such time until and including the Distribution Date, true, correct, and complete in all material respects. Spinco, on behalf of itself and all other members of the Spinco Group, hereby confirms and agrees to comply with any and all covenants and agreements in the Tax Materials applicable to Spinco or any member of the Spinco Group or the Flash Business.

(c) Each of WDC, on behalf of itself and all other members of the WDC Group, and Spinco, on behalf of itself and all other members of the Spinco Group represents and warrants that it knows of no fact (after due inquiry) that may cause the Tax treatment of the Internal Restructuring, Spinco Contribution or Distribution to be other than the Tax-Free Status of the Transactions.

(d) Each of WDC, on behalf of itself and all other members of the WDC Group, and Spinco, on behalf of itself and all other members of the Spinco Group represents and warrants that it has no plan or intent to take any action which is inconsistent with any statements or representations made in the Tax Materials.

4.2 Restrictions Relating to the Distribution .

(a) Spinco, on behalf of itself and all other members of the Spinco Group, hereby covenants and agrees that no member of the Spinco Group will take, fail to take, or permit to be taken: (i) any action where such action or failure to act would be inconsistent with or cause to be untrue any statement, information, covenant or representation in the Tax Materials or (ii) any action which constitutes a Spinco Disqualifying Action.

(b) During the Restricted Period, Spinco:

(i) shall continue and cause to be continued the Active Trade or Business, taking into account Section 355(b)(3) of the Code, as conducted immediately prior to the Distribution;

(ii) shall not voluntarily dissolve or liquidate itself (including any action that is a liquidation for U.S. federal income tax purposes);

(iii) shall not (1) enter into any Proposed Acquisition Transaction or, to the extent Spinco has the right to prohibit any Proposed Acquisition Transaction, permit any Proposed Acquisition Transaction to occur, (2) redeem or otherwise repurchase (directly or through an Affiliate) any stock, or rights to acquire stock except to the extent such repurchases satisfy Section 4.05(1)(b) of Revenue Procedure 96-30 (as in effect prior to the amendment of such Revenue Procedure by Revenue Procedure 2003-48), (3) amend its certificate of incorporation (or other organizational documents), or take any other action, whether through a stockholder vote or otherwise, affecting the relative voting rights of its capital stock (including through the conversion of any capital stock into another class of capital stock), (4) merge or consolidate with any other Person or

(5) take any other action or actions (including any action or transaction that would be reasonably likely to be inconsistent with any representation made in the Tax Certificates) which in the aggregate would, when combined with any other direct or indirect changes in ownership of Spinco capital stock pertinent for purposes of Section 355(e) of the Code, have the effect of causing or permitting one or more Persons (whether or not acting in concert) to acquire directly or indirectly stock representing a fifty-percent or greater interest in Spinco or would reasonably be expected to result in a failure to preserve the Tax-Free Status of the Transactions;

(iv) shall not and shall not permit any member of the Spinco Group, to sell, transfer, or otherwise dispose of or agree to, sell, transfer or otherwise dispose (including in any transaction treated for federal income tax purposes as a sale, transfer or disposition) of assets (including, any shares of capital stock of a Subsidiary) that, in the aggregate, constitute more than 20% of the consolidated gross assets of Spinco or the Spinco Group. The foregoing sentence shall not apply to (1) sales, transfers, or dispositions of assets in the ordinary course of business, (2) any cash paid to acquire assets from an unrelated Person in an arm's-length transaction, (3) any assets transferred to a Person that is disregarded as an entity separate from the transferor for federal income tax purposes or (4) any mandatory or optional repayment (or pre-payment) of any indebtedness of Spinco or any member of the Spinco Group. The percentages of gross assets or consolidated gross assets of Spinco or the Spinco Group, as the case may be, sold, transferred, or otherwise disposed of, shall be based on the fair market value of the gross assets of Spinco and the members of the Spinco Group as of the Distribution Date. For purposes of this Section 4.2(b)(iv), a merger of Spinco or one of its Subsidiaries with and into any Person that is not a wholly owned Subsidiary of Spinco shall constitute a disposition of all of the assets of Spinco or such Subsidiary; and

(v) shall not take, and shall not permit any Affiliate to take, any action in violation of the restrictions set forth onExhibit B.

(c) Notwithstanding the restrictions imposed by Sections 4.2(a) and 4.2(b), Spinco or a member of the Spinco Group may take any of the actions or transactions described therein if Spinco either (i) obtains an Unqualified Tax Opinion or Post-Distribution Ruling, in each case, in form and substance reasonably satisfactory to WDC or (ii) obtains the prior written consent of WDC waiving the requirement that Spinco obtain an Unqualified Tax Opinion or Post-Distribution Ruling, such waiver to be provided in WDC's sole and absolute discretion. WDC's evaluation of an Unqualified Tax Opinion or Post-Distribution Ruling may consider, among other factors, the appropriateness of any underlying assumptions, representations, and covenants made in connection with such opinion. Spinco shall bear all costs and expenses of securing any such Unqualified Tax Opinion or Post-Distribution Ruling and shall reimburse WDC for all reasonable out-of-pocket expenses that WDC or any of its Affiliates may incur in good faith in seeking to obtain or evaluate any such Unqualified Tax Opinion or Post-Distribution Ruling. Neither the delivery of an Unqualified Tax Opinion or Post-Distribution Ruling nor WDC's waiver of Spinco's obligation to deliver an Unqualified Tax Opinion or Post-Distribution Ruling shall limit or modify Spinco's continuing indemnification obligation pursuant to Article V.

## ARTICLE V

## INDEMNITY OBLIGATIONS

5.1 Indemnity Obligations.

(a) WDC shall indemnify and hold harmless Spinco from and against, and will reimburse Spinco for, without duplication: (i) all liability for Taxes allocated to WDC pursuant to Article II, together with WDC' allocable portion of all accounting, legal and other professional fees, and court costs incurred in connection with such Taxes or any other out-of-pocket costs incurred in connection with such Taxes, (ii) all Taxes andTax-Related Losses arising out of, based upon, or relating or attributable to any breach of or inaccuracy in, or failure to perform, as applicable, any representation, covenant, or obligation of any member of the WDC Group pursuant to this Agreement, (iii) the amount of any Refund received by any member of the WDC Group that is allocated to Spinco pursuant to Section 2.4(a) and (iv) any Distribution Taxes and Tax-Related Losses, except to the extent attributable to a Spinco Disqualifying Action.

(b) Spinco shall indemnify and hold harmless WDC from and against, and will reimburse WDC for, without duplication: (i) all liability for Taxes allocated to Spinco pursuant to Article II, together with Spinco's allocable portion of all accounting, legal and other professional fees, and court costs incurred in connection with such Taxes or any other out-of-pocket costs incurred in connection with such Taxes, (ii) all Taxes andTax-Related Losses arising out of, based upon, or relating or attributable to any breach of or inaccuracy in, or failure to perform, as applicable, any representation, covenant, or obligation of any member of the Spinco Group pursuant to this Agreement, (iii) the amount of any Refund received by any member of the Spinco Group that is allocated to WDC pursuant to Section 2.4(a) and (iv) any Distribution Taxes and Tax-Related Losses attributable to a Spinco Disqualifying Action (regardless of whether the conditions set forth in Section 4.2(c) are satisfied).

(c) To the extent that any Tax orTax-Related Loss is subject to indemnity pursuant to both Sections 5.1(a) and 5.1(b), responsibility for such Tax or Tax-Related Loss shall be shared by WDC and Spinco according to relative fault. For purposes ofSection 5.1(a)(i) and Section 5.1(b)(i), a Party's allocable portion of fees or costs shall be equal to the percentage allocation of the underlying Tax to such Party under Article II.

5.2 Indemnification Payments.

(a) Except as otherwise provided in this Agreement, if either Party (the "Indemnitee") is required to pay to a Taxing Authority a Tax or to another Person a payment in respect of a Tax that the other Party (the "Indemnifying Party") is liable for under this Agreement, including as the result of a Final Determination, the Indemnitee shall notify the Indemnifying Party, in writing, of its obligation to pay such Tax and, in reasonably sufficient detail, its calculation of the amount due by such Indemnifying Party to the Indemnitee, including any Tax-Related Losses attributable thereto. The Indemnifying Party shall pay such amount, including any Tax-Related Losses attributable thereto, to the Indemnitee no later than the later of (i) five (5) Business Days prior to the date on which such payment is due to the applicable Taxing Authority or (ii) fifteen (15) Business Days after the receipt of notice from the other Party.

(b) If, as a result of any change or redetermination made with respect to Sections 2.1 or 2.2, any amount previously allocated to and borne by one Party pursuant to the provisions of Article II is thereafter allocated to the other Party, then, no later than fifteen (15) Business Days after such change or redetermination, such other Party shall pay to such Party the amount previously borne by such Party which is allocated to such other Party as a result of such change or redetermination.

5.3 Payment Mechanics.

(a) All payments under this Agreement shall be made by WDC directly to Spinco and by Spinco directly to WDC; provided, however, that if the Parties mutually agree with respect to any such indemnification payment, any member of the WDC Group, on the one hand, may make such indemnification payment to any member of the Spinco Group, on the other hand, and vice versa. All indemnification payments shall be treated in the manner described in Section 5.4.

(b) In the case of any payment of Taxes made by a Preparing Party or Indemnitee pursuant to this Agreement for which such Preparing Party or Indemnitee, as the case may be, has received a payment from the other Party, such Preparing Party or Indemnitee shall provide to the other Party a copy of any official government receipt received with respect to the payment of such Taxes to the applicable Taxing Authority (or, if no such official governmental receipts are available, executed bank payment forms or other reasonable evidence of payment).

5.4 Treatment of Payments. In the absence of any change in Tax treatment under the Code or except as otherwise required by other applicable Tax Law, any Tax indemnity payments made under this Agreement shall be reported for Tax purposes by the payor and the recipient as distributions or capital contributions, as appropriate, occurring immediately before the Distribution (but only to the extent the payment does not relate to a Tax allocated to the payor in accordance with Section 1552 of the Code or the Treasury Regulations thereunder or Treasury Regulation Section 1.1502-33(d) (or under corresponding principles of other applicable Tax Laws)) or as payments of an assumed or retained liability. Any Tax indemnity payment made under this Agreement shall be increased as necessary so that after making all payments in respect to Taxes imposed on or attributable to such indemnity payment, the recipient receives an amount equal to the sum it would have received had no such Taxes been imposed.

## ARTICLE VI

## TAX CONTESTS

6.1 Notice. Each Party shall notify the other Party in writing within fifteen (15) days after receipt by such Party or any member of its Group of a written communication from any Taxing Authority with respect to any pending or threatened audit, claim, dispute, suit, action, proposed assessment or other proceeding (a "Tax Contest") concerning any Taxes for which the other Party may be liable pursuant to this Agreement, and thereafter shall promptly forward or make available to such Party copies of notices and communications relating to such Tax Contest.

6.2 Separate Returns. In the case of any Tax Contest with respect to any Separate Return, the Party having the liability pursuant to Article II hereof for the Tax that is the subject of such Tax Contest shall have the sole responsibility and right to control the prosecution of such Tax Contest, including the exclusive right to communicate with agents of the applicable Taxing Authority and to control, resolve, settle, or agree to any deficiency, claim, or adjustment proposed, asserted, or assessed in connection with or as a result of such Tax Contest.

6.3 Joint Returns. Subject to Section 6.6, in the case of any Tax Contest with respect to any Joint Return, (a) WDC shall have the sole responsibility and right to control the prosecution of such Tax Contest to the extent it relates to a Joint Return for which a member of the WDC Group is the common parent and (b) Spinco shall have the sole responsibility and right to control the prosecution of such Tax Contest to the extent it relates to a Joint Return for which a member of the Spinco Group is the common parent, in each case, including the exclusive right to communicate with agents of the applicable Taxing Authority and to control, resolve, settle, or agree to any deficiency, claim, or adjustment proposed, asserted, or assessed in connection with or as a result of such Tax Contest.

6.4 Tax Contests Related to the Tax-Free Status of the Transactions. Notwithstanding Section 6.2 or Section 6.3, WDC shall have the sole responsibility and right to control the prosecution of any Tax Contest that relates to the Tax-Free Status of the Transactions (each, a "Tax-Free Status Tax Contest").

6.5 Obligation of Continued Notice. During the pendency of any Tax Contest or threatened Tax Contest, each of the Parties shall provide prompt notice to the other Party of any written communication received by it or a member of its respective Group from a Taxing Authority regarding any Tax Contest for which it is indemnified by the other Party hereunder or for which it may be required to indemnify the other Party hereunder. Such notice shall attach copies of the pertinent portion of any written communication from a Taxing Authority and contain factual information (to the extent known) describing any asserted Tax liability in reasonable detail and shall be accompanied by copies of any notice and other documents received from any Taxing Authority in respect of any such matters. Such notice shall be provided in a reasonably timely fashion; provided, however, that in the event that timely notice is not provided, a Party shall be relieved of its obligation to indemnify the other Party only to the extent that such delay results in actual increased costs or actual prejudice to such other Party.

6.6 Settlement Rights. Notwithstanding anything herein to the contrary, unless waived by the Parties in writing, in connection with any potential adjustment in a Tax Contest as a result of which adjustment the Non-Controlling Party may reasonably be expected to become liable to make any indemnification payment to the Controlling Party under this Agreement: (i) the Controlling Party shall keep the Non-Controlling Party informed in a timely manner of all actions taken or proposed to be taken by the Controlling Party with respect to such potential adjustment in such Tax Contest; (ii) the Controlling Party shall timely provide the Non-Controlling Party with copies of any correspondence or filings submitted to any Tax Authority or judicial authority in connection with such potential adjustment in such Tax Contest; (iii) the

Controlling Party shall defend such Tax Contest diligently and in good faith; (iv) the Controlling Party shall consult with the Non-Controlling Party and offer the Non-Controlling Party a reasonable opportunity to comment before submitting any written materials prepared or furnished in connection with such potential adjustment in such Tax Contest; and (v) the Controlling Party shall not settle such Tax Contest without the Non-Controlling Party's prior written consent (such consent not to be unreasonably withheld, conditioned or delayed). In the case of a Tax-Free Status Tax Contest, Spinco (at its sole expense) shall have the right to attend, any formally scheduled meetings with Tax Authorities or hearings or proceedings before any judicial authorities in connection with any potential adjustment in a Tax-Free Status Tax Contest pursuant to which the Spinco may reasonably be expected to become liable to make any indemnification payment to WDC under this Agreement. The failure of the Controlling Party to take any action specified in the preceding sentence with respect to the Non-Controlling Party shall not relieve the Non-Controlling Party of any liability and/or obligation which it may have to the Controlling Party under this Agreement except to the extent that the Non-Controlling Party was actually harmed by such failure, and in no event shall such failure relieve the Non-Controlling Party from any other liability or obligation which it may have to the Controlling Party.

## ARTICLE VII

## COOPERATION

7.1 General.

(a) Each Party shall fully cooperate, and shall cause all members of such Party's Group to fully cooperate, with all reasonable requests in writing from the other Party, or from an agent, representative or advisor to such Party, in connection with the preparation and filing of any Tax Return, claims for Refunds, the conduct of any Tax Contest, and calculations of amounts required to be paid pursuant to this Agreement, in each case, related or attributable to or arising in connection with Taxes of either Party or any member of either Party's Group covered by this Agreement and the establishment of any reserve required in connection with any financial reporting (a "Tax Matter"). Such cooperation shall include the provision of any information reasonably necessary or helpful in connection with a Tax Matter and shall include, without limitation, at each Party's own cost:

(i) the provision of any Tax Returns of either Party or any member of either Party's Group, books, records (including information regarding ownership and Tax basis of property), documentation and other information relating to such Tax Returns, including accompanying schedules, related work papers, and documents relating to rulings or other determinations by Taxing Authorities;

(ii) the execution of any document (including any power of attorney) in connection with any Tax Contest of either Party or any member of either Party's Group, or the filing of a Tax Return or a Refund claim of either Party or any member of either Party's Group;

(iii) the use of the Party's reasonable best efforts to obtain any documentation in connection with a Tax Matter; and

(iv) the use of the Party's reasonable best efforts to obtain any Tax Returns (including accompanying schedules, related work papers, and documents), documents, books, records or other information in connection with the filing of any Tax Returns of any of either Party or any member of either Party's Group.

Each Party shall make its employees and facilities available, without charge, on a mutually convenient basis to facilitate such cooperation. In the event that a member of the WDC Group, on the one hand, or a member of the Spinco Group, on the other hand, suffers a Tax detriment as a result of a Transfer Pricing Adjustment, the Parties shall cooperate pursuant to this Section 7 to seek any competent authority relief that may be available with respect to such Transfer Pricing Adjustment.

7.2 Consistent Treatment. Unless and until there has been a Final Determination to the contrary, each Party agrees not to take any position on any Tax Return, in connection with any Tax Contest or otherwise that is inconsistent with (a) the treatment of payments between the WDC Group and the Spinco Group as set forth in Section 5.4, or (b) the Tax-Free Status of the Transactions.

## ARTICLE VIII

## RETENTION OF RECORDS; ACCESS

8.1 Retention of Records. For so long as the contents thereof may become material in the administration of any matter under applicable Tax Law, but in any event until the later of (i) sixty (60) days after the expiration of any applicable statutes of limitation (including any waivers or extensions thereof) and (ii) seven years after the Distribution Date, the Parties shall retain records, documents, accounting data and other information (including computer data) necessary for the preparation and filing of all Tax Returns (collectively, "Tax Records") in respect of Taxes of any member of either the WDC Group or the Spinco Group for any Pre-Distribution Period, Straddle Period, or Post-Distribution Period or for any Tax Contests relating to such Tax Returns. At any time after the Distribution Date that the WDC Group proposes to destroy such records or documents, it shall first notify the Spinco Group in writing and the Spinco Group shall be entitled to receive such records or documents proposed to be destroyed. At any time after the Distribution Date that the Spinco Group proposes to destroy such records or documents, it shall first notify the WDC Group in writing and the WDC Group shall be entitled to receive such records or documents proposed to be destroyed. The Parties will notify each other in writing of any waivers or extensions of the applicable statute of limitations that may affect the period for which the foregoing records or other documents must be retained.

8.2 Access to Tax Records. The Parties and their respective Affiliates shall make available to each other for inspection and copying during normal business hours upon reasonable notice all Tax Records (and, for the avoidance of doubt, any pertinent underlying data accessed or stored on any computer program or information technology system) in their possession and shall permit the other Party and its Affiliates, authorized agents and representatives and any

representative of a Taxing Authority or other Tax auditor direct access, during normal business hours upon reasonable notice to any computer program or information technology system used to access or store any Tax Records, in each case to the extent reasonably required by the other Party in connection with the preparation of Tax Returns or financial accounting statements, audits, litigation, or the resolution of items pursuant to this Agreement. The Party seeking access to the records of the other Party shall bear all costs and expenses associated with such access, including any professional fees.

## ARTICLE IX

## DISPUTE RESOLUTION

In the event of any dispute between the Parties as to any matter covered by this Agreement, the Parties shall appoint a nationally recognized independent public accounting firm (the "Accounting Firm") to resolve such dispute. In this regard, the Accounting Firm shall make determinations with respect to the disputed items based solely on representations made by WDC and Spinco and their respective representatives, and not by independent review, and shall function only as an expert and not as an arbitrator and shall be required to make a determination in favor of one Party only. The Parties shall require the Accounting Firm to resolve all disputes no later than thirty (30) days after the submission of such dispute to the Accounting Firm, but in no event later than the due date for the payment of Taxes or the filing of the applicable Tax Return, if applicable, and agree that all decisions by the Accounting Firm with respect thereto shall be final and conclusive and binding on the Parties. The Accounting Firm shall resolve all disputes in a manner consistent with this Agreement and, to the extent not inconsistent with this Agreement, in a manner consistent with the Past Practices of WDC and its Subsidiaries, except as otherwise required by applicable Law. The Parties shall require the Accounting Firm to render all determinations in writing and to set forth, in reasonable detail, the basis for such determination. The fees and expenses of the Accounting Firm shall be borne equally by the Parties.

## ARTICLE X

## MISCELLANEOUS PROVISIONS

10.1 Effective Date. This Agreement shall be effective as of the date hereof. For the avoidance of doubt, this Agreement shall not apply to payments of Taxes (including estimated Taxes) made, or Tax Returns filed, prior to the date hereof, except as expressly set forth herein.

10.2 Entire Agreement. This Agreement, including any exhibits and amendments hereto, and the other agreements and documents expressly referred to herein, shall together constitute the entire agreement among the Parties with respect to the subject matter hereof and thereof and shall supersede all prior negotiations, agreements and understandings, both written and oral, among or between any of the Parties with respect to such subject matter hereof.

10.3 Governing Law. This Agreement and the consummation of the Transactions, and any Action (whether at law, in contract, in tort or otherwise) arising out of or relating to this Agreement and the consummation of the Transactions, or the negotiation, validity, interpretation, performance, breach or termination of this Agreement and the consummation of the Transactions, shall be governed by and construed in accordance with the internal law of the State of Delaware, regardless of the law that might otherwise govern under applicable principles of conflicts of law thereof.

10.4 Specific Performance; Jurisdiction.

(a) Except as otherwise provided herein, any and all remedies herein expressly conferred upon a Party shall be deemed cumulative with and not exclusive of any other remedy conferred hereby, or by law or equity upon such party, and the exercise by a Party of any one remedy shall not preclude the exercise of any other remedy. Nothing in this Agreement shall be deemed a waiver by any Party of any right to specific performance or injunctive relief. The Parties understand and agree that the covenants and agreements on each of their parts herein contained are uniquely related to the desire of the Parties and their respective Affiliates to consummate the Transactions, that the Transactions are a unique business opportunity at a unique time for each of WDC and Spinco and their respective Affiliates, and further agree that irreparable damage would occur in the event that any provision of this Agreement were not performed in accordance with its specific terms, and further agree that, although monetary damages may be available for the breach of such covenants and agreements, monetary damages would be an inadequate remedy therefor. It is accordingly agreed that, in addition to any other remedy that may be available to it, including monetary damages, each of the Parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement exclusively in the Delaware Court of Chancery and any state appellate court therefrom within the State of Delaware (or, if the Delaware Court of Chancery declines to accept jurisdiction over a particular matter, any state or federal court within the State of Delaware). Each of the Parties further agrees that no Party shall be required to obtain, furnish or post any bond or similar instrument in connection with or as a condition to obtaining any remedy referred to in this Section 9.4 and each Party waives any objection to the imposition of such relief or any right it may have to require the obtaining, furnishing or posting of any such bond or similar instrument.

(b) Each of the Parties irrevocably agrees that, subject (except in the case of any legal action or proceeding seeking specific performance) to prior compliance with Article IX, any legal action or proceeding with respect to this Agreement and the rights and obligations arising hereunder, or for recognition and enforcement of any judgment in respect of this Agreement and the rights and obligations arising hereunder, brought by any other Party or its successors or assigns, shall be brought and determined exclusively in the Delaware Court of Chancery and any state appellate court therefrom within the State of Delaware (or, if the Delaware Court of Chancery declines to accept jurisdiction over a particular matter, any state or federal court within the State of Delaware). Each of the Parties hereby irrevocably submits with regard to any such action or proceeding for itself and in respect of its property, generally and unconditionally, to the personal jurisdiction of the aforesaid courts and agrees that it will not bring any action relating to this Agreement or any of the transactions contemplated by this Agreement in any court other than the aforesaid courts. Each of the Parties hereby irrevocably waives, and agrees not to assert, by way of motion, as a defense, counterclaim or otherwise, in any action or proceeding with respect to this Agreement: (i) any claim that it is not personally subject to the jurisdiction of the above named courts for any reason other than the failure to serve

in accordance with this Section 10.4; (ii) any claim that it or its property is exempt or immune from jurisdiction of any such court or from any legal process commenced in such courts (whether through service of notice, attachment prior to judgment, attachment in aid of execution of judgment, execution of judgment or otherwise); and (iii) to the fullest extent permitted by the applicable Law, any claim that: (x) the suit, action or proceeding in such court is brought in an inconvenient forum; (y) the venue of such suit, action or proceeding is improper; or (z) this Agreement, or the subject matter hereof, may not be enforced in or by such courts (other than by reason of, except in the case of any action or proceeding for specific performance, needing to first comply with the provisions of Article IX). In the event that any suit or action is instituted to enforce any provision in this Agreement, the prevailing Party in such dispute shall be entitled to recover from the losing Party all fees, costs and expenses of enforcing any right of such prevailing Party under or with respect to this Agreement, including, without limitation, such reasonable fees and expenses of attorneys and accountants, which shall include, without limitation, all fees, costs and expenses of appeals. The Parties agree that service of any court paper may be made in any manner as may be provided under the applicable Laws or court rules governing service of process in such court. The Parties agree that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by applicable Law.

10.5 Waiver of Jury Trial. EACH OF THE PARTIES IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY ACTION OR LEGAL PROCEEDING (WHETHER AT LAW, IN CONTRACT, IN TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

10.6 Notices. All notices and other communications hereunder shall be in writing and shall be deemed duly delivered: (a) four (4) Business Days after being sent by registered or certified mail, return receipt requested, postage prepaid; (b) one (1) Business Day after being sent for next Business Day delivery, fees prepaid, via a reputable nationwide overnight courier service; (c) if sent by email transmission prior to 6:00 p.m. recipient's local time, upon transmission when receipt is confirmed; or (d) if sent by email transmission after 6:00 p.m. recipient's local time, the Business Day following the date of transmission when receipt is confirmed:

(a) If to WDC:

c/o Western Digital Corporation
[Address]
Attn: **[•]**
Email: **[•]**

(b) If to Spinco:

c/o Sandisk Corporation
[Address]
Attn: **[•]**
Email: **[•]**

10.7 Amendments and Waivers.

(a) This Agreement may be amended or supplemented in any and all respects and any provision of this Agreement may be waived and any such waiver shall be binding upon a Party, only if such waiver is set forth in a writing executed by such waiving Party bound thereby, and any such amendment or supplement shall be effective only if set forth in a writing executed by each of the Parties; and any such waiver, amendment or supplement shall not be applicable or have any effect except in the specific instance in which it is given. No course of dealing between or among any Persons having any interest in this Agreement shall be deemed effective to modify, amend or discharge any part of this Agreement or any rights or obligations of any Party under or by reason of this Agreement.

(b) Notwithstanding the foregoing, no failure on the part of any Party to exercise any power, right, privilege or remedy under this Agreement, and no delay on the part of any Party in exercising any power, right, privilege or remedy under this Agreement, shall operate as a waiver of such power, right, privilege or remedy; and no single or partial exercise of any such power, right, privilege or remedy shall preclude any other or further exercise thereof or of any other power, right, privilege or remedy. The rights and remedies hereunder are cumulative and not exclusive of any rights or remedies that any Party would otherwise have. Any waiver, permit, consent or approval of any kind or character of any breach or default under this Agreement or any such waiver of any provision of this Agreement must satisfy the conditions set forth in Section 10.7(a) and shall be effective only to the extent in such writing specifically set forth.

10.8 Termination. This Agreement shall terminate without further action upon termination of the Separation Agreement. If so terminated, no Party shall have any Liability of any kind to the other Parties or any other Person on account of this Agreement, except as provided in the Separation Agreement.

10.9 No Third-Party Beneficiaries. Except as specifically provided in the Separation Agreement or any Ancillary Agreement, this Agreement is solely for the benefit of the Parties and their respective successors and permitted assigns and is not intended, and shall not be deemed, to (a) create any agreement of employment with any person, (b) confer on third parties (including any employees of the Parties and their respective Groups) any remedy, claim, reimbursement, claim of action or other right in addition to those existing without reference to this Agreement, or (c) otherwise create any third-party beneficiary hereto.

10.10 Assignability; Binding Effect. This Agreement shall be binding upon, and shall be enforceable by and inure solely to the benefit of, the Parties and their respective successors and permitted assigns; provided, however, that neither this Agreement nor any Party's rights, interests or obligations hereunder may be assigned or delegated by any such Party, in whole or in part (whether by operation of law or otherwise), without the prior written consent of the other Party, and any attempted assignment or delegation of this Agreement or any of such rights or obligations by any Party without the prior written consent of the other Party shall be void and of no effect. Except as set forth in Section 10.9, nothing in this Agreement, express or implied, is intended to or shall confer upon any Person (other than the Parties and their permitted successors and assigns) any power, right, privilege or remedy of any nature whatsoever under or by reason of this Agreement.

10.11 Survival. The representations, warranties, covenants, and agreements set forth in this Agreement shall be unconditional and absolute and shall remain in effect without limitation as to time.

10.12 Construction.

(a) For purposes of this Agreement, whenever the context requires: (i) the singular number shall include the plural, and vice versa; (ii) the masculine gender shall include the feminine and neuter genders; (iii) the feminine gender shall include the masculine and neuter genders; and (iv) the neuter gender shall include masculine and feminine genders.

(b) The Parties agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting Party shall not be applied in the construction or interpretation of this Agreement.

(c) As used in this Agreement, the words “include” and “including,” and variations thereof, shall not be deemed to be terms of limitation, but rather shall be deemed to be followed by the words “without limitation.”

(d) As used in this Agreement, the words “hereof,” “herein,” “hereto” and “hereunder” and words of similar import shall refer to this Agreement as a whole and not to any particular provision of this Agreement.

(e) The measure of a period of one (1) month or year for purposes of this Agreement will be the date of the following month or year corresponding to the starting date; and, if no corresponding date exists, then the end date of such period being measured will be the next actual date of the following month or year (for example, one month following February 18 is March 18 and one month following March 31 is May 1).

(f) As used in this Agreement, the word “extent” in the phrase “to the extent” shall mean the degree to which a subject or other thing extends, and such phrase shall not mean simply “if.”

(g) As used in this Agreement, the word “will” shall be deemed to have the same meaning and effect as the word “shall.”

(h) As used in this Agreement, the terms “or,” “any” or “either” are not exclusive and shall be deemed to be “and/or.”

(i) As used in this Agreement, references to “written” or “in writing” include in electronic form.

(j) As used in this Agreement, references to the “date hereof” are to the date of this Agreement.

(k) Except as otherwise indicated, all references in this Agreement to "Sections," "Exhibits" and "Schedules" are intended to refer to Sections of this Agreement and Exhibits or Schedules to this Agreement.

(l) The table of contents and the section and other headings and subheadings contained in this Agreement and the Exhibits hereto are for convenience of reference only, shall not be deemed to be a part of this Agreement and shall not be referred to in connection with the construction, meaning or interpretation of this Agreement. The preamble and the recitals set forth at the beginning of this Agreement are incorporated by reference into and made a part of this Agreement.

(m) Any payment to be made pursuant hereto shall be made in U.S. dollars and by wire transfer of immediately available funds.

(n) As used in this Agreement, references to "U.S. dollars" and "$" in this report are to the lawful currency of the United States of America.

10.13 Severability. Any term or provision of this Agreement which is invalid or unenforceable in any situation in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement in any other jurisdiction or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction. If any provision of this Agreement is so broad as to be unenforceable, such provision shall be interpreted to be only so broad as is enforceable. If a final judgment of a court of competent jurisdiction declares that any term or provision of this Agreement is invalid or unenforceable, the Parties agree that the court making such determination shall have the power to limit such term or provision, to delete specific words or phrases or to replace such term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision, and this Agreement shall be valid and enforceable as so modified. In the event such court does not exercise the power granted to it in the prior sentence, the Parties agree to replace such invalid or unenforceable term or provision with a valid and enforceable term or provision that will achieve, to the extent possible, the economic, business and other purposes of such invalid or unenforceable term or provision.

10.14 Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument and shall become effective when counterparts have been signed by each of the Parties and delivered to the other Party, it being understood that all Parties need not sign the same counterpart. This Agreement may be executed and delivered by facsimile transmission, by electronic mail in "portable document format" (".pdf") form or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, or by a combination of such means. The exchange of a fully executed Agreement (in counterparts or otherwise) by facsimile or electronic transmission shall be treated in all manner and respects as an original agreement and shall be considered to have the same binding legal effects as if it were the original signed version thereof delivered in person.

At the request of any Party, the other Party shall re-execute original forms thereof and deliver them to the requesting Party. No Party shall raise the use of a facsimile machine or other electronic means to deliver a signature or the fact that any signature was transmitted or communicated through the use of a facsimile machine or other electronic means as a defense to the formation of a contract, and each such Party forever waives any such defense.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement as of the day and year first above written.

Western Digital Corporation

By: _____
Name:
Title:

Sandisk Corporation

By: _____
Name:
Title:

**Exhibit 10.3**

# FORM OF EMPLOYEE MATTERS AGREEMENT

**between**

**WESTERN DIGITAL CORPORATION**

**and**

**SANDISK CORPORATION**

**dated as of**

**[·], 2024**

ARTICLE I

DEFINITIONS AND INTERPRETATION



ARTICLE II

GENERAL PRINCIPLES



ARTICLE III

DEFINED CONTRIBUTION PLANS



ARTICLE IV

HEALTH AND WELFARE PLANS

ARTICLE IX

MISCELLANEOUS



**Schedules**

**EMPLOYEE MATTERS AGREEMENT**

This Employee Matters Agreement (this "Agreement"), dated as of [•], is between Western Digital Corporation, a Delaware corporation ("WDC"), and Sandisk Corporation, a Delaware corporation and wholly owned Subsidiary of WDC ("Spinco") (each a "Party" and together, the "Parties").

R E C I T A L S:

WHEREAS, WDC, directly and indirectly through its wholly owned Subsidiaries, is engaged in the Flash Business;

WHEREAS, the Board of Directors of WDC (the "WDC Board") has determined that it is advisable and in the best interests of WDC and WDC's stockholders to separate the Flash Business from the other businesses of WDC and to divest the Flash Business in the manner contemplated by the Separation and Distribution Agreement, dated as of the date of this Agreement (the "Separation Agreement"), by and among WDC and Spinco; and

WHEREAS, pursuant to the Separation Agreement, the Parties have agreed to enter into this Agreement for the purpose of allocating Assets, Liabilities and responsibilities with respect to certain employee matters and employee compensation and benefit plans and programs between them and to address certain other employment-related matters; provided that, following, and as a result of, the Internal Restructuring and the Spinco Contribution, including the separation of employees and employment-related Assets, it is intended that Spinco, through its wholly owned subsidiaries, will be able to operate and conduct the Flash Business on a standalone basis with sufficient employees.

NOW, THEREFORE, in consideration of the foregoing and the representations, warranties, covenants and agreements contained herein, and intending to be legally bound hereby, the Parties agree as follows:

## ARTICLE I

## DEFINITIONS AND INTERPRETATION

SECTION 1.1 Definitions. Capitalized terms used but not defined herein shall have the meanings assigned to such terms in the Separation Agreement, and the following terms shall have the following meanings:

"Action" has the meaning set forth in the Separation Agreement.

"Affiliate" has the meaning set forth in the Separation Agreement.

"Agreement" has the meaning set forth in the preamble.

"Ancillary Agreements" has the meaning set forth in the Separation Agreement.

"Applicable Exchange" means the securities exchange as may at the applicable time be the principal market for shares of Spinco Common Stock or shares of WDC Common Stock, as applicable.

"Assets" has the meaning set forth in the Separation Agreement.

"Automatic Transfer Employee" means each Automatic Transfer Spinco Employee and each Automatic Transfer WDC Employee.

"Automatic Transfer Spinco Employee" means any Spinco Employee, where local employment Laws, including but not limited to the Transfer Regulations, provide for an automatic transfer of such employee to Spinco or any member of the Spinco Group by operation of Law upon the transfer of a business and such business transfer occurs as a result of the transactions contemplated by the Separation Agreement.

"Automatic Transfer WDC Employee" means any WDC Employee, where local employment Laws, including but not limited to the Transfer Regulations, provide for an automatic transfer of such employee to WDC or any member of the WDC Group by operation of Law upon the transfer of a business and such business transfer occurs as a result of the transactions contemplated by the Separation Agreement.

"Benefit Arrangement" means, with respect to an entity, each Employee Benefit Plan that is sponsored or maintained by such entity (or to which such entity contributes or is required to contribute or in which it participates), and excluding workers' compensation plans, policies, programs and arrangements.

"Business Day" has the meaning set forth in the Separation Agreement. In the event that any action is required or permitted to be taken under this Agreement on or by a date that is not a Business Day, such action may be taken on or by the Business Day immediately following such date.

"Code" means the U.S. Internal Revenue Code of 1986, as amended.

"Collective Bargaining Agreement" means all agreements with the collective bargaining representative, employee representative, labor or trade union, labor or management organization, or works council or similar representative bodies of Spinco Employees including all national or sector specific collective agreements which are applicable to Spinco Employees, in each case in effect immediately prior to the Separation Time that set forth terms and conditions of employment of Spinco Employees, and all modifications of, or amendments to, such agreements and any rules, procedures, awards or decisions of Governmental Authority interpreting or applying such agreements.

"Confidential Information" has the meaning set forth in the Separation Agreement.

"Consents" has the meaning set forth in the Separation Agreement.

"Continuation Period" has the meaning set forth in Section 2.14.

"Contract" has the meaning set forth in the Separation Agreement.

"Delayed Transfer Spinco Employee" means (A) each Spinco Employee who is not able to work because of a serious condition and is receiving long-term disability income replacement benefits from a member of the WDC Group under a WDC Benefit Arrangement; provided, that in no event shall any Automatic Transfer Spinco Employee, or any Non-Automatic Transfer Spinco Employee in the jurisdictions where the transfer of employment is by way of employer substitution, in each case of this clause (y) whose employment transfers to Spinco as of or prior to the Separation Date by operation of applicable Law, be deemed to be a Delayed Transfer Spinco Employee, (B) each Spinco Employee employed in a jurisdiction in which a Spinco Sub capable of serving as the employing entity (including by having set up the operational functions required to employ Spinco Employees in such jurisdiction on the terms contemplated by this Agreement) of such Spinco Employee is unable to be established on or prior to the Separation Date, or (C) each Spinco Employee with respect to whom WDC reasonably believes that it is necessary to delay the transfer for immigration purposes; provided, that an Automatic Transfer Spinco Employee will only be a Delayed Transfer Spinco Employee under clause (B) or (C) above to the extent that applicable Law permits a delay in the transfer of such Automatic Transfer Spinco Employee in such circumstance.

"Delayed Transfer WDC Employee" means (A) each WDC Employee who is not able to work because of a serious condition and is receiving long-term disability income replacement benefits from a member of the Spinco Group under a Spinco Benefit Arrangement; provided, that in no event shall any Automatic Transfer WDC Employee, or any Non-Automatic Transfer WDC Employee in the jurisdictions where the transfer of employment is by way of employer substitution, in each case of this clause (y) whose employment transfers to WDC as of or prior to the Separation Date by operation of applicable Law, be deemed to be a Delayed Transfer WDC Employee, (B) each WDC Employee employed in a jurisdiction in which a Subsidiary of WDC capable of serving as the employing entity (including by having set up the operational functions required to employ WDC Employees in such jurisdiction on the terms contemplated by this Agreement) of such WDC Employee is unable to be established on or prior to the Separation Date, or (C) each WDC Employee with respect to whom Spinco reasonably believes that it is necessary to delay the transfer for immigration purposes; provided, that an Automatic Transfer WDC Employee will only be a Delayed Transfer WDC Employee under clause (B) or (C) above to the extent that applicable Law permits a delay in the transfer of such Automatic Transfer WDC Employee in such circumstance.

"Distribution" has the meaning set forth in the Separation Agreement.

"Distribution Date" has the meaning set forth in the Separation Agreement.

"Dual-Service Director" means any individual who is a non-employee member of each of the Spinco Board and the WDC Board as of the Separation Time.

"Employee Benefit Plan" means each: (i) "employee benefit plan" (within the meaning of Section 3(3) of ERISA, whether or not subject to ERISA), (ii) employment, individual independent contractor, termination, severance, change in control, salary continuation, transaction bonus, retention or other contract or agreement, and (iii) other plan, program, policy,

practice, agreement or other arrangement relating to pension, retirement, supplemental retirement, profit-sharing, bonus, incentive compensation, equity or equity-based compensation, deferred compensation, vacation, sick pay, stock purchase, stock option, phantom equity, restricted stock, severance, supplemental unemployment, welfare, hospitalization or other medical, life, or other insurance, long or short term disability, fringe benefit or any other similar compensation or employee benefits, in each case, whether written or unwritten other than a plan, program, policy, practice, agreement or other arrangement maintained, or required to be maintained or contributed to, by any Governmental Authority.

"Employee Representative" means any works council, employee representative, labor or trade union, labor or management organization, group of employees or similar representative body for Spinco Employees.

"Employment Tax Return" means any return, report, certificate, form or similar statement or document (including any related or supporting information or schedule attached thereto and any information return, amended tax return, claim for refund or declaration of estimated Employment Tax) permitted or required to be supplied to, or filed with, a taxing authority in connection with the determination, assessment or collection of any Employment Tax or the administration of any laws, regulations or administrative requirements relating to any Employment Tax (whether or not a payment is required to be made with respect to such filing).

"Employment Taxes" means any federal, state, local or foreign Taxes, charges, fees, duties, levies, imposts, rates, social security contributions or other assessments or obligations, in each case in the nature of a Tax, imposed on, due or asserted to be due from (i) employees or deemed employees of the WDC Group or employees or deemed employees of the Spinco Group or (ii) the WDC Group or the Spinco Group as employers or deemed employers of such employees, including employers' and employees' portions of Federal Insurance Contributions Act Taxes, employers' Federal Unemployment Tax Act taxes and state and local unemployment insurance taxes, and employers' withholding, reporting and remitting obligations with respect to any such Taxes or employees' federal, state and local income taxes that are imposed on or due from employees or deemed employees of the WDC Group or the Spinco Group.

"ERISA" means the U.S. Employee Retirement Income Security Act of 1974, as amended.

"Excluded Assets" has the meaning set forth in the Separation Agreement.

"Excluded Jurisdiction" means each of China, Israel, Malaysia, the Philippines and Thailand.

"Excluded Liabilities" has the meaning set forth in the Separation Agreement.

"Exercise Date" has the meaning set forth in the WDC ESPP.

"Exercise Period" has the meaning set forth in the WDC ESPP.

"Flash Business" has the meaning set forth in the Separation Agreement.

"Flash Liabilities" has the meaning set forth in the Separation Agreement.

"Former Spinco Employee" means any former employee of the Spinco Group as of the Separation Time (other than a WDC Employee).

"Former WDC Director" means any individual who is a former non-employee member of the WDC Board as of the Separation Time (other than a Spinco Director).

"Former WDC Employee" means any former employee of the WDC Group as of the Separation Time (other than a Spinco Employee).

"Governmental Authority" has the meaning set forth in the Separation Agreement.

"HIPAA" means the Health Insurance Portability and Accountability Act of 1996, as amended.

"Information" has the meaning set forth in the Separation Agreement.

"Intellectual Property Rights" has the meaning set forth in the Separation Agreement.

"Internal Restructuring" has the meaning set forth in the Separation Agreement.

"IRS" means the U.S. Internal Revenue Service.

"Law" has the meaning set forth in the Separation Agreement.

"Liabilities" has the meaning set forth in the Separation Agreement.

"Losses" has the meaning set forth in the Separation Agreement.

"Mid-Year Cash Incentives" has the meaning set forth in Section 7.4(a).

"Non-Automatic Transfer Employee" means each Non-Automatic Transfer Spinco Employee and each Non-Automatic Transfer WDC Employee.

"Non-Automatic Transfer Spinco Employees" means any Spinco Employee who is not an Automatic Transfer Spinco Employee.

"Non-Automatic Transfer WDC Employees" means any WDC Employee who is not an Automatic Transfer WDC Employee.

"Non-Transferred Spinco Employee" means each Spinco Employee who fails to transfer employment to Spinco or a member of the Spinco Group as of the Separation Date or such later date as provided for under this Agreement, and such failure to transfer employment is not the result of any act or omission by Spinco or a member of the Spinco Group, including Spinco's or a member of the Spinco Group's failure to comply with the terms of this Agreement.

"Non-Transferred WDC Employee" means each WDC Employee who fails to transfer employment to WDC or a member of the WDC Group as of the Separation Date or such later date as provided for under this Agreement, and such failure to transfer employment is not the result of any act or omission by WDC or a member of the WDC Group, including WDC's or a member of the WDC Group's failure to comply with the terms of this Agreement.

"Offering Period" has the meaning set forth in the WDC ESPP.

"Participating Company" means WDC or any Person (other than an individual) participating in a WDC Benefit Arrangement.

"Party" or "Parties" has the meaning set forth in the preamble.

"Performance Stock Unit" has the meaning set forth under the WDC Equity Incentive Plans.

"Person" has the meaning set forth in the Separation Agreement.

"Post-Separation Spinco Stock Value" means the simple average of the closing trading price per-share of Spinco Common Stock trading on the Applicable Exchange during each of the first five (5) full Trading Sessions, commencing with the first Trading Session following the Distribution Date, rounded to two (2) decimal places.

"Post-Separation WDC Converted PSU Award" means a WDC PSU Award converted into a time-based restricted stock unit award and adjusted by WDC effective as of the Separation Time in accordance with Section 6.2(b). A Post-Separation WDC Converted PSU Award is a time-based restricted stock unit award as of and after the Separation Time.

"Post-Separation WDC DSU Award" means a WDC DSU Award adjusted by WDC effective as of the Separation Time in accordance with Section 6.3.

"Post-Separation WDC Equity Awards" means Post-Separation WDC Converted PSU Awards, Post-Separation WDC DSU Awards, Post-Separation WDC PSU Awards, and Post-Separation WDC RSU Awards, collectively.

"Post-Separation WDC PSU Award" means a WDC PSU Award adjusted by WDC effective as of the Separation Time in accordance with Section 6.2(a).

"Post-Separation WDC RSU Award" means a WDC RSU Award adjusted by WDC effective as of the Separation Time in accordance with Section 6.1.

"Post-Separation WDC Stock Value" means the simple average of the closing trading price per-share of WDC Common Stock trading on the Applicable Exchange during each of the first five (5) full Trading Sessions, commencing with the first Trading Session following the Distribution Date, rounded to two (2) decimal places.

"Pre-Separation WDC Stock Value" shall mean the closing per-share price of WDC Common Stock trading "regular way with due bills" on the Applicable Exchange on the Trading Session immediately prior to the Distribution Date, rounded to two (2) decimal places.

"Privacy Laws" means the following legislation to the extent applicable from time to time: (a) national laws implementing the Directive on Privacy and Electronic Communications (2002/58/EC); (b) the General Data Protection Regulation (2016/679) (the "GDPR") and any national law supplementing the GDPR; (c) the UK General Data Protection Regulation as defined by the Data Protection Act 2018 as amended by the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (the "UK GDPR"); (d) the California Consumer Privacy Act 2020, Cal. Civ. Code § 1798.100, et seq., (together with any regulations relating thereto) ("CCPA"); and (e) any other data protection or privacy laws, regulations, or regulatory requirements applicable to the processing of personal data (as amended and/or replaced from time to time).

"Privilege" has the meaning set forth in the Separation Agreement.

"Reimbursement" has the meaning set forth in Section 2.2(d).

"Reimbursing Party" has the meaning set forth in Section 2.2(d).

"Remaining Cash Incentives" has the meaning set forth in Section 7.4(C).

"Requesting Party" has the meaning set forth in Section 2.2(d).

"Restricted Stock Unit" has the meaning set forth under the WDC Equity Incentive Plans.

"Retained Welfare Plan" has the meaning set forth in Section 4.1(b).

"Rollover Welfare Plan" has the meaning set forth in Section 4.1(c).

"Separation" has the meaning set forth in the Separation Agreement.

"Separation Agreement" has the meaning set forth in the recitals.

"Separation Date" has the meaning set forth in the Separation Agreement.

"Separation Time" has the meaning set forth in the Separation Agreement.

"Spinco" has the meaning set forth in the preamble.

"Spinco 401(k) Plan" has the meaning set forth in Section 3.1(b).

"Spinco Benefit Arrangement" means any Benefit Arrangement sponsored, maintained or contributed to, or required to be maintained or contributed to, by any member of the Spinco Group effective prior to, as of or following the Separation Time.

"Spinco Board" means the Board of Directors of Spinco.

"Spinco Cash Incentive Plans" has the meaning set forth in Section 7.4(e).

"Spinco Change in Control" has the meaning set forth in Section 6.5(a).

"Spinco Common Stock" means the issued and outstanding shares of common stock, par value $0.01 per share, of Spinco.

"Spinco Contribution" has the meaning set forth in the Separation Agreement.

"Spinco Converted PSU Award" means a WDC PSU Award converted into a time-based restricted stock unit award, assumed, and adjusted by Spinco effective as of the Separation Time in accordance with Section 6.2. A Spinco Converted PSU Award is a time-based restricted stock unit award as of and after the Separation Time.

"Spinco Delayed Transfer Date" means (A) the date that a Delayed Transfer Spinco Employee (within the meaning of clause (A) thereof) returns to active service; provided that such Delayed Transfer Spinco Employee will become a Spinco Employee only if and when such Delayed Transfer Spinco Employee returns to active service for any member of the WDC Group within six (6) months following the Distribution Date or such longer period as required by Law or otherwise agreed to in writing by the Parties; (B) the date a Spinco Sub capable of serving as the employing entity of a Delayed Transfer Spinco Employee (within the meaning of clause (B) thereof) is established in the applicable jurisdiction or such Delayed Transfer Spinco Employee is otherwise able to be transferred to a member of the Spinco Group in accordance with applicable Law; provided that the Parties agree to cooperate to establish any such Spinco Sub as soon as reasonably practicable following the Separation Time; or (C) the date that a Delayed Transfer Spinco Employee (within the meaning of clause (C) thereof) has obtained the appropriate visa or work authorization to commence employment; provided that such Delayed Transfer Spinco Employee will become a Spinco Employee only if and when such Delayed Transfer Spinco Employee is authorized to commence employment for any member of the Spinco Group within six (6) months following the Distribution Date or such longer period as required by Law or otherwise agreed to in writing by the Parties.

"Spinco Director" means any individual who is a non-employee member of the Spinco Board as of the Separation Time, other than a Dual-Service Director.

"Spinco Employee" means, except for the excluded employees set forth on Schedule 1.1 attached hereto, each employee of any member of the WDC Group or the Spinco Group who is set forth on Schedule 1.2 attached hereto. The employees set forth on Schedule 1.2 shall be those employees who are either (A) exclusively or primarily engaged in the Flash Business or (B) necessary for the ongoing operation of the Flash Business following the Separation Date, in each case, regardless of whether any such employee (x) is actively at work as of the Separation Date or (y) is not actively at work as of the Separation Date as a result of disability or illness, an approved leave of absence (including military leave with reemployment rights under federal law and leave under the Family and Medical Leave Act of 1993), vacation, personal day or similar short- or long-term absence.

"Spinco Employee Books and Records" has the meaning set forth in Section 2.1(a)(i).

"Spinco Employee Liabilities" means any and all Liabilities, whenever incurred (for the avoidance of doubt, whether incurred prior to, at or following the Separation Time), arising out of, related to, resulting from, or with respect to: (a) the employment or termination of employment of any Spinco Employee (excluding any Non-Transferred Spinco Employee), with the exception of any liabilities arising from any action or omission of WDC involving non-compliance with employment-related laws occurring solely prior to the Spinco Transfer Date, but including liability related to the rights of the transferring employee based on seniority and related terms, (b) the employment or termination of employment of any Non-Transferred WDC Employee, with the exception of any liabilities arising from any action or omission of WDC involving non-compliance with employment-related laws occurring solely prior to the Spinco Transfer Date, (c) the engagement or service or termination of engagement or service of any Spinco Independent Contractor, with the exception of any liabilities arising from any action or omission of WDC involving non-compliance with employment-related laws occurring solely prior to the Spinco Transfer Date, but including liability related to the rights of the transferring employee based on seniority and related terms, (d) any applicant's application for employment or engagement with any member of the Spinco Group or with respect to the Flash Business, and (e) any other Liabilities assumed by Spinco or any member of the Spinco Group pursuant to this Agreement.

"Spinco Equity Awards" means Spinco Converted PSU Awards and Spinco RSU Awards, collectively.

"Spinco Equity Incentive Plans" has the meaning set forth in Section 6.6.

"Spinco ESPP" has the meaning set forth in Section 6.7.

"Spinco Group" means Spinco, each of the Spinco Subs and any legal predecessors thereto, and following the Separation Date, each of its Affiliates.

"Spinco Indemnitees" means Spinco, each member of the Spinco Group and all Persons who are or have been shareholders, directors, partners, managers, managing members, officers, agents or employees of any member of the Spinco Group (in each case, in their respective capacities as such) (excluding any member of the WDC Group), together with their respective heirs, executors, administrators, successors and assigns.

"Spinco Independent Contractor Books and Records" has the meaning set forth in Section 2.1(a)(ii).

"Spinco Independent Contractors" means each independent contractor of any member of the Spinco Group or the WDC Group who is actively providing services as of the Separation Date or party to any agreement with any member of the Spinco Group or the WDC Group as of the Separation Date contemplating future service and, in each case, is (or pursuant to such agreement contemplating future service would be) either (A) exclusively or primarily engaged in the Flash Business; or (B) necessary for the ongoing operation of the Flash Business following the Separation Date, which shall include, for the avoidance of doubt, specified service providers who are engaged through a third-party employer as of the Separation Date, in the case of each of the foregoing clauses (A) and (B).

"Spinco LTI Cash Award" means a WDC LTI Cash Award assumed by Spinco effective as of the Separation Time in accordance with Section 6.4.

"Spinco Non-U.S. Savings Plans" has the meaning set forth in Section 3.2(b).

"Spinco NQDC Plan" has the meaning set forth in Section 5.1(b).

"Spinco Ratio" means the quotient, carried out to six decimal places, obtained by dividing (a) the Pre-Separation WDC Stock Value by (b) the Post-Separation Spinco Stock Value.

"Spinco RSU Award" means a WDC RSU Award assumed and adjusted by Spinco effective as of the Separation Time in accordance with Section 6.1.

"Spinco Severance Plans" has the meaning set forth in Section 7.5(a).

"Spinco Subs" has the meaning set forth in the Separation Agreement.

"Spinco Transfer Date" means the date on which a Spinco Employee became or becomes employed or engaged by Spinco or any member of the Spinco Group.

"Spinco Welfare Plans" means any Welfare Plans maintained by Spinco or any member of the Spinco Group.

"Subsidiary" has the meaning set forth in the Separation Agreement.

"Successor Corporation" has the meaning set forth in Section 6.5(c).

"Tax" or "Taxes" has the meaning set forth in the Tax Matters Agreement.

"Tax Matters Agreement" means the Tax Matters Agreement, as defined in the Separation Agreement, as it may be amended from time to time in accordance with the terms thereof.

"Trading Session" shall mean the period of time during any given calendar day, commencing with the determination of the opening price on the Applicable Exchange and ending with the determination of the closing price on the Applicable Exchange, in which trading in shares of WDC Common Stock or shares of Spinco Common Stock (as applicable) is permitted on the Applicable Exchange.

"Transfer Regulations" means (i) all laws of any member state of the European Union implementing the European Union Council Directive 2001/23/EC of 12 March 2001 on the approximation of the Laws of member states of the European Union relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses (the "Acquired Rights Directive") and legislation and regulations of any member state of the European Union implementing such Acquired Rights Directive, and (ii) any similar Laws in any jurisdiction providing for an automatic transfer, by operation of law, of employment in the event of a transfer of business.

"Transferor WDC Non-U.S. Savings Plans" has the meaning set forth in Section 3.2(b).

"Transferred WDC Non-U.S. Savings Plans" has the meaning set forth in Section 3.2(c).

"VP+ Spinco Employee" means each Spinco Employee with a title of Executive Vice President, Senior Vice President or Vice President immediately prior to the Separation Time (or the equivalent of either title in the internal records of WDC) or who was an officer of WDC within the meaning of Section 16 of the Securities Exchange Act of 1934, as amended.

"WDC" has the meaning set forth in the preamble.

"WDC 401(k) Plan" means the Western Digital Corporation 401(k) Plan.

"WDC Benefit Arrangement" means any Benefit Arrangement sponsored, maintained or contributed to, or required to be maintained or contributed to, by any member of the WDC Group.

"WDC Board" has the meaning set forth in the recitals.

"WDC Cash Incentive Plans" means (i) the Western Digital Corporation Executive Short-Term Incentive Plan; (ii) the Western Digital Corporation Leadership, Professional & Factory Workforce Short-Term Incentive Plan; and (iii) the Western Digital Corporation Worldwide Sales Incentive Plan, as in effect each fiscal year.

"WDC Change in Control" has the meaning set forth in Section 6.5(a).

"WDC Common Stock" means the issued and outstanding shares of common stock, par value $0.01 per share, of WDC.

"WDC Delayed Transfer Date" means (A) the date that a Delayed Transfer WDC Employee (within the meaning of clause (A) thereof) returns to active service; provided that such Delayed Transfer WDC Employee will become a WDC Employee only if and when such Delayed Transfer WDC Employee returns to active service for any member of the Spinco Group within six (6) months following the Distribution Date or such longer period as required by Law or otherwise agreed to in writing by the Parties; (B) the date a Subsidiary of WDC capable of serving as the employing entity of a Delayed Transfer WDC Employee (within the meaning of clause (B) thereof) is established in the applicable jurisdiction or such Delayed Transfer WDC Employee is otherwise able to be transferred to a member of the WDC Group in accordance with applicable Law; provided that the Parties agree to cooperate to establish any such Subsidiary of WDC as soon as reasonably practicable following the Separation Time; or (C) the date that a Delayed Transfer WDC Employee (within the meaning of clause (C) thereof) has obtained the appropriate visa or work authorization to commence employment; provided that such Delayed Transfer WDC Employee will become a WDC Employee only if and when such Delayed Transfer WDC Employee is authorized to commence employment for any member of the WDC Group within six (6) months following the Distribution Date or such longer period as required by Law or otherwise agreed to in writing by the Parties.

"WDC Director" means any individual who is a non-employee member of the WDC Board as of the Separation Time, other than a Dual-Service Director.

"WDC DSU Award" means an award of Restricted Stock Units or other right to receive shares of WDC Common Stock that is subject to a deferral election in accordance with the WDC Non-Employee Director RSU Grant Program, WDC Non-Employee Directors Stock-For-Fees Plan and/or the WDC NQDC Plan.

"WDC Employee" means any employee of the WDC Group or the Spinco Group who is not a Spinco Employee.

"WDC Employee Liabilities" means any and all Liabilities, whenever incurred (for the avoidance of doubt, whether incurred prior to, at or following the Separation Time), arising out of, related to, resulting from, or with respect to: (a) the employment or termination of employment of any WDC Employee (excluding any Non-Transferred WDC Employee), with the exception of any liabilities arising from any action or omission of Spinco involving non-compliance with employment-related laws occurring solely prior to the WDC Transfer Date, but including liability related to the rights of the transferring employee based on seniority and related terms, (b) the employment or termination of employment of any Non-Transferred Spinco Employee, with the exception of any liabilities arising from any action or omission of Spinco involving non-compliance with employment-related laws occurring solely prior to the WDC Transfer Date, (c) the engagement or service or termination of engagement or service of any WDC Independent Contractor, with the exception of any liabilities arising from any action or omission of Spinco involving non-compliance with employment-related laws occurring solely prior to the WDC Transfer Date, but including liability related to the rights of the transferring employee based on seniority and related terms, (d) any applicant's application for employment or engagement with any member of the WDC Group, and (e) any other Liabilities assumed by WDC or any member of the WDC Group pursuant to this Agreement, but in the case of each of (a) through (e), only to the extent that such Liabilities are not arising out of, related to, resulting from, or with respect to any of the Flash Business, Spinco Employees (other than Non-Transferred Spinco Employees), or Spinco Independent Contractors.

"WDC Equity Awards" means WDC DSU Awards, WDC RSU Awards, and WDC PSU Awards, collectively.

"WDC Equity Incentive Plans" means the (i) the Western Digital Corporation 2021 Long-Term Incentive Plan, as amended and restated effective as of November 15, 2023; and (ii) the Western Digital Corporation Amended and Restated 2017 Performance Incentive Plan, as amended and restated as of August 11, 2020.

"WDC ESPP" means the Western Digital Corporation 2005 Employee Stock Purchase Plan, as amended and restated as of August 25, 2022.

"WDC Group" means WDC, each of its Subsidiaries, and any legal predecessors thereto, but excluding any member of the Spinco Group.

"WDC Indemnitees" means WDC, each member of the WDC Group, and all Persons who are or have been shareholders, directors, partners, managers, managing members, officers, agents or employees of any member of the WDC Group (in each case, in their respective capacities as such) (excluding any shareholder of WDC), together with their respective heirs, executors, administrators, successors and assigns.

"WDC Independent Contractor" means any independent contractor of the WDC Group or the Spinco Group who is not a Spinco Independent Contractor.

"WDC LTI Cash Award" means a cash award granted by WDC pursuant to the WDC Equity Incentive Plans.

"WDC Non-Employee Director RSU Grant Program" means the Western Digital Corporation Non-Employee Directors Restricted Stock Unit Program under any WDC Equity Incentive Plan.

"WDC Non-Employee Directors Stock-for-Fees Plan" means the Amended and Restated Western Digital Corporation Non-Employee Directors Stock-For-Fees Plan.

"WDC Non-U.S. Savings Plan" means each WDC Benefit Arrangement that is a defined contribution retirement plan in which employees who are based outside of the United States participate and/or that is subject to any Law other than United States federal, state or local Law.

"WDC NQDC Plan" means the Western Digital Corporation Deferred Compensation Plan, as amended and restated as of January 1, 2013.

"WDC NQDC Plan Withdrawal Date" has the meaning set forth in Section 5.1(a).

"WDC PSU Award" means an award of Performance Stock Units granted by WDC pursuant to the WDC Equity Incentive Plans that is subject to performance-based vesting.

"WDC Ratio" means the quotient, carried out to six decimal places, obtained by dividing (a) the Pre-Separation WDC Stock Value by (b) the Post-Separation WDC Stock Value.

"WDC RSU Award" means an award of Restricted Stock Units granted by WDC pursuant to the WDC Equity Incentive Plans that is not subject to performance-based vesting, but excluding any WDC DSU Award.

"WDC Severance Plans" means (i) the Western Digital Corporation Change in Control Severance Plan, as amended and restated as of May 24, 2021; (ii) the Western Digital Corporation Executive Severance Plan, as may be amended and/or restated from time to time, and (iii) the Western Digital Severance Plan for U.S. Employees, as may be amended and/or restated from time to time.

"WDC Transfer Date" means the date on which a WDC Employee became or becomes employed or engaged by WDC or any member of the WDC Group.

"WDC Welfare Plans" means any Welfare Plans maintained by WDC or any member of the WDC Group.

"Welfare Plan" means, where applicable, a "welfare plan" (as defined in Section 3(1) of ERISA and in 29 C.F.R.§2510.3-1) or a "cafeteria plan" under Section 125 of the Code, and any benefits offered thereunder, and any other plan offering health benefits (including medical, prescription drug, dental, vision and mental health and substance use disorder), disability benefits, or life, accidental death and disability, pre-tax premium conversion benefits, dependent care assistance programs, employee assistance programs, contribution funding toward a health savings account, flexible spending accounts, tuition reimbursement or adoption assistance programs or cashable credits.

SECTION 1.2 References; Interpretation. Unless the context otherwise requires:

(a) For purposes of this Agreement, whenever the context requires: (i) the singular number shall include the plural, and vice versa; (ii) the masculine gender shall include the feminine and neuter genders; (iii) the feminine gender shall include the masculine and neuter genders; and (iv) the neuter gender shall include masculine and feminine genders.

(b) The Parties agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in the construction or interpretation of this Agreement.

(c) As used in this Agreement, the words "include" and "including" and variations thereof, shall not be deemed to be terms of limitation but rather shall be deemed to be followed by the words "without limitation."

(d) As used in this Agreement, the words "hereof," "herein," "hereto" and "hereunder" and words of similar import shall refer to this Agreement as a whole and not to any particular provision of this Agreement.

(e) The measure of a period of one (1) month or year for purposes of this Agreement will be the date of the following month or year corresponding to the starting date; and, if no corresponding date exists, then the end date of such period being measured will be the next actual date of the following month or year (for example, one month following February 18 is March 18 and one month following March 31 is May 1).

(f) As used in this Agreement, the word "extent" in the phrase "to the extent" shall mean the degree to which a subject or other thing extends, and such phrase shall not mean simply "if."

(g) As used in this Agreement, the word "will" shall be deemed to have the same meaning and effect as the word "shall."

(h) As used in this Agreement, the terms "or," "any" or "either" are not exclusive and shall be deemed to be "and/or."

(i) As used in this Agreement, references to "written" or "in writing" include in electronic form.

(j) As used in this Agreement, references to the "date hereof" are to the date of this Agreement.

(k) Except as otherwise indicated, all references in this Agreement to "Sections," "Articles" and "Schedules" are intended to refer to Sections or Articles of this Agreement and Schedules to this Agreement.

(l) The table of contents and the section and other headings and subheadings contained in this Agreement and any Schedules to this Agreement are for convenience of reference only, shall not be deemed to be a part of this Agreement and shall not be referred to in connection with the construction, meaning or interpretation of this Agreement. The preamble and the recitals set forth at the beginning of this Agreement are incorporated by reference into and made a part of this Agreement.

(m) Any payment to be made pursuant hereto shall be made in U.S. dollars and by wire transfer of immediately available funds.

(n) As used in this Agreement, references to "U.S. dollars" and "$" in this report are to the lawful currency of the United States of America.

(o) All references to statutes shall include all regulations promulgated thereunder, and all references to statutes and related regulations shall include all amendments of the same and any successor or replacement statutes and regulations.

SECTION 1.3 Relation to Other Documents. To the extent there is any inconsistency between this Agreement and the terms of another agreement pertaining to the Separation (other than any Collective Bargaining Agreement) that is the subject of this Agreement and such inconsistency (i) arises in connection with or as a result of employment with or the performance of services before or after the Separation for any member of the WDC Group or Spinco Group and (ii) relates to the allocation of Liabilities attributable to the employment, service, termination of employment or termination of service of all present or Former WDC Employees, present or Former Spinco Employees, Spinco Independent Contractors or any of their dependents and beneficiaries (and any alternate payees in respect thereof) and other service providers (including any individual who is, or was or is determined to be an independent contractor, temporary employee, temporary service worker, consultant, freelancer, agency employee, leased employee, on-call worker, incidental worker, or non-payroll worker or in any other employment, non-employment, or retainer arrangement, or relationship with any member of the WDC Group or the Spinco Group), the terms of this Agreement shall prevail.

## ARTICLE II

## GENERAL PRINCIPLES

SECTION 2.1 Allocation of Assets

(a) For purposes of the Separation Agreement, "Flash Assets" shall include, in each case to the extent existing and owned or held immediately prior to the Separation Time by any member of the WDC Group or the Spinco Group, all of the WDC Group's and the Spinco Group's respective right, title and interest in, to and under the following Assets:

(i) With respect to Spinco Employees, as permitted by applicable Law, subject at all times to compliance with applicable Privacy Laws, subject to Section 5.3 of the Separation Agreement, and solely to the extent determined by WDC to be necessary for the Parties to comply in good faith with the terms of this Agreement, in the possession of a member of the WDC Group or the Spinco Group, and to the extent practicable: all personnel files as they are currently maintained, whether as hard copies or as electronic books and records, whether in Workday, OneDrive, or other easily accessible and transferrable system and that relate to the employment of such Spinco Employees with the members of the WDC Group or the Spinco Group, in each case excluding any Intellectual Property Rights other than Spinco IP embodied therein (collectively, the "Spinco Employee Books and Records"); provided, however, that: (x) WDC shall be entitled to retain a copy of any and all Spinco Employee Books and Records, which shall be subject to the provisions of Section 2 of the Separation Agreement and deemed the Confidential Information of Spinco and subject to the provisions of Section 6.6 of the Separation Agreement; (y) WDC may retain any materials that are not reasonably practicable to identify and extract subject to the right of access pursuant to Section 5.1 of the Separation Agreement, which shall be deemed the Confidential Information of Spinco and subject to Section 6.6 of the Separation Agreement; and (z) WDC shall be entitled to redact any portion of the Spinco Employee Books and Records to the extent related to any matter other than the Flash Business; provided, however, that such retained materials shall be deemed Confidential Information of Spinco and subject to the provisions of Section 6.6 of the Separation Agreement. For illustrative purposes only, a Spinco Employee's personnel file would include, but is not limited to, onboarding documents, the Employee Invention and Confidential Agreement, privacy notices or consent, payroll and benefit elections, discipline records, documents signed by the Spinco Employee that relate to obtaining or holding employment, and performance-related documents, such as promotion records, incentive awards (short and long-term), quarterly check-ins, and performance designations, all of which are regularly maintained by People Support.

(ii) With respect to Spinco Independent Contractors, as permitted by applicable Law, subject at all times to compliance with applicable Privacy Laws, subject to Section 5.3 of the Separation Agreement, and solely to the extent determined by WDC to be necessary for the Parties to comply in good faith with the terms of this Agreement, in the possession of a member of the WDC Group or the Spinco Group, and to the extent practicable: all electronic books and records that are housed in the Wand system and relate to the onboarding and offboarding of such Spinco Independent Contractors with the members of the WDC Group or the Spinco Group, in each case excluding any non-electronic records and any Intellectual Property Rights other than Spinco IP embodied therein (collectively, the "Spinco Independent Contractor Books and Records"); provided, however, that: (x) WDC shall be entitled to retain a copy of any and all Spinco Independent Contractor Books and Records, which shall be subject to the provisions of Section 2 of the Separation Agreement and deemed the Confidential Information of Spinco and subject to the provisions of Section 6.6 of the Separation Agreement; (y)

WDC may retain any materials that are not reasonably practicable to identify and extract subject to the right of access pursuant to Section 5.1 of the Separation Agreement, which shall be deemed the Confidential Information of Spinco and subject toSection 6.6 of the Separation Agreement; and (z) WDC shall be entitled to redact any portion of the Spinco Independent Contractor Books and Records to the extent related to any matter other than the Flash Business; provided, however, that such retained materials shall be deemed Confidential Information of Spinco and subject to the provisions of Section 6.6 of the Separation Agreement.

(b) Notwithstanding Section 2.1(a), for purposes of the Separation Agreement, "Excluded Assets" shall include the employment and personnel records of (i) employees or service providers of the WDC Group or the Spinco Group who are not Spinco Employees or Spinco Independent Contractors, (ii) the Spinco Employees, including, for the avoidance of doubt, records the transfer of which is prohibited by Law or otherwise by reason of any agreement with Spinco Employees or any Person representing any of them (subject to the provisions of Section 1.8(a) of the Separation Agreement), and (iii) any materials subject to any Privileges in accordance with Section 5.3 of the Separation Agreement.

(c) As applicable with respect to WDC Employees, Spinco shall, or shall cause the appropriate member of the Spinco Group to, transfer or cause to be transferred all employment and personnel files of the WDC Employees as of the WDC Transfer Date, in the same manner and subject to the same requirements as provided in Section 2.1(a)(i) above with respect to Spinco Employees. For the avoidance of doubt, such records shall be "Excluded Assets" for purposes of the Separation Agreement.

SECTION 2.2 Assumption of Liabilities.

(a) Effective as of the Separation Time, unless otherwise specified in this Agreement, Spinco shall, or shall cause one or more members of the Spinco Group to, assume or retain, as applicable, and pay, perform, fulfill and discharge, in due course in full, all of the Spinco Employee Liabilities, and Spinco and the applicable members of the Spinco Group shall be responsible for such Spinco Employee Liabilities in accordance with their respective terms regardless of when or where such Spinco Employee Liabilities arose or arise, or whether the facts on which they are based occurred prior to or subsequent to the Separation Time, regardless of where or against whom such Spinco Employee Liabilities are asserted or determined or whether asserted or determined prior to the date hereof (in each case except to the extent satisfied prior to the Separation Time).

(b) Effective as of the Distribution Date, unless otherwise specified in this Agreement, WDC shall, or shall cause one or more members of the WDC Group to, assume or retain, as applicable, and pay, perform, fulfill and discharge, in due course in full, all of the WDC Employee Liabilities, and WDC and the applicable members of the WDC Group shall be responsible for such WDC Employee Liabilities in accordance with their respective terms regardless of when or where such WDC Employee Liabilities arose or arise, or whether the facts on which they are based occurred prior to or subsequent to the Separation Time, regardless of where or against whom such WDC Employee Liabilities are asserted or determined or whether asserted or determined prior to the date hereof (in each case except to the extent satisfied prior to the Separation Time).

(c) All Liabilities assigned to or assumed or retained by WDC or a member of the WDC Group under this Agreement shall be Excluded Liabilities for purposes of the Separation Agreement. All Liabilities assigned to or assumed or retained by Spinco or a member of the Spinco Group under this Agreement shall be Flash Liabilities for purposes of the Separation Agreement.

(d) Reimbursements.

(i) From time to time after the Distribution Date, the Parties shall promptly reimburse one another, upon reasonable request of the Party requesting reimbursement (the "Requesting Party") and the presentation by such Party of such substantiating documentation as the other Party (the "Reimbursing Party") shall reasonably request, for the cost of any obligations or Liabilities satisfied or assumed by the Requesting Party or its Affiliates (including for any such Liabilities that transfer to the Spinco Group by operation of Law or Collective Bargaining Agreement) that are, or that have been made pursuant to this Agreement, the responsibility of the Reimbursing Party or any of its Affiliates (any such reimbursement, a "Reimbursement").

(ii) Any Reimbursement payable pursuant to this Section 2.2(d) shall be (i) equal to the cost actually incurred by the Requesting Party, including the employer-portion of any associated Employment Taxes payable by the Requesting Party in connection therewith, and (ii) submitted to the Reimbursing Party within thirty (30) calendar days of the payment by the Requesting Party.

(e) Subject to applicable Law and the Tax Matters Agreement, WDC shall retain responsibility for all employee-related regulatory filings for reporting periods ending at or prior to the Separation Time, except for Equal Employment Opportunity Commission EEO-1 reports and affirmative action program (AAP) reports and responses to Office of Federal Contract Compliance Programs (OFCCP) submissions required after the SpinCo Transfer Date, for which WDC shall provide data and Information (to the extent permitted by applicable Laws and consistent with Section 8.1) to Spinco, which shall be responsible for making such filings in respect of Spinco Employees in accordance with and subject to the requirements of applicable Law.

(f) WDC shall be the responsible party for duly preparing and timely filing or causing to be duly prepared and timely filed all Employment Tax Returns required or permitted to be filed by any member of the WDC Group and, on or prior to the Distribution Date, by any member of the Spinco Group. WDC shall be liable for all Employment Taxes due or payable for or with respect to services provided by employees or deemed employees of any member of the WDC Group at any time and services provided by employees or deemed employees of any member of the Spinco Group on or prior to the Distribution Date.

(g) Spinco shall be the responsible party for duly preparing and timely filing or causing to be duly prepared and timely filed all Employment Tax Returns of any member of the Spinco Group with respect to periods (or portions thereof) following the Distribution Date or required to be filed by any member of the Spinco Group after the Distribution Date. Spinco shall be liable for all Employment Taxes due or payable for or with respect to services provided by employees or deemed employees of any member of the Spinco Group after the Distribution Date.

(h) With respect to any Employment Tax Return required to be filed pursuant to this Agreement, the party responsible for preparing and filing such Employment Tax Return shall remit or cause to be remitted to the applicable taxing authority in a timely manner any Taxes due in respect of any such Employment Tax Return. In the case of any Employment Tax Return for which the Party that is not responsible for preparing and filing such Employment Tax Return is obligated pursuant to this Agreement to pay all or a portion of the Taxes reported as due on such Employment Tax Return, the party responsible for preparing and filing such Employment Tax Return shall notify the other Party, in writing, of its obligation to pay such Taxes and, in reasonably sufficient detail, its calculation of the amount due by such other Party and the Party receiving such notice shall pay such amount to the party responsible for preparing and filing such Employment Tax Return upon the later of five (5) Business Days prior to the date on which such payment is due and fifteen (15) Business Days after the receipt of such notice.

SECTION 2.3 Participation in WDC Benefit Arrangements. Except as required by applicable Law, as otherwise provided for in this Agreement or pursuant to a transition services agreement entered into among the Parties or as otherwise agreed to by the Parties, effective as of the Separation Time, (A) (i) Spinco and each member of the Spinco Group, to the extent applicable, shall cease to be a Participating Company in any WDC Benefit Arrangement (other than a Transferred WDC Non-U.S. Savings Plan or Rollover Welfare Plan), (ii) each Spinco Employee shall cease to participate in, be covered by, accrue benefits under, or be eligible to contribute to any WDC Benefit Arrangement (other than a Transferred WDC Non-U.S. Savings Plan or Rollover Welfare Plan), except to the extent of obligations that accrued before the Distribution Date, which shall remain a Liability of any member of the WDC Group pursuant to this Agreement, and (iii) any Person who participates in any Transferred WDC Non-U.S. Savings Plan or Rollover Welfare Plan but is not a Spinco Employee shall cease to participate in, be covered by, accrue benefits under, be eligible to contribute to or have any rights under such Transferred WDC Non-U.S. Savings Plan or Rollover Welfare Plan; and (B) (i) WDC and each member of the WDC Group, to the extent applicable, shall cease to be a Participating Company in any Spinco Benefit Arrangement, and (ii) each WDC Employee shall cease to participate in, be covered by, accrue benefits under, or be eligible to contribute to any Spinco Benefit Arrangement, except to the extent of obligations that accrued before the Distribution Date, which shall remain a Liability of any member of the Spinco Group pursuant to this Agreement. The Parties shall take all necessary action to effectuate this Section 2.3.

SECTION 2.4 Service Recognition. Effective as of the Separation Time, and in addition to any applicable obligations under the Transfer Regulations or other applicable Law, (A) Spinco shall, and shall cause each member of the Spinco Group to, give each Spinco Employee full credit for purposes of eligibility, vesting and determination of level of benefits under any Spinco Benefit Arrangement (but not with respect to eligibility for benefits or calculation or accrual of benefits under any retiree medical or welfare plans or accrual of benefits under any defined benefit program) for such Spinco Employee's service with any member of the WDC Group or any predecessor thereto prior to the Separation Time, to the same extent such

service was recognized by the applicable WDC Benefit Arrangement immediately prior to the Separation Time; provided, that, such service shall not be recognized to the extent such recognition would result in the duplication of benefits; and (B) WDC shall, and shall cause each member of the WDC Group to, give each WDC Employee full credit for purposes of eligibility, vesting and determination of level of benefits under any WDC Benefit Arrangement (but not with respect to eligibility for benefits or calculation or accrual of benefits under any retiree medical or welfare plans or accrual of benefits under any defined benefit program) for such WDC Employee's service with any member of the Spinco Group or any predecessor thereto prior to the Separation Time, to the same extent such service was recognized by the applicable Spinco Benefit Arrangement immediately prior to the Separation Time; provided, that, such service shall not be recognized to the extent such recognition would result in the duplication of benefits.

SECTION 2.5 Collective Bargaining Agreements.

(a) Notwithstanding anything in this Agreement to the contrary, prior to the Separation Time, WDC and Spinco shall, to the extent required by applicable Law, take or cause to be taken all actions that are necessary (if any) for Spinco or a member of the Spinco Group to (i) continue to maintain or to assume and honor any Collective Bargaining Agreements that relate to Spinco Employees; (ii) assume and honor any obligations of the WDC Group under Collective Bargaining Agreements that are maintained outside of the United States in accordance with industry or regulatory standards, as such obligations relate to Spinco Employees; and (iii) continue to maintain or to assume and honor any pre-existing collective bargaining relationships (in each case including obligations that arise in respect of the period both before and after the date of employment by the Spinco Group) in respect of any Spinco Employees and any Employee Representatives.

(b) As of the Separation Time, Spinco shall, or shall cause Spinco or a member of the Spinco Group to (i) continue to maintain or to assume and honor any Collective Bargaining Agreements that relate to Spinco Employees; (ii) assume and honor any obligations of the WDC Group under Collective Bargaining Agreements that are maintained outside of the United States in accordance with industry or regulatory standards, as such obligations relate to Spinco Employees; and (iii) continue to maintain or to assume and honor any pre-existing collective bargaining relationships (in each case including obligations that arise in respect of the period both before and after the date of employment by the Spinco Group) in respect of any Spinco Employees and any Employee Representatives.

(c) Nothing in this Agreement is intended to alter the provisions of any Collective Bargaining Agreement or modify in any way the obligations of the WDC Group or the Spinco Group to any Employee Representative or any other Person as described in such agreement.

SECTION 2.6 No Acceleration of Benefits. Except as otherwise provided in this Agreement, no provision of this Agreement shall be construed to create any right, or accelerate vesting or entitlement, to any compensation or benefit whatsoever on the part of any Spinco Employee or other former, current or future employee or other service provider of the WDC Group or Spinco Group under any Benefit Arrangement of the WDC Group or Spinco Group.

SECTION 2.7 Amendment Authority. Nothing in this Agreement is intended to prohibit any member of the WDC Group or Spinco Group from amending, terminating or otherwise modifying any employee benefit plans, policies or compensation programs in accordance with the terms thereof at any time prior to, on or after the Separation Date.

SECTION 2.8 No Commitment to Employment or Benefits. Nothing contained in this Agreement shall be construed as a commitment or agreement on the part of the WDC Group or Spinco Group to continue the employment of any individual or to provide any recall or similar rights to an individual on layoff or any type of leave of absence or, except as otherwise specifically provided in this Agreement, as a commitment on the part of the WDC Group or Spinco Group to continue the compensation or benefits of any individual for any period, except as required by applicable Law. Without limiting the generality of Section 9.6, this Agreement is solely for the benefit of the WDC Group and the Spinco Group, and nothing in this Agreement, express or implied, (i) is intended to confer any rights, benefits, remedies, obligations or Liabilities under this Agreement upon any Person, including any Spinco Employee, Spinco Independent Contractor or other current or former employee, officer, director, contractor or other service provider of the WDC Group or Spinco Group, other than the Parties and their respective successors and assigns or (ii) shall constitute the adoption or establishment of, or an amendment or other modification to any Benefit Arrangement or any other compensation or employee benefit plan or arrangement of the WDC Group or Spinco Group.

SECTION 2.9 Certain Employment Transfers.

(a) Subject to the requirements of applicable Law, and except as set forth below with respect to the treatment of Automatic Transfer Spinco Employees, Automatic Transfer WDC Employees, Non-Automatic Transfer Spinco Employees outside of the United States, Non-Automatic Transfer WDC Employees outside of the United States and Delayed Transfer Spinco Employees and Delayed Transfer WDC Employees, as applicable, (i) no later than the Spinco Transfer Date, WDC shall use commercially reasonable efforts to (A) cause the employment of any Spinco Employee and the contract of services of any natural person Spinco Independent Contractor engaged directly by a member of the WDC Group to be transferred to a member of the Spinco Group on the Spinco Transfer Date, (B) transfer, assign and delegate to Spinco the Spinco Employee Liabilities, and (C) cause the employment of any individual who is employed by a member of the Spinco Group but does not qualify as a Spinco Employee and the contract of services between any natural person independent contractor or consultant engaged directly by a member of the Spinco Group that does not qualify as a Spinco Independent Contractor and a member of the Spinco Group to be transferred to a member of the WDC Group, and (ii) no later than the WDC Transfer Date, Spinco shall use commercially reasonable efforts to (A) cause the employment of any WDC Employee and the contract of services of any natural person WDC Independent Contractor engaged directly by a member of the Spinco Group to be transferred to a member of the WDC Group on the WDC Transfer Date, (B) transfer, assign and delegate to WDC the WDC Employee Liabilities, and (C) cause the employment of any individual who is employed by a member of the WDC Group but does not qualify as a WDC Employee and the contract of services between any natural person independent contractor or consultant engaged directly by a member of the WDC Group that does not qualify as a WDC Independent Contractor and a member of the WDC Group to be transferred to a member of the Spinco Group.

(b) With respect to each Automatic Transfer Employee, their employment shall not be terminated upon the Spinco Transfer Date or WDC Transfer Date, as applicable, but rather the rights, powers, duties, liabilities and obligations of WDC or Spinco (or the appropriate member of the WDC Group or Spinco Group), as applicable, to such employees with respect to their material terms of employment in force immediately before the Separation Date shall be transferred to the appropriate member of the Spinco Group at the Spinco Transfer Date or the WDC Group at the WDC Transfer Date, as applicable, but only to the extent required by, and only then in accordance with, applicable Law, and Spinco agrees to take all actions reasonably necessary to cause the Spinco Employees to be so employed and WDC agrees to take all actions reasonably necessary to cause such WDC Employees to be so employed.

(c) Except as set forth below with respect to Delayed Transfer Spinco Employees or Delayed Transfer WDC Employees, as applicable, for Non-Automatic Transfer Employees outside of the United States where the transfer of employment is by way of termination/resignation andre-hire, or tripartite transfer agreement, the appropriate member of the Spinco Group or WDC Group, as applicable, shall terminate the employment of each such employee effective the day before the Spinco Transfer Date or WDC Transfer Date, as applicable, and the appropriate member of the Spinco Group or WDC Group, as applicable, shall offer employment to each such employee effective on the Spinco Transfer Date or WDC Transfer Date, as applicable. Except as set forth below with respect to Delayed Transfer Spinco Employees or Delayed Transfer WDC Employees, as applicable, for Non-Automatic Transfer Employees outside of the United States where the transfer of employment is by way of employer substitution, the appropriate member of the Spinco Group or WDC Group, as applicable, shall effectuate an employer substitution on the Separation Date with respect to the employees, to the extent permitted by and in accordance with applicable Law, pursuant to which each appropriate member of the Spinco Group or WDC Group, as applicable, will employ the employees, and will acknowledge and accept all rights, obligations, duties, and responsibilities with respect to such employees arising after the Distribution Date or as otherwise required by Law as of the Distribution Date.

(d) WDC Group and Spinco Group agree to execute, and to seek to have the applicable Spinco Employees and WDC Employees execute, such documentation, if any, as may be necessary to reflect the transfer of employment described in this Section 2.9. Spinco shall provide the Information, within reason, as reasonably requested by WDC in writing in sufficient time to enable WDC and the applicable members of the WDC Group to meet their information and consultation requirements pursuant to applicable Law, the Transfer Regulations, any Collective Bargaining Agreement or otherwise, including pursuant to Section 2.10(a), provided, that any such requests are timely received. Subject at all times to its obligations under applicable Privacy Law, WDC shall provide the Information, within reason, as reasonably requested by Spinco in writing in sufficient time to enable Spinco and the applicable members of the Spinco Group to meet their information and consultation requirements pursuant to applicable Law, the Transfer Regulations, any Collective Bargaining Agreement or otherwise, including pursuant to Section 2.10(b), provided that any such requests are timely received. To the extent a Spinco

Employee objects, rejects or refuses to transfer to Spinco Group in accordance with applicable Law, then, subject to applicable Law, such employee shall remain employed by WDC, or the applicable member of the WDC Group, and shall no longer be considered a Spinco Employee to the extent permitted by Law, and WDC shall retain the Liabilities associated with such Spinco Employee, provided that any such Liabilities do not arise as a direct result of a breach of this Agreement, the Separation Agreement, or applicable Law by any member of the Spinco Group or any substantial change or proposal to make a substantial change to the working conditions of such Spinco Employee to their material detriment. To the extent a WDC Employee objects, rejects or refuses to transfer to WDC or a member of the WDC Group in accordance with applicable Law, then, subject to applicable Law, such employee shall remain employed by Spinco, or the applicable member of the Spinco Group, and shall no longer be considered a WDC Employee to the extent permitted by Law, and Spinco shall retain the Liabilities associated with such WDC Employee, provided that any such Liabilities do not arise as a direct result of a breach of this Agreement, the Separation Agreement, or applicable Law by any member of the WDC Group or any substantial change or proposal to make a substantial change to the working conditions of such WDC Employee to their material detriment. For the avoidance of doubt, Spinco shall assume and retain all Liabilities arising out of, relating to or resulting from the failure of a Spinco Employee to transfer employment to a member of the Spinco Group as a direct result of a breach of this Agreement or the Separation Agreement by any member of the Spinco Group, and WDC shall assume and retain all Liabilities arising out of, relating to or resulting from the failure of a WDC Employee to transfer employment to a member of the WDC Group as a direct result of a breach of this Agreement or the Separation Agreement by any member of the WDC Group. WDC and Spinco shall cooperate, in good faith, to enable Spinco and/or WDC to meet their respective information and consultation requirements pursuant to applicable Law, the Transfer Regulations, any Collective Bargaining Agreement or otherwise, including pursuant to Section 2.10(b).

(e) In the case of any Delayed Transfer Spinco Employee who remains employed by the WDC Group, or any Delayed Transfer WDC Employee who remains employed by the Spinco Group, in each case, after the Separation Date as a result of clause (A) of the definition of Delayed Transfer Spinco Employee or Delayed Transfer WDC Employee, as applicable, the Parties shall cause any such Delayed Transfer Spinco Employee to be employed by Spinco or a member of the Spinco Group and any such Delayed Transfer WDC Employee to be employed by WDC or a member of the WDC Group, as applicable, effective as of the Spinco Delayed Transfer Date or WDC Delayed Transfer Date, as applicable. In the case of any Delayed Transfer Spinco Employee who remains employed by the WDC Group, or any or any Delayed Transfer WDC Employee who remains employed by the Spinco Group, in each case, after the Separation Date as a result of clause (B) or (C) of the definition of Delayed Transfer Spinco Employee or Delayed Transfer WDC Employee, as applicable, the Parties will cooperate in good faith (i) in respect of the provision of such employee's services to the Spinco Group or WDC Group, as applicable, after the Separation Time and the allocation of costs associated with such services and (ii) to facilitate such employee's transfer of employment to the Spinco Group or WDC Group, as applicable, as soon as practicable following the Separation Time. The employment of such Delayed Transfer Spinco Employees shall transfer to the Spinco Group, and the employment of such Delayed Transfer WDC Employees shall transfer to the WDC Group, in each case, in accordance with applicable Law on the Spinco Delayed Transfer Date or WDC Delayed Transfer Date, as applicable. References to "Closing," "Closing Date," "Distribution

Date," "Separation Time" and "Separation Date" in this Agreement shall be interpreted to mean the "Spinco Delayed Transfer Date" or "WDC Delayed Transfer Date" as it applies to any Delayed Transfer Spinco Employee or Delayed Transfer WDC Employee, as applicable, where the context requires. For the avoidance of doubt, except as otherwise specified in this Agreement, Spinco or a member of the Spinco Group shall assume (and shall reimburse WDC or a member of the WDC Group, as applicable, for) all Spinco Employee Liabilities pertaining to a Delayed Transfer Spinco Employee as of the Spinco Delayed Transfer Date, and WDC or a member of the WDC Group shall assume (and shall reimburse Spinco or a member of the Spinco Group, as applicable, for) all WDC Employee Liabilities pertaining to a Delayed Transfer WDC Employee as of the WDC Delayed Transfer Date.

(f) To the extent permitted by Law and as necessary to effectuate the terms of this Agreement, Spinco shall employ Spinco Employees who are foreign nationals working in the United States with H-1B non-immigrant status and those employees for whom there are pending or approvedForm I-140 immigrant petitions for alien workers as of the Separation Date, under terms and conditions such that Spinco qualifies as a "successor employer" under applicable United States immigration laws effective as of the Separation Date. Immediately as of the Separation Date, Spinco shall assume all immigration-related liabilities and responsibilities with respect to such employees.

(g) To the extent necessary for any Spinco Employee to perform services in connection with such Spinco Employee's employment or other service relationship with Spinco or any of its Affiliates, WDC or the applicable WDC Subsidiary shall, and does hereby automatically, effective as of the Separation Date, (i) release or cause to be released each Spinco Employee from any existing non-competition, non-solicitation, no-hire, confidentiality or other similar obligation owed to WDC or any of the WDC Subsidiaries solely to the extent necessary for such Spinco Employee to perform such services to a member of the Spinco Group, and (ii) to the extent permitted by Law, take reasonable steps to affect the transfer and assignment of such non-competition, non-solicitation, no-hire, confidentiality or other similar obligation to a member of the Spinco Group.

SECTION 2.10 Information and Consultation.

(a) WDC shall and shall cause its Subsidiaries and each member of the Spinco Group that is to employ any Spinco Employee to comply with all requirements and obligations to inform, consult or otherwise notify any WDC Employees, any Spinco Employees or any Employee Representatives in relation to the Separation, the Distribution, and any other consequence of the transactions contemplated by the Separation Agreement, whether required pursuant to any Collective Bargaining Agreement, the Transfer Regulations or other applicable Law, provided, that Spinco shall provide the Information, within reason, as reasonably requested in writing by WDC in sufficient time to enable WDC and the applicable members of the WDC Group to meet their information and consultation requirements pursuant to the Transfer Regulations, any Collective Bargaining Agreement or otherwise, provided, further, that any such requests are timely received.

(b) Spinco shall and shall cause its Subsidiaries to comply with all requirements and obligations to inform, consult or otherwise notify any Spinco Group employees or any representatives of them in relation to this Agreement and any other consequence of the transactions contemplated by this Agreement whether required pursuant to any Collective Bargaining Agreement applicable to Spinco Group employees, the Transfer Regulations or other applicable Law, provided, that WDC shall provide the Information, within reason, as requested by Spinco in sufficient time to enable Spinco and the applicable members of the Spinco Group to meet their information and consultation requirements pursuant to the Transfer Regulations, any Collective Bargaining Agreement or otherwise, provided, further, that any such requests are timely received.

SECTION 2.11 Certain Requirements. Notwithstanding anything in this Agreement to the contrary, if the terms of a Collective Bargaining Agreement or applicable Law require that any assets or Liabilities be retained by the WDC Group or transferred to or assumed by the Spinco Group in a manner that is different from that set forth in this Agreement, such retention, transfer or assumption shall be made in accordance with the terms of such Collective Bargaining Agreement or applicable Law and shall not be made as otherwise set forth in this Agreement, but shall remain subject to any Party's obligation to reimburse any other Party as set forth in Section 2.2(d).

SECTION 2.12 Sharing of Information. On and after the date hereof and in each case to the extent permitted by applicable Law, WDC shall, and shall cause each member of the WDC Group to use commercially reasonable efforts to (i) share any materials and documents with Spinco that are reasonably determined by WDC to be necessary to permit Spinco to effectuate the provisions of this Agreement and (ii) make available Spinco Employees to Spinco for purposes of making any communications to such Spinco Employees relating to the provisions of this Agreement; provided, that WDC shall be permitted to approve in advance any such written or oral communications and have a representative present at any meeting between Spinco and a Spinco Employee that occurs prior to the Separation Time.

SECTION 2.13 Employee Non-Solicitation.

(a) The Parties agree that, from and after the date hereof until the date that is two (2) years after the Distribution Date, they shall not, and shall cause their Subsidiaries and controlled Affiliates not to, without the prior written consent of WDC or Spinco, as applicable, directly or indirectly, (i) solicit for employment or engagement any employees of the other Party, or their Subsidiaries or Affiliates, as applicable, or (ii) encourage or in any other manner persuade or attempt to encourage or persuade any employees of the other Party, or their Subsidiaries or Affiliates, as applicable, to leave the service of the other Party, or their Subsidiaries or Affiliates, as applicable, or in any way interfere with the relationship between the other Party and their Subsidiaries or Affiliates, as applicable; provided, however, in each case, that (A) the placement of any general mass solicitation or advertising that is not targeted at employees of the other Party or its Subsidiaries or Affiliates shall not be considered a violation of this Section 2.13, and this Section 2.13 shall not preclude a Party or its Subsidiaries or Affiliates from soliciting or hiring any employee of the other Party or their Subsidiaries or Affiliates, as applicable, in each case, whose employment was involuntarily terminated by the other Party prior to such solicitation or hiring; provided, further, that nothing in this Section 2.13 shall require either Party, or their Subsidiaries or Affiliates to take any action or refrain from taking any action if such action or inaction would violate applicable Law.

SECTION 2.14 Continuation of Salary, Bonus and Benefits Generally. Subject to the terms of any applicable Law or Collective Bargaining Agreement, during the period commencing on the Distribution Date and ending on December 31, 2025 (the "Continuation Period"), Spinco shall, or shall cause the applicable member of the Spinco Group to, use commercially reasonable efforts to provide to each Spinco Employee for so long as such Spinco Employee remains employed by Spinco or any member of the Spinco Group during the Continuation Period: (i) an annual base salary or base wage rate and annual target cash incentive compensation opportunities (excluding change-in-control, retention, long-term cash incentive and equity and equity-related opportunities), in each case, that are no less favorable than such annual base salary or base wage rate and target cash incentive compensation opportunities (excluding change-in-control, retention, long-term cash incentive and equity and equity-related opportunities) provided to the Spinco Employee immediately prior to the Distribution, (ii) severance pay and benefits at levels that are no less favorable than the levels of such severance pay and benefits as in effect for such Spinco Employee immediately prior to the Distribution and (iii) retirement and health and welfare benefits (excluding retiree medical and welfare programs and defined benefit pension plans) that are substantially comparable, in the aggregate, to those provided to Spinco Employees immediately prior to the Distribution.

## ARTICLE III

## DEFINED CONTRIBUTION PLANS

SECTION 3.1 401(k) Plan Participation.

(a) Effective as of the Separation Time, (i) the active participation of each Spinco Employee who is a participant in a WDC 401(k) Plan shall automatically cease and no Spinco Employee shall thereafter accrue any benefits under any such WDC 401(k) Plan and (ii) WDC shall cause each such Spinco Employee to become fully vested in such Spinco Employee's account balances under such WDC 401(k) Plan.

(b) Effective as of the Separation Time, Spinco shall, or shall cause a member of the Spinco Group to, have in effect a defined contribution retirement plan that is tax-qualified under Section 401(a) of the Code and includes a qualified cash or deferred arrangement within the meaning of Section 401(k) of the Code, with terms that, as of the Separation Time, are substantially comparable to those provided to Spinco Employee under the WDC 401(k) Plan immediately prior to the Separation Time (the "Spinco 401(k) Plan"). Each Spinco Employee who, as of immediately prior to the Separation Time, was a participant in the WDC 401(k) Plan shall automatically be enrolled in the Spinco 401(k) Plan as of the Separation Time, applying the same salary deferral elections that were in effect with respect to such Spinco Employee under the WDC 401(k) Plan immediately prior to the Separation Time, unless such Spinco Employee affirmatively elects otherwise. Each Spinco Employee who is not a participant in the WDC 401(k) Plan immediately prior to the Separation Time shall be permitted to enroll in the Spinco 401(k) Plan on or after the Separation Time in accordance with the terms of the Spinco 401(k) Plan.

(c) Spinco shall, or shall cause the appropriate member of the Spinco Group to cause the Spinco 401(k) Plan to provide each Spinco Employee with full credit for such Spinco Employee's service with WDC or any of WDC's Affiliates or predecessors prior to the Separation Time for purposes of eligibility and vesting under the Spinco 401(k) Plan.

(d) To the extent applicable, as soon as practicable on or after the Separation Time, WDC shall take all measures needed to cause the transfer to the Spinco 401(k) Plan of all of the assets and liabilities of the WDC 401(k) Plan that are attributable to Spinco Employees, including without limitation, all promissory notes and receivables in respect of plan loans to Spinco Employees under the WDC 401(k) Plan that remain outstanding as of the Separation Time and accrued liabilities arising out of any applicable qualified domestic relations order. Spinco shall direct the trustees of the Spinco 401(k) Plan to accept such transfer of assets and liabilities from the WDC 401(k) Plan. Such transfer of assets and liabilities shall be made in accordance with the applicable requirements of Sections 411(d)(6) and 414(l) of the Code, Treasury Regulation Section 1.414(l)-1 and ERISA Section 208.

(e) Spinco Group and WDC shall cooperate to take any and all commercially reasonable measures needed to effect the transition to the Spinco 401(k) Plan of all outstanding loans under the WDC 401(k) Plan with respect to Spinco Employees so as to prevent, to the extent reasonably possible, a deemed distribution or loan offset with respect to such outstanding loans. Such actions may include, for example, amending the WDC 401(k) Plan to permit a Spinco Employee to continue to make scheduled loan payments to the WDC 401(k) Plan after the Separation Time, but before the WDC 401(k) Plan assets and liabilities are transferred to the Spinco 401(k) Plan, and adopting administrative procedures to facilitate such loan payments.

(f) All contributions payable to the WDC 401(k) Plan before the Separation Time with respect to employee deferrals, matching contributions and employer contributions for Spinco Employees, determined in accordance with the terms and provisions of the WDC 401(k) Plan (notwithstanding any last-day-of-year employment requirements or hours of service requirements) shall be paid by WDC to the WDC 401(k) Plan prior to the date of the asset transfer described in Section 3.1(c).

(g) On and after the date on which assets are transferred from the WDC 401(k) Plan to the Spinco 401(k) Plan in accordance with Section 3.1(c), Spinco or a member of the Spinco Group shall be solely and exclusively responsible for all 401(k) accounts of the Spinco Employees and the Liabilities and assets associated with such accounts or in any way related to the Spinco 401(k) Plan, whether accrued before, on or after the Separation Time.

(h) WDC or a member of the WDC Group shall be solely and exclusively responsible for all accounts and the Liabilities under the WDC 401(k) Plan in respect of participants who are not Spinco Employees and assets associated with such accounts or in any way related to the WDC 401(k) Plan, whether accrued before, on or after the Separation Time.

(i) WDC shall indemnify, defend and hold harmless the Spinco Indemnitees for any Losses or Liabilities related to or arising under any WDC 401(k) Plan to the extent related to any act or omission or operation of such WDC 401(k) Plan occurring prior to the Separation Time (including any Losses or Liabilities under such WDC 401(k) Plan arising out of, relating to or resulting from any violation of applicable Laws or Collective Bargaining Agreement by any member of the WDC Group).

SECTION 3.2 Non-U.S. Savings Plan Participation.

(a) Subject to any Collective Bargaining Agreement and applicable Law or unless otherwise agreed upon by the Parties, including pursuant to any transition services agreement, effective as of the Separation Time, the participation of each Spinco Employee who is a participant in a WDC Non-U.S. Savings Plan shall automatically cease and no Spinco Employee shall thereafter accrue any benefits under any such WDC Non-U.S. Savings Plan.

(b) Unless otherwise agreed upon by the Parties, with respect to each WDC Non-U.S. Savings Plan listed on Schedule 3.2(b) hereto (collectively, the "Transferor WDC Non-U.S. Savings Plans"), Spinco shall, or shall cause a member of the Spinco Group to, establish or maintain one or more plans in which each Spinco Employee who participated in such Transferor WDC Non-U.S. Savings Plan immediately prior to the Separation Time will be eligible to participate as of the Separation Time, with (i) terms (excluding employer contributions) substantially comparable to the terms of the applicable WDC Non-U.S. Savings Plan as in effect immediately prior to the Separation Time or (ii) if applicable, terms as required by an applicable Collective Bargaining Agreement or applicable Law (such plan or plans, the "Spinco Non-U.S. Savings Plans"). Where permissible under applicable Law, unless otherwise agreed to by the Parties, WDC shall cause the Transferor WDC Non-U.S. Savings Plans to transfer (and Spinco shall, or shall cause the appropriate member of the Spinco Group to, cause the Spinco Non-U.S. Savings Plans to accept a transfer of) (i) Liabilities in respect of the obligations to or otherwise in respect of Spinco Employees under the Transferor WDC Non-U.S. Savings Plans and (ii) any assets held by or on behalf of WDC that correspond to the Liabilities so transferred. Except as otherwise agreed by the Parties, such transfer shall be effected in accordance with applicable Law and local custom and practice.

(c) Notwithstanding anything set forth in Section 3.2(b) and subject to any applicable Law, Collective Bargaining Agreement or transition services agreement among the Parties, effective as of the Separation Time, Spinco shall, or shall cause the appropriate member of the Spinco Group to, assume sponsorship of, and shall assume all assets and benefit Liabilities relating to any WDC Non-U.S. Savings Plan set forth on Schedule 3.2(c) hereto, in which all or a majority of the participants immediately prior to the Separation Time are Spinco Employees (each, a "Transferred WDC Non-U.S. Savings Plan").

(d) Spinco shall, or shall cause the appropriate member of the Spinco Group to be responsible for any and all Liabilities relating solely to Spinco Employees with respect to the Spinco Non-U.S. Savings Plans and any Transferred WDC Non-U.S. Savings Plans (other than Liabilities for benefit payments arising prior to the Distribution Date, Liabilities thereunder arising out of, relating to or resulting from any violation of applicable Laws or Collective Bargaining Agreement by any member of the WDC Group).

(e) Except as specifically provided in this Section 3.2, no member of the Spinco Group shall have any Liability with respect to any WDC Non-U.S. Savings Plan or other WDC Benefit Arrangement that is a defined contribution retirement plan.

(f) WDC shall retain all accounts and all assets and Liabilities relating to the WDC Non-U.S. Savings Plans in respect of each participant other than a Spinco Employee.

## ARTICLE IV

## HEALTH AND WELFARE PLANS

SECTION 4.1 Health and Welfare Plan Participation.

(a) Subject to any Collective Bargaining Agreement and applicable Law or unless otherwise agreed upon by the Parties, including pursuant to any transition services agreement, effective as of the Separation Time, the active participation of each Spinco Employee who is a participant in a WDC Welfare Plan shall automatically cease and no Spinco Employee shall thereafter accrue any benefits under any such WDC Welfare Plan.

(b) With respect to each WDC Welfare Plan listed on Schedule 4.1(b) hereto (collectively, the "Retained Welfare Plans"), Spinco shall, or shall cause a member of the Spinco Group to, use commercially reasonable efforts to establish or maintain one or more Spinco Welfare Plans in which each Spinco Employee who participated in such Retained Welfare Plan immediately prior to the Separation Time will be eligible to participate as of the Separation Time, with terms substantially comparable in the aggregate to the terms of the applicable WDC Welfare Plan as in effect immediately prior to the Separation Time, except as otherwise required by an applicable Collective Bargaining Agreement or applicable Law. Spinco shall, or shall cause the appropriate member of the Spinco Group to use commercially reasonable efforts to cause (i) all pre-existing condition exclusions and actively-at-work requirements of each Spinco Welfare Plan to be waived for such Spinco Employees and their covered dependents to the extent such provisions were already satisfied by such Spinco Employee under the applicable Retained Welfare Plan, and (ii) any eligible expenses incurred by such Spinco Employees their covered dependents during the portion of the plan year of the Retained Welfare Plan ending on the date such Spinco Employee's participation in the corresponding Spinco Welfare Plan begins to be taken into account under such Spinco Welfare Plan for purposes of satisfying all deductible, coinsurance and maximum out-of-pocket requirements applicable to such Spinco Employees and their covered dependents for the applicable plan year as if such amounts had been paid in accordance with the Spinco Welfare Plan.

(c) Subject to applicable Law and any Collective Bargaining Agreement or transition services agreement among the Parties, effective as of the Separation Time, Spinco or the appropriate Spinco Group member shall assume sponsorship of, and shall assume all assets and Liabilities relating to, each WDC Welfare Plan set forth on Schedule 4.1(c) hereto, in which all or a majority of the participants immediately prior to the Separation Time are Spinco Employees (each, a "Rollover Welfare Plan"); provided that if any such Rollover Welfare Plan is a self-insured, the WDC Group shall provide a summary of the associated assets and Liabilities for such plan as of a date no more than thirty (30) days prior to the Separation Date.

SECTION 4.2 Certain Liabilities.

(a) With respect to employee welfare and fringe benefits, (i) WDC shall fully perform, pay and discharge, under the WDC Welfare Plans, all claims of Spinco Employees that are incurred but not paid prior to or as of the Distribution Date and (ii) Spinco shall, or shall cause the appropriate member of the Spinco Group to fully perform, pay and discharge, under the Spinco Welfare Plans, after the Distribution Date, all claims of Spinco Employees that are incurred after the Distribution Date under the applicable Spinco Benefit Arrangement.

(b) For purposes of this Section 4.2, a claim or Liability is deemed to be incurred (i) with respect to medical, dental, vision and/or prescription drug benefits, upon the rendering of health services giving rise to such claim or Liability, (ii) with respect to life insurance, accidental death and dismemberment and business travel accident insurance, upon the occurrence of the event giving rise to such claim or Liability and (iii) with respect to disability benefits, upon the first date of the event resulting in the individual's disability, as determined by the disability benefit insurance carrier or claim administrator, giving rise to such claim or Liability.

SECTION 4.3 Time-Off Benefits.

(a) To the extent any Spinco Employee is required, under any Collective Bargaining Agreement or by applicable Law, to be paid in connection with the transfer of employment with the Spinco Group or the Distribution for any vacation time, paid time off and other time-off benefits as such Spinco Employee had with the WDC Group as of immediately before the Spinco Transfer Date, WDC shall, or shall cause another member of the WDC Group to, (i) pay such Spinco Employee the amounts owed and the associated Employment Taxes, unless as otherwise agreed between the Spinco Employee and WDC, or another member of the WDC Group, as applicable and in accordance with applicable Law, and (ii) subject to the following sentence, retain all Liabilities with respect to such amounts, including with respect to Tax withholding, reporting, remitting or payment obligations or any regulatory filing obligation in connection therewith.

(b) Unless otherwise required by Section 4.3(a), (A) Spinco shall, or shall cause the appropriate member of the Spinco Group to credit each Spinco Employee as of the Spinco Transfer Date with the amount of accrued but unused vacation time, paid time off and other time-off benefits as such Spinco Employee had with the WDC Group as of immediately before the Spinco Transfer Date, (B) Spinco shall, or shall cause the appropriate member of the Spinco Group to cause each Spinco Employee to be eligible to use any accrued but unused vacation time, paid time off and other time-off benefits as such Spinco Employee had with the WDC Group as of immediately before the Spinco Transfer Date, (C) to the extent in excess of the amount that would have been available to the Spinco Employee had the Spinco Employee's service with the WDC Group been treated as service with the Spinco Group, Spinco shall, or shall cause the appropriate member of the Spinco Group to pay any Spinco Employee for any excess amount of vacation time, paid time off and other time-off benefits not used in accordance with the foregoing clause (B), subject to applicable Law, and (D) as of the Spinco Transfer Date, each Spinco Employee shall be subject to Spinco's or the appropriate member of the Spinco Group's vacation policy (prorated as of the Spinco Transfer Date) for the year in which the Spinco Transfer Date occurs, subject to applicable Law and any Collective Bargaining Agreement; provided, however, that Spinco shall provide Spinco Employees with credit for employment service with the WDC Group for purposes of determining each Spinco Employee's eligibility for and future accruals of vacation days under the Spinco's or the appropriate member of the Spinco Group's vacation policy; and provided further, that such service shall not be recognized to the extent such recognition would result in the duplication of benefits under any Spinco Group policies. Subject to Section 4.3(a), time-off benefits for Spinco Employees will be fully equivalent to those provided by the Spinco Group to similarly situated employees of the Spinco Group in the applicable jurisdiction as of the date hereof.

(c) To the extent any WDC Employee is required, under any Collective Bargaining Agreement or by applicable Law, to be paid in connection with the transfer of employment with the WDC Group or the Distribution for any vacation time, paid time off and other time-off benefits as such WDC Employee had with the Spinco Group as of immediately before the WDC Transfer Date, Spinco shall, or shall cause another member of the Spinco Group to, comply with such requirements in the same manner and subject to the same requirements as set forth in Sections 4.3(a) and (b) above with respect to Spinco Employees.

## ARTICLE V

## EXECUTIVE BENEFIT PLANS

SECTION 5.1 Non-Qualified Deferred Compensation Plans.

(a) Effective as of the earlier to occur of (i) the Separation Time and (ii) January 1, 2025 (such earlier date, the "WDC NQDC Plan Withdrawal Date"), the active participation of each Spinco Employee and Spinco Director who is a participant in the WDC NQDC Plan shall automatically cease and no Spinco Employee or Spinco Director shall thereafter accrue any benefits as an active participant under any such WDC NQDC Plan; provided that all accounts of Spinco Employees and Spinco Directors maintained under the WDC NQDC Plan as of the WDC NQDC Plan Withdrawal Date and all deferral elections made prior thereto shall at all times from and following the WDC NQDC Plan Withdrawal Date remain (i) under the WDC NQDC Plan and (ii) the sole obligation and liability of WDC and its Affiliates following the WDC NQDC Plan Withdrawal Date (including, but not limited to, all deferral elections made by Spinco Employees relating to their first half of fiscal 2025 bonuses).

(b) Unless otherwise agreed upon by the Parties, effective as of January 1, 2025, Spinco shall cause a member of the Spinco Group to have adopted a non-qualified deferred compensation plan (the "Spinco NQDC Plan") in which each Spinco Employee, Spinco Director and Dual-Service Director who participated in the WDC NQDC Plan immediately prior to January 1, 2025 will be eligible to participate as of January 1, 2025, with terms consistent with then-prevailing market terms for similarly-situated companies, except as otherwise required by the terms of an applicable Collective Bargaining Agreement or applicable Law. The Spinco NQDC Plan and all accounts of Spinco Employees, Spinco Directors and Dual-Service Directors maintained thereunder shall at all times be the Spinco Group's sole responsibility and no member of the WDC Group shall have any obligation or liability with respect thereto.

(c) Spinco shall provide data and Information on participants in the WDC NQDC Plan (to the extent permitted by applicable Laws and consistent with Section 8.1) to WDC, including census information and employment termination dates for Spinco Employees who participate in the WDC NQDC Plan, for the purpose of administering the WDC NQDC Plan.

(d) WDC shall, and shall cause each member of the WDC Group to use commercially reasonable efforts to, provide each Spinco Employee or Spinco Director who has an account maintained under the WDC NQDC Plan following the WDC NQDC Plan Withdrawal Date with access to any account information, materials, or website access provided by Newport (or any successor third-party administrator) to the same extent such information, materials or website access is provided to active participants under the WDC NQDC Plan.

## ARTICLE VI

## TREATMENT OF WDC EQUITY AND LTI CASH AWARDS

SECTION 6.1 Treatment of WDC RSU Awards

(a) *Post-Separation WDC RSU Awards.* Each WDC RSU Award that is outstanding immediately prior to the Separation Time and held by a WDC Employee, Former WDC Employee, or WDC Director shall be adjusted, effective as of the Separation Time (and shall thereafter be referred to as a Post-Separation WDC RSU Award), as follows:

(i) The number of shares of WDC Common Stock subject to each Post-Separation WDC RSU Award shall be equal to the product (rounded down to the nearest whole share) of (A) the number of shares of WDC Common Stock subject to the Post-Separation WDC RSU Award's corresponding WDC RSU Award immediately prior to the Separation Time and (B) the greater of 1 and the WDC Ratio.

(ii) Each Post-Separation WDC RSU Award shall remain outstanding under the applicable WDC Equity Incentive Plan and be subject to the same terms, vesting conditions, settlement dates and method of settlement and other terms and conditions as were in effect immediately prior to the Separation Time for the corresponding WDC RSU Award; provided, however, that certain restrictions and/or different terms may be imposed on any such Post-Separation WDC RSU Award after the Separation Time if necessary and appropriate to comply with applicable Law and/or to avoid undue cost or administrative burden.

(b) *Spinco RSU Awards.* Except as set forth in Section 6.1(c), each WDC RSU Award that is outstanding immediately prior to the Separation Time and held by a Spinco Employee or Spinco Director shall be assumed and adjusted, in each case, effective as of the Separation Time (and shall thereafter be referred to as a Spinco RSU Award), as follows:

(i) The number of shares of Spinco Common Stock subject to each Spinco RSU Award shall be equal to the product (rounded down to the nearest whole share) of (A) the number of shares of WDC Common Stock subject to the Spinco RSU Award's corresponding WDC RSU Award immediately prior to the Separation Time and (B) the greater of 1/3 and the Spinco Ratio.

(ii) Each Spinco RSU Award shall be assumed under the applicable Spinco Equity Incentive Plan and remain subject to the same terms, vesting conditions, settlement dates and method of settlement and other terms and conditions as were in effect immediately prior to the Separation Time for the corresponding WDC RSU Award;

provided, however, that certain restrictions and/or different terms may be imposed on any such Spinco RSU Award after the Separation Time if necessary and appropriate to comply with applicable Law and/or to avoid undue cost or administrative burden.

(c) *Basket RSU Awards.* Each WDC RSU Award that is outstanding immediately prior to the Separation Time and held by a Dual-Service Director or a VP+ Spinco Employee (other than any VP+ Spinco Employee who resides in an Excluded Jurisdiction) shall be converted, as of the Separation Time, into both a Post-Separation WDC RSU Award (which shall remain outstanding under the applicable WDC Equity Incentive Plan) and a Spinco RSU Award (which shall be assumed by Spinco or any member of the Spinco Group under a Spinco Equity Incentive Plan). Each such award shall be subject to the same terms and conditions (including with respect to vesting conditions, settlement dates and method of settlement) after the Separation Time as the terms and conditions applicable to the corresponding WDC RSU Award immediately prior to the Separation Time; provided, however, that certain restrictions may be imposed on any such Post-Separation WDC RSU Award or Spinco RSU Award after the Separation Time if necessary and appropriate to comply with applicable Law; and further provided, however, that from and after the Separation Time:

(i) the number of shares of WDC Common Stock subject to the Post-Separation WDC RSU Award shall be equal to the number of shares of WDC Common Stock subject to the Post-Separation WDC RSU Award's corresponding WDC RSU Award immediately prior to the Separation Time; and

(ii) the number of shares of Spinco Common Stock subject to the Spinco RSU Award shall be equal to the product (rounded down to the nearest whole share) obtained by multiplying (x) the number of shares of WDC Common Stock subject to the Spinco RSU Award's corresponding WDC RSU Award immediately prior to the Separation Time by (y) the number of shares of Spinco Common Stock an individual holder of WDC Common Stock as of immediately prior to the Distribution Date will receive with respect to one (1) share of WDC Common Stock in the Distribution pursuant to Section 3.1(a) of the Separation Agreement.

SECTION 6.2 Treatment of WDC PSU Awards

(a) *Post-Separation WDC PSU Awards.* Each WDC PSU Award that is outstanding immediately prior to the Separation Time and held by a WDC Employee or Former WDC Employee shall be adjusted, effective as of the Separation Time (and shall thereafter be referred to as a Post-Separation WDC PSU Award), as follows:

(i) The number of shares of WDC Common Stock subject to each Post-Separation WDC PSU Award shall be equal to the product (rounded down to the nearest whole share) of (A) the number of shares of WDC Common Stock subject to the Post-Separation WDC PSU Award's corresponding WDC PSU Award immediately prior to the Separation Time and (B) the greater of 1 and the WDC Ratio.

(ii) Each Post-Separation WDC PSU Award shall remain outstanding under the applicable WDC Equity Incentive Plan and be subject to the same terms, vesting conditions, settlement dates and method of settlement and other terms and conditions as were in effect immediately prior to the Separation Time for the corresponding WDC PSU Award; provided, however, that certain restrictions may be imposed on any such Post-Separation WDC PSU Award after the Separation Time if necessary and appropriate to comply with applicable Law; and further provided, however, that the performance measures applicable to the Post-Separation WDC PSU Award shall be the same as those applicable to the corresponding WDC PSU Award immediately prior to the Separation Time, except as otherwise provided in writing by the WDC Board or the Compensation and Talent Committee or other applicable committee thereof, as applicable, in their sole discretion; and further provided, however, that the performance measures applicable to the Post-Separation WDC PSU Award with respect to fiscal year 2025 shall be deemed achieved at target performance to the extent necessary and appropriate to avoid distortions associated with the Separation as determined in writing by the WDC Board or the Compensation and Talent Committee or other applicable committee thereof, as applicable, in their sole discretion.

(b) *Basket Converted PSU Awards.* Each WDC PSU Award that is outstanding immediately prior to the Separation Time and held by a Spinco Employee (other than a Spinco Employee who resides in an Excluded Jurisdiction) shall be converted and adjusted, in each case, effective as of the Separation Time, into both a time-based restricted stock unit award which shall remain outstanding under the applicable WDC Equity Incentive Plan (and shall thereafter be referred to as a Post-Separation WDC Converted PSU Award) and a time-based restricted stock unit award which shall be assumed by Spinco or any member of the Spinco Group under a Spinco Equity Incentive Plan (and shall thereafter be referred to as a Spinco Converted PSU Award). Each such award shall be subject to substantially the same terms and conditions (including with respect to vesting conditions, settlement dates and method of settlement) after the Separation Time as the terms and conditions applicable to the corresponding WDC PSU Award immediately prior to the Separation Time, but excluding any performance-based vesting conditions that were applicable to the WDC PSU Award immediately prior to the Separation Time; provided, however, that certain restrictions may be imposed on any such Post-Separation WDC Converted PSU Award or Spinco Converted PSU Award after the Separation Time if necessary and appropriate to comply with applicable Law; and further provided, however, that from and after the Separation Time:

(i) The number of shares of WDC Common Stock subject to the WDC PSU Award shall be adjusted effective as of immediately prior to the Separation Time (and contingent upon the Separation) such that performance measures applicable to the WDC PSU Award with respect to any completed performance periods as of the Separation Time shall be achieved at actual performance, performance measures applicable to the WDC PSU Award with respect to any performance periods not yet completed as of the Separation Time shall be deemed achieved at target performance, and any modifiers applicable to the WDC PSU Award shall be pro-rated through the most recent fiscal year, in each case, as may be determined by the WDC Board or the Compensation and Talent Committee or other applicable committee thereof, as applicable, in their sole discretion.

(ii) The number of shares of WDC Common Stock subject to the Post-Separation WDC Converted PSU Award shall be equal to the adjusted number of shares of WDC Common Stock subject to the Spinco Converted PSU Award's corresponding WDC PSU Award immediately prior to the Separation Time (as determined in accordance with Section 6.2(b)(i) above).

(iii) The number of shares of Spinco Common Stock subject to the Spinco Converted PSU Award shall be equal to the product (rounded down to the nearest whole share) obtained by multiplying (x) the adjusted number of shares of WDC Common Stock subject to the corresponding WDC PSU Award immediately prior to the Separation Time (as determined in accordance with Section 6.2(b)(i) above) by (y) the number of shares of Spinco Common Stock an individual holder of WDC Common Stock as of immediately prior to the Distribution Date will receive with respect to one (1) share of WDC Common Stock in the Distribution pursuant to Section 3.1(a) of the Separation Agreement.

(c) *Spinco Converted PSU Awards in Excluded Jurisdictions.* Each WDC PSU Award that is outstanding immediately prior to the Separation Time and held by a Spinco Employee who resides in an Excluded Jurisdiction shall be converted into a time-based restricted stock unit award, assumed, and adjusted, in each case, effective as of the Separation Time (and shall thereafter be referred to as a Spinco Converted PSU Award), as follows:

(i) The number of shares of WDC Common Stock subject to the WDC PSU Award shall be adjusted effective as of immediately prior to the Separation Time (and contingent upon the Separation) such that performance measures applicable to the WDC PSU Award with respect to any completed performance periods as of the Separation Time shall be achieved at actual performance, performance measures applicable to the WDC PSU Award with respect to any performance periods not yet completed as of the Separation Time shall be deemed achieved at target performance, and any modifiers applicable to the WDC PSU Award shall be pro-rated through the most recent fiscal year, in each case, as may be determined by the WDC Board or the Compensation and Talent Committee or other applicable committee thereof, as applicable, in their sole discretion.

(ii) The number of shares of Spinco Common Stock subject to each Spinco Converted PSU Award (rounded down to the nearest whole share) shall be equal to the product obtained by multiplying (A) the adjusted number of shares of WDC Common Stock subject to the Spinco Converted PSU Award's corresponding WDC PSU Award immediately prior to the Separation Time (as determined in accordance with Section 6.2(c)(i) above) by (B) the greater of 1/3 and the Spinco Ratio.

(iii) Each Spinco Converted PSU Award shall be assumed under the applicable Spinco Equity Incentive Plan and remain subject to substantially the same terms and conditions (including with respect to vesting conditions, settlement dates and method of settlement) after the Separation Time as the terms and conditions applicable to the corresponding WDC PSU Award immediately prior to the Separation Time, but excluding any performance-based vesting conditions that were applicable to the WDC PSU Award immediately prior to the Separation Time; provided, however, that certain restrictions and/or different terms may be imposed on any such Spinco Converted PSU Award after the Separation Time if necessary and appropriate to comply with applicable Law and/or to avoid undue cost or administrative burden.

SECTION 6.3 Treatment of WDC DSU Awards

(a) *Post-Separation WDC DSU Awards.* Each WDC DSU Award that is outstanding immediately prior to the Separation Time shall be adjusted, effective as of the Separation Time (and shall thereafter be referred to as a Post-Separation WDC DSU Award), as follows:

(i) The number of shares of WDC Common Stock subject to each Post-Separation WDC DSU Award shall be equal to the product (rounded down to the nearest whole share) of (A) the number of shares of WDC Common Stock subject to the Post-Separation WDC DSU Award's corresponding WDC DSU Award immediately prior to the Separation Time by (B) the greater of 1 and the WDC Ratio.

(ii) Each Post-Separation WDC DSU Award shall remain outstanding under the applicable WDC Equity Incentive Plan and be subject to the same terms, vesting conditions, settlement dates and method of settlement and other terms and conditions as were in effect immediately prior to the Separation Time for the corresponding WDC DSU Award; provided, however, that certain restrictions may be imposed on any such Post-Separation WDC DSU Award after the Separation Time if necessary and appropriate to comply with applicable Law.

SECTION 6.4 Treatment of WDC LTI Cash Awards

(a) *WDC LTI Cash Awards.* Each WDC LTI Cash Award that is outstanding immediately prior to the Separation Time and held by a WDC Employee, Former WDC Employee, WDC Director or Former WDC Director shall remain outstanding without any adjustment thereto.

(b) *Spinco LTI Cash Awards.* Each WDC LTI Cash Award that is outstanding immediately prior to the Separation Time and held by a Spinco Employee or Spinco Director shall be converted into a Spinco LTI Cash Award, effective as of the Separation Time (and shall thereafter be referred to as a Spinco LTI Cash Award). Each Spinco LTI Cash Award shall be subject to the same terms, vesting conditions, settlement dates and method of settlement and other terms and conditions as were in effect immediately prior to the Separation Time for the corresponding WDC LTI Cash Award; provided, that all payment obligations thereunder shall be assumed by Spinco.

SECTION 6.5 Treatment upon Separation and a Change in Control.

(a) After the Separation Time, for any award adjusted under this Article VI, any reference to a "change in control," "change of control" or similar definition in an award agreement, severance plan or equity incentive plan applicable to such award (x) with respect to Post-Separation WDC Equity Awards, shall be deemed to refer to a "change in control," "change of control" or similar definition as set forth in the applicable Post-Separation WDC Equity Award agreement, WDC Severance Plan or WDC Equity Incentive Plan, as applicable (a "WDC

Change in Control"), and (y) with respect to Spinco Equity Awards, shall be deemed to refer to a "change in control," "change of control" or similar definition as set forth in the applicable Spinco Equity Award agreement, Spinco Severance Plan or Spinco Equity Incentive Plan, as applicable (a "Spinco Change in Control").

(b) Neither the Separation, the Distribution nor any employment transfer described herein shall constitute a termination of employment or service for purposes of any WDC Equity Award, Post-Separation WDC Equity Award or Spinco Equity Award, as applicable. In addition, an individual's continuous employment or service with the Spinco Group shall be treated as continuous employment or service with the WDC Group with respect to any Post-Separation WDC Equity Award held by a VP+ Spinco Employee. Further, if the original WDC Equity Award held by a VP+ Spinco Employee was subject, as of immediately prior to the Distribution, to accelerated vesting provisions (i) by reference to a termination of employment or service with the WDC Group and/or (ii) in connection with a WDC Change in Control, in each case, as set forth in the applicable WDC Severance Plan, then the corresponding Post-Separation WDC Equity Award and Spinco Equity Award held by such VP+ Spinco Employee shall be subject to the same vesting acceleration provisions upon his or her termination of employment or service with the relevant member of the Spinco Group and/or in connection with a Spinco Change in Control, in each case, as shall be set forth in the applicable Spinco Severance Plan; provided that in no event shall the treatment of the Post-Separation WDC Equity Awards be more favorable under the applicable Spinco Severance Plan than the treatment that would have been provided under the applicable WDC Severance Plan prior to the Separation Time.

(c) Notwithstanding the foregoing, in the event of a Spinco Change in Control, (i) if any Spinco Equity Award then held by any VP+ Spinco Employee is not assumed or substituted by a successor corporation or a parent or subsidiary thereof ("Successor Corporation"), then each such Spinco Equity Award and corresponding Post-Separation WDC Equity Award (that relates to the same original WDC Equity Award) shall accelerate and vest in its entirety on a date prior to the effective time of such Spinco Change in Control as determined by the administrator of the applicable Spinco Equity Incentive Plan, and (ii) if Spinco Equity Awards are assumed or substituted by a Successor Corporation, then each such Spinco Equity Award and corresponding Post-Separation WDC Equity Award (that relates to the same original WDC Equity Award) shall be subject to the vesting acceleration provisions under the applicable Spinco Severance Plan upon the holder's termination of employment or service following the Spinco Change in Control. The Spinco Change in Control shall have no impact on any Post-Separation WDC DSU Award.

(d) In the event of a WDC Change in Control (i) any Post-Separation WDC Equity Award then held by any VP+ Spinco Employee shall vest in full and (ii) any Spinco Equity Award then held by any VP+ Spinco Employee shall remain subject to the terms of any Spinco Equity Award agreement, Spinco Severance Plan or Spinco Equity Incentive Plan, as applicable.

SECTION 6.6 Spinco Equity Incentive Plans. Effective as of the Separation Time, Spinco shall have adopted an equity incentive plan and such other plans (the "Spinco Equity Incentive Plans"), which shall permit the grant and issuance of the Spinco Equity Awards denominated in shares of Spinco Common Stock, in addition to the Spinco LTI Cash Awards, as described in this Article VI.

SECTION 6.7 Employee Stock Purchase Plan. Prior to the date hereof, the administrator of the WDC ESPP shall have taken all actions necessary and appropriate, to the extent permissible by applicable Law, and in accordance with such applicable Law: (a) to amend the WDC ESPP, prior to the Distribution Date, such that each Exercise Period that would otherwise be in progress as of immediately prior to the Distribution Date shall be shortened and a new Exercise Date shall be set by the administrator of the WDC ESPP (or its delegee) to occur upon the day that is ten (10) trading days prior to the Distribution Date in accordance with the terms of the WDC ESPP, as of which date the Exercise Period and related Offering Period then in progress will terminate; provided, however, that with respect any Exercise Period commencing on or after December 1, 2024, in the sole discretion of WDC, such Exercise Period may be terminated effective as of the day prior to the Distribution Date, and without setting a new Exercise Date, in which case the payroll deductions credited to the participants' accounts for that Exercise Period will be returned to them on or as soon as practicable following the Distribution Date in accordance with the terms of the WDC ESPP; (b) to terminate the participation of Spinco Employees in the WDC ESPP effective no later than immediately prior to the Separation Time; and (c) to commence a new Offering Period and payroll deductions and other contributions by WDC Employees as soon as reasonably practicable after the Distribution Date, on such date as may be determined by the administrator of the WDC ESPP. Effective as of or before the Distribution Date, Spinco shall adopt an employee stock purchase plan in a form substantially similar to the WDC ESPP (the "Spinco ESPP"), and the Spinco Employees shall be eligible to participate in the Spinco ESPP effective no later than the Distribution Date, or such other date as may be determined by the administrator of the Spinco ESPP; provided, however, that Spinco may (a) delay implementation of the Spinco ESPP in one or more countries to the extent necessary to complete those actions and undertakings that Spinco, in its sole discretion, determines to be necessary or advisable to comply with applicable Law; or (b) elect to not offer the Spinco ESPP in certain non-U.S. jurisdictions for legal, regulatory or tax issues or requirements and/or to avoid undue cost or administrative burden.

SECTION 6.8 Necessary Actions. The Parties shall, as soon as practicable after the date hereof and in no event later than the Business Day prior to the Distribution Date, take all actions as may be necessary to implement the provisions of this Article VI, including adopting any necessary resolutions and making any required plan amendments and award modifications and obtaining any required consents from Spinco Employees.

SECTION 6.9 Awards Granted in Certain Non-U.S. Jurisdictions. Notwithstanding the foregoing provisions of this Article VI, the provisions of this Article VI may be modified by the Parties to the extent necessary or advisable to address legal, regulatory or tax issues or requirements and/or to avoid undue cost or administrative burden arising out of the application of this Article VI to equity-based incentive compensation awards subject to non-U.S. Laws. For the avoidance of doubt, the Parties may provide for different adjustments with respect to or impose different terms on some or all Spinco Equity Awards or WDC Equity Awards to the extent that the Parties deem such adjustments necessary and appropriate. Any adjustments made by the Parties shall be deemed to have been incorporated by reference herein as if fully set forth above and shall be binding on the Parties and their respective Subsidiaries and Affiliates.

SECTION 6.10 SEC Registration. All shares of Spinco Common Stock to be issued in respect of the Spinco Equity Awards shall be subject to an effective registration statement on Form S-8 (or another appropriate form) maintained by Spinco. Spinco shall use commercially reasonable efforts to keep such registration statement effective (and maintain the current status of the prospectus required thereby) for so long as any such Spinco Equity Awards remain outstanding.

SECTION 6.11 Tax and Regulatory Compliance for Post-Separation WDC Equity Awards. To the extent any member of the Spinco Group is subject to Tax withholding, reporting, remitting or payment obligations or any regulatory filing obligation in connection with the Post-Separation WDC Equity Awards, the Parties agree to cooperate to ensure that such obligations are met and that any Employment Taxes payable by any member of the WDC Group or Spinco Group in connection with such awards shall be paid by WDC. The Parties hereby acknowledge and agree that (i) the members of the WDC Group shall be solely responsible for all obligations relating to reporting of Taxes to the appropriate Governmental Authority and remitting the amounts of any such Taxes required to be withheld (including any Employment Taxes) to the appropriate Governmental Authority in connection with the exercise, vesting or settlement of any such Post-Separation WDC Equity Awards, and no member of the Spinco Group shall have any Liability with respect thereto and (ii) Tax deductions relating to the Post-Separation WDC Equity Awards shall be retained by WDC. The obligations of the members of the WDC Group and the Spinco Group to provide Information to the other party in order to allow the administration of the Post-Separation WDC Equity Awards pursuant to this Article VI are set forth in Article VIII.

SECTION 6.12 Compliance. In the event that the treatment specified in this Article VI hereof does not comply with applicable Law or results in adverse Tax consequences to the Parties or any Spinco Employees, the Parties agree to negotiate in good faith alternative treatment or other resolution that complies with applicable Law and does not result in adverse Tax consequences to the Parties or any Spinco Employees, subject to any Party's obligation to reimburse any other Party as set forth in Section 2.2(d).

## ARTICLE VII

## ADDITIONAL COMPENSATION MATTERS

SECTION 7.1 Workers' Compensation Liabilities. Effective as of the Separation Time, Spinco shall assume all Liabilities for Spinco Employees related to any and all workers' compensation claims and coverage, arising under any law of any state, territory, or possession of the U.S. or the District of Columbia, and arising prior to, at or after the Separation Time, and Spinco shall be fully responsible for the administration of all such claims. If Spinco is unable to assume any such Liability or the administration of any such claim because of the operation of applicable state law or for any other reason, WDC shall retain such Liabilities and Spinco shall reimburse and otherwise fully indemnify WDC for all such Liabilities, including the costs of administering the plans, programs or arrangements under which any such Liabilities have accrued or otherwise arisen.

SECTION 7.2 Code Section 409A. Notwithstanding anything in this Agreement to the contrary, the Parties agree to negotiate in good faith regarding the need for any treatment different from that otherwise provided herein with respect to the payment of compensation to ensure that the treatment of such compensation does not cause the imposition of a Tax under Section 409A of the Code. In no event, however, will any Party be liable to another in respect of any Taxes imposed under, or any other costs or Liabilities relating to, Section 409A of the Code.

SECTION 7.3 Payroll Matters. In the case of each Spinco Employee, the employer of such individual as of immediately before the Separation Date shall be responsible for paying (and the W-2 and other payroll reporting obligations for) the payroll amount due to such individual for the payroll period (or portion thereof) ending on the Separation Date, unless otherwise agreed to by WDC and Spinco (or the appropriate member of the Spinco Group).

SECTION 7.4 Cash Incentives

(a) Subject to applicable Law, cash incentives payable under the WDC Cash Incentive Plans in respect of the first half of the fiscal year during which the Distribution Date occurs (the "Mid-Year Cash Incentives") shall be determined as of the Separation Time based on actual performance results and level of performance achieved (or actual commissions earned, as applicable) in respect of the first half of such fiscal year (including, if applicable, the portion of any performance period relating to the first half of such fiscal year) measured against the applicable targets under the applicable WDC Cash Incentive Plan.

(b) To the extent earned in accordance with Section 7.4(a), the Mid-Year Cash Incentives shall be paid to the eligible WDC Employees and Spinco Employees no later than at the time or times WDC otherwise would have paid such Mid-Year Cash Incentives in the ordinary course of business, subject to the terms and conditions of the applicable WDC Cash Incentive Plan (including, to the extent required, the employees' continued employment with the WDC Group or Spinco Group, as applicable, through the applicable payment date). The WDC Group shall be solely responsible for funding, paying, and discharging all obligations relating to any Mid-Year Cash Incentives that any WDC Employee is eligible to receive under any WDC Cash Incentive Plan, and no member of the Spinco Group shall have any obligations with respect thereto. The Spinco Group shall be solely responsible for funding, paying, and discharging all obligations relating to any Mid-Year Cash Incentives that any Spinco Employee is eligible to receive under any WDC Cash Incentive Plan at the time or times WDC otherwise would have paid such Mid-Year Cash Incentives in the ordinary course of business, and no member of the WDC Group shall have any obligations with respect thereto[; provided, however, that pursuant to the Separation Agreement, WDC shall pay to Spinco (or an appropriate member of the Spinco Group) a cash payment equal to the aggregate Mid-Year Cash Incentives accrued, or expected to accrue, with respect to the Spinco Employees as of the Separation Time, as well as an additional amount equal to the employer portion of Employment Taxes required to be paid with respect to such amount (and Spinco or the appropriate member of the Spinco Group shall timely pay such taxes to the appropriate Governmental Authority).]

(c) Subject to applicable Law, and notwithstanding anything to the contrary herein, cash incentives for Spinco Employees in respect of the second half of the fiscal year during which the Distribution Date occurs (the "Remaining Cash Incentives") shall accrue at each Spinco Employee's target incentive award percentage (under the applicable WDC Cash Incentive Plan or otherwise) based on payroll for the portion of the second half of the fiscal year that occurs up to the Separation Time. The Spinco Group shall be solely responsible for funding, paying, and discharging all obligations relating to any Remaining Cash Incentives that any Spinco Employee is eligible to receive (under any Spinco Cash Incentive Plan or otherwise), to the extent earned following the Separation Time, and no member of the WDC Group shall have any obligations with respect thereto[; provided, however, that pursuant to the Separation Agreement, WDC shall pay to Spinco (or an appropriate member of the Spinco Group) a cash payment equal to the aggregate Remaining Cash Incentives accrued, or expected to accrue, with respect to the Spinco Employees as of the Separation Time, as well as an additional amount equal to the employer portion of Employment Taxes required to be paid with respect to such amount (and Spinco or the appropriate member of the Spinco Group shall timely pay such taxes to the appropriate Governmental Authority).]

(d) On or following the Distribution Date, WDC shall determine appropriate performance measures to be used for the remainder of the fiscal year for eligible WDC Employees under the WDC Cash Incentive Plans or such other plans as may be adopted by WDC for the grant of cash incentives to WDC Employees following the Distribution Date.

(e) Effective as of the Separation Time, Spinco (or the appropriate member of the Spinco Group) shall have adopted a cash incentive plan and such other plans (the "Spinco Cash Incentive Plans"), which shall permit the grant of cash incentives to Spinco Employees following the Distribution Date with terms substantially comparable to the terms of the WDC Cash Incentive Plans as in effect immediately prior to the Separation Time. Further, at any time following the Distribution Date, Spinco (or the appropriate member of the Spinco Group) shall determine, in compliance with applicable Law and any applicable Collective Bargaining Agreement, those Spinco Cash Incentive Plans in which the Spinco Employees will be eligible to participate and appropriate performance measures to be used for the remainder of the fiscal year during which the Distribution Date occurs.

SECTION 7.5 Severance Plans

(a) Effective as of the Separation Time, Spinco (or the appropriate member of the Spinco Group) shall have adopted a severance plan and such other plans (the "Spinco Severance Plans") for the benefit of eligible Spinco Employees containing terms substantially similar to those set forth in the WDC Severance Plans. Further, following the Separation Time, Spinco (or the appropriate member of the Spinco Group) shall determine, in compliance with applicable Law and any applicable Collective Bargaining Agreement, those Spinco Severance Plans in which the Spinco Employees will be eligible to participate.

(b) Following the Separation Time, the WDC Group shall be solely responsible for funding, paying and discharging all obligations relating to any severance benefits that any WDC Employee or Former WDC Employee is eligible to receive under any WDC Severance Plan and no member of the Spinco Group shall have any obligations with respect

thereto. Further, following the Separation Time, the Spinco Group shall be solely responsible for funding, paying and discharging all obligations relating to any severance benefits that any Spinco Employee is eligible to receive under any Spinco Severance Plan and no member of the WDC Group shall have any obligations with respect thereto.

(c) The Parties hereto agree that none of the transactions contemplated by the Separation Agreement or any of the Ancillary Agreements, including this Agreement, shall constitute a "change in control," "change of control" or similar term, as applicable, within the meaning of any WDC Benefit Arrangement or Spinco Benefit Arrangement relating to severance benefits, including under any WDC Severance Plan or Spinco Severance Plan.

(d) To the extent permitted by applicable Law, it is intended that the WDC Employees and Spinco Employees shall not experience a termination of employment or service solely as a result of the transactions contemplated by the Separation Agreement or any of the Ancillary Agreements, including any employment transfers contemplated by this Agreement. WDC shall cause each WDC Severance Plan to be interpreted and administered consistent with such intent and shall have taken all actions necessary or appropriate prior to the Separation Time to clarify that WDC Employees and Spinco Employees shall not be entitled to any severance payments or benefits under any WDC Severance Plan as a result of such transactions or transfers, as applicable.

SECTION 7.6 Additional Matters. See Schedule 7.6 hereto.

## ARTICLE VIII

## GENERAL AND ADMINISTRATIVE

SECTION 8.1 Sharing of Information. To the extent permitted by applicable Law and Section 5.3 of the Separation Agreement, WDC and Spinco shall provide to each other and their respective agents and vendors all Information (other than communications, documents and materials subject to any Privilege) as the other may reasonably request to enable the requesting Party to defend or prosecute claims, administer efficiently and accurately each of its Benefit Arrangements (including in connection with audits or other proceedings maintained by any Governmental Authority), to timely and accurately comply with and report under Section 14 of the Securities Exchange Act of 1934, as amended, and the Code, to determine the scope of, as well as fulfill, its obligations under this Agreement, and otherwise to comply with provisions of applicable Law. WDC shall comply with all applicable Privacy Laws and requirements when collecting, processing, sharing and/or transferring information relating to an individual or which on its own or with other information may identify or be used to identify an individual. Such Information shall, to the extent reasonably practicable, be provided in the format and at the times and places requested, but in no event shall the Party providing such Information be obligated to incur any out-of-pocket expenses not reimbursed by the Party making such request or make such Information available outside of its normal business hours and premises. Any Information shared or exchanged pursuant to this Agreement shall be subject to the confidentiality requirements set forth in Section 6.6 of the Separation Agreement; provided, that, notwithstanding anything in such Section 6.6 and without otherwise limiting the provisions of such Section 6.6, each of the Parties shall comply with any requirement of applicable Law in regard to the confidentiality of

the Information (whether relating to employee records or otherwise) that is shared with another Party in accordance with this Section 8.1. The Parties also hereby agree to enter into any business associate agreements that may be required for the sharing of any Information pursuant to this Agreement to comply with the requirements of HIPAA. The Parties shall use their best efforts to secure Consents from employees, former employees and their respective dependents to the extent required by Law or otherwise to permit the Parties to share Information as contemplated in this Section 8.1. WDC shall indemnify, defend and hold harmless the Spinco Indemnitees for any Losses or Liabilities related to or resulting from the failure by any member of the WDC Group to provide timely and accurate Information prior to, at or after the Distribution Date in accordance with this Agreement. The Spinco Group shall indemnify, defend and hold harmless the WDC Indemnitees for any Losses or Liabilities related to or resulting from the failure to provide timely and accurate Information by any member of the Spinco Group, following the Distribution Date. Nothing in this Section 8.1 shall be construed to govern any matters of Privilege, which such matters shall be governed by Section 5.3 of the Separation Agreement.

SECTION 8.2 Commercially Reasonable Efforts/Cooperation. (i) Each of the Parties shall use commercially reasonable efforts (subject to, and in accordance with applicable Law) to take promptly, or cause to be taken promptly, all actions, and to do promptly, or cause to be done promptly, and to assist and cooperate with the other Parties in doing, all things reasonably necessary, proper or advisable to consummate and make effective the transactions contemplated by and carry out the intent and purposes of this Agreement, including adopting plans or plan amendments and using commercially reasonable efforts to obtain satisfaction of the conditions precedent to each Party's obligations hereunder within its reasonable control and to perform all covenants and agreements herein applicable to such Party and (ii) none of the Parties will, without the prior written consent of any other applicable Party, take any action which would reasonably be expected to prevent or materially impede, interfere with or delay the transactions contemplated by this Agreement. Without limiting the generality of the foregoing provisions of this Section 8.2, (A) where the cooperation of third parties, such as insurers or trustees, would be necessary in order for a Party to completely fulfill its obligations under this Agreement, such Party shall use commercially reasonable efforts to cause such third parties to provide such cooperation, (B) each of the Parties shall cooperate on any issue relating to the transactions contemplated by this Agreement for which the other Party seeks a determination letter or private letter ruling from the IRS, an advisory opinion from the Department of Labor or any other filing, consent or approval with respect to or by a Governmental Authority, (C) each of the Parties shall cooperate in connection with any audits of any Benefit Arrangement or payroll services with respect to which such Party may have Information, (D) each of the Parties shall cooperate in coordinating each of their respective payroll systems and to implement the actions contemplated pursuant to this Agreement, including under Section 6.5, Section 7.3 and Section 7.4, and (E) each of the Parties shall cooperate in good faith in connection with the notification and consultation with works councils, labor unions and other employee representatives of employees of the Spinco Group.

SECTION 8.3 Employer Rights. Without limiting Section 2.7 or Section 2.8 and except as otherwise expressly provided in this Agreement (including Section 2.3), nothing in this Agreement shall prohibit any Party or any of their respective Affiliates from amending, modifying or terminating any of their respective Benefit Arrangements at any time within their sole discretion.

SECTION 8.4 Consent of Third Parties. If any provision of this Agreement is dependent on the Consent of any third party and such Consent is withheld, the Parties shall use their commercially reasonable efforts to implement the applicable provisions of this Agreement to the fullest extent practicable. If any provision of this Agreement cannot be implemented due to the failure of such third party to consent, the Parties shall negotiate in good faith to implement the provision (as applicable) in a mutually satisfactory manner.

SECTION 8.5 Access to Employees. On and after the Separation Time, WDC and Spinco shall, and shall cause each of their respective Affiliates to, use their commercially reasonable efforts to make available to each other those of their employees who may reasonably be needed in order to defend or prosecute any legal or administrative Action (other than a legal action between or among any of the Parties) to which any employee, director or Benefit Arrangement of the WDC Group or Spinco Group is a party and which relates in any way to their respective employment or to their respective Benefit Arrangements prior to the Separation Time. The Party to whom an employee is made available in accordance with this Section 8.5 shall pay or reimburse the other Party for all reasonable expenses which may be incurred by such employee in connection therewith, including all reasonable travel, lodging, and meal expenses.

SECTION 8.6 Beneficiary Designation/Release of Information/Right to Reimbursement. To the extent permitted by applicable Law and except as otherwise provided for in this Agreement, all beneficiary designations, authorizations for the release of Information and rights to reimbursement made by or relating to Spinco Employees under WDC Benefit Arrangements shall be transferred to and be in full force and effect under the corresponding Spinco Benefit Arrangements until such beneficiary designations, authorizations or rights are replaced or revoked by, or no longer apply, to the relevant Spinco Employee.

## ARTICLE IX

## MISCELLANEOUS

SECTION 9.1 Entire Agreement. This Agreement and the Separation Agreement and the Ancillary Agreements, including any schedules, exhibits and amendments hereto and thereto, and the other agreements and documents referred to herein and therein, shall together constitute the entire agreement among the Parties with respect to the subject matter hereof and thereof and shall supersede all prior negotiations, agreements and understandings, both written and oral, among or between any of the Parties with respect to such subject matter hereof and thereof.

SECTION 9.2 Governing Law. This Agreement and the consummation of the transactions contemplated hereby, and any Action (whether at law, in contract, in tort or otherwise) arising out of or relating to this Agreement and the consummation of the transactions contemplated hereby, or the negotiation, validity, interpretation, performance, breach or termination of this Agreement and the consummation of the transactions contemplated hereby shall be governed by and construed in accordance with the internal law of the State of Delaware, regardless of the law that might otherwise govern under applicable principles of conflicts of law thereof.

SECTION 9.3 Notices. All notices and other communications hereunder shall be in writing and shall be deemed duly delivered: (a) four (4) Business Days after being sent by registered or certified mail, return receipt requested, postage prepaid; (b) one (1) Business Day after being sent for next Business Day delivery, fees prepaid, via a reputable nationwide overnight courier service; (c) if sent by email transmission prior to 6:00 p.m. recipient's local time, upon transmission when receipt is confirmed; or (d) if sent by email transmission after 6:00 p.m. recipient's local time, the Business Day following the date of transmission when receipt is confirmed:

(a) If to WDC:

c/o Western Digital Corporation
[Address]
Attn: [·]
Email: [·]

with a copy to (which shall not constitute notice):

Skadden, Arps, Slate, Meagher & Flom LLP
525 University Avenue Suite 1400
Palo Alto, CA 94301
Attn: Thomas J. Ivey and Christopher J. Bors
E-mail: thomas.ivey@skadden.com and christopher.bors@skadden.com

(b) If to Spinco:

c/o Sandisk Corporation
[Address]
Attn: [·]
Email: [·]

with a copy to (which shall not constitute notice):

Skadden, Arps, Slate, Meagher & Flom LLP
525 University Avenue Suite 1400
Palo Alto, CA 94301
Attn: Thomas J. Ivey and Christopher J. Bors
Email: thomas.ivey@skadden.com and christopher.bors@skadden.com

SECTION 9.4 Amendments and Waivers.

(a) This Agreement may be amended or supplemented in any and all respects and any provision of this Agreement may be waived and any such waiver shall be binding upon a Party, only if such waiver is set forth in a writing executed by such waiving party bound thereby, and any such amendment or supplement shall be effective only if set forth in a writing executed by each of the Parties; and any such waiver, amendment or supplement shall not be applicable or have any effect except in the specific instance in which it is given. No course of dealing between or among any Persons having any interest in this Agreement shall be deemed effective to modify, amend or discharge any part of this Agreement or any rights or obligations of any Party under or by reason of this Agreement.

(b) Notwithstanding the foregoing, no failure on the part of any Party to exercise any power, right, Privilege or remedy under this Agreement, and no delay on the part of any Party in exercising any power, right, Privilege or remedy under this Agreement, shall operate as a waiver of such power, right, Privilege or remedy; and no single or partial exercise of any such power, right, Privilege or remedy shall preclude any other or further exercise thereof or of any other power, right, Privilege or remedy. The rights and remedies hereunder are cumulative and not exclusive of any rights or remedies that any Party would otherwise have. Any waiver, permit, consent or approval of any kind or character of any breach or default under this Agreement or any such waiver of any provision of this Agreement must satisfy the conditions set forth in Section 9.4(a) and shall be effective only to the extent in such writing specifically set forth.

SECTION 9.5 Early Termination. This Agreement shall terminate without further action at any time before the Distribution upon termination of the Separation Agreement. If so terminated, no Party shall have any Liability of any kind to the other Parties or any other Person on account of this Agreement, except as provided in the Separation Agreement, it being understood that this Section 9.5 shall not be deemed to limit or modify the provisions of Section 9.8 of the Separation Agreement (Termination).

SECTION 9.6 No Third-Party Beneficiaries. Except for the provisions of Section 3.1(i) and Section 8.1 with respect to indemnification of Spinco Indemnitees or WDC Indemnitees, as applicable, which are intended to benefit and be enforceable by the Persons specified therein as indemnitees, this Agreement is solely for the benefit of the Parties, and their respective successors and permitted assigns, and is not intended, and shall not be deemed, to (a) be construed as an amendment, waiver, or creation of any agreement of employment with any person, any Employee Benefit Plan or other employee benefit plan, (b) limit in any way the right of the WDC Group, Spinco Group or any of their respective Affiliates, to amend or terminate any Employee Benefit Plan at any time, (c) create any right to employment, continued employment, or any term or condition of employment with the WDC Group, Spinco Group or any of their respective Affiliates, (d) confer on third parties (including any employees of the Parties and their respective Affiliates) any remedy, claim, reimbursement, claim of action or other right in addition to those existing without reference to this Agreement, or (e) otherwise create any third-party beneficiary hereto.

SECTION 9.7 Assignability; Binding Effect. This Agreement shall be binding upon, and shall be enforceable by and inure solely to the benefit of, the Parties and their respective successors and permitted assigns; provided, however, that neither this Agreement nor any Party's rights, interests or obligations hereunder may be assigned or delegated by any such Party, in whole or in part (whether by operation of law or otherwise), without the prior written consent of the other Parties, and any attempted assignment or delegation of this Agreement or any of such rights or obligations by any Party without the prior written consent of the other Parties shall be void and of no effect. Except as set forth in Section 9.6, nothing in this Agreement, express or implied, is intended to or shall confer upon any Person (other than the Parties) any power, right, Privilege or remedy of any nature whatsoever under or by reason of this Agreement.

SECTION 9.8 Severability. Any term or provision of this Agreement which is invalid or unenforceable in any situation in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement in any other jurisdiction or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction. If any provision of this Agreement is so broad as to be unenforceable, such provision shall be interpreted to be only so broad as is enforceable. If a final judgment of a court of competent jurisdiction declares that any term or provision of this Agreement is invalid or unenforceable, the Parties agree that the court making such determination shall have the power to limit such term or provision, to delete specific words or phrases or to replace such term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision, and this Agreement shall be valid and enforceable as so modified. In the event such court does not exercise the power granted to it in the prior sentence, the Parties agree to replace such invalid or unenforceable term or provision with a valid and enforceable term or provision that will achieve, to the extent possible, the economic, business and other purposes of such invalid or unenforceable term or provision.

SECTION 9.9 Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument and shall become effective when counterparts have been signed by each of the Parties and delivered to the other Parties, it being understood that all Parties need not sign the same counterpart. This Agreement may be executed and delivered by facsimile transmission, by electronic mail in "portable document format" (".pdf") form or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, or by combination of such means. The exchange of a fully executed Agreement (in counterparts or otherwise) by facsimile or electronic transmission shall be treated in all manner and respects as an original agreement and shall be considered to have the same binding legal effects as if it were the original signed version thereof delivered in person.

At the request of any Party, the other Parties shall re-execute original forms thereof and deliver them to the requesting Party. No Party shall raise the use of a facsimile machine or other electronic means to deliver a signature or the fact that any signature was transmitted or communicated through the use of a facsimile machine or other electronic means as a defense to the formation of a Contract, and each such Party forever waives any such defense.

SECTION 9.10 Dispute Resolution. Any controversy, dispute or claim arising out of, in connection with, or in relation to the interpretation, performance, nonperformance, validity, termination or breach of this Agreement or otherwise arising out of, or in any way related to this Agreement or the transactions contemplated hereby or thereby shall be subject to the dispute resolutions procedures set forth in Sections 8.1 and 9.4 of the Separation Agreement.

SECTION 9.11 Waiver of Jury Trial. EACH OF THE PARTIES IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY ACTION OR LEGAL PROCEEDING (WHETHER AT LAW, IN CONTRACT, IN TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

[*Remainder of this page intentionally left blank.*]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the day and year first above written.

**Western Digital Corporation**

By: _____
Name:
Title:

**Sandisk Corporation**

By: _____
Name:
Title:

[*Signature Page to Employee Matters Agreement*]

**Exhibit 10.4**

**FORM OF IP CROSS-LICENSE AGREEMENT**

This IP Cross-License Agreement (this "**Agreement**"), dated as of **[•]** (the "**Effective Date**"), is made and entered into by and between Western Digital Corporation, a Delaware corporation ("**WDC**"), and Sandisk Corporation, a Delaware corporation and wholly owned Subsidiary of WDC ("**Spinco**") (each a "**Party**" and together, the "**Parties**"). Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in Article I.

**RECITALS**

WHEREAS, WDC and Spinco, have entered into the Separation and Distribution Agreement, dated as of**[•]** (as amended, modified or supplemented from time-to-time in accordance with its terms, the '**SDA**"), pursuant to which (i) WDC has agreed to transfer to Spinco, and Spinco has agreed to receive and assume, certain assets and liabilities of the Flash Business and (ii) following such transfer and the other transactions specified in the SDA, WDC has agreed to effect the Distribution, all as more specifically described in, and subject to the terms of, the SDA;

WHEREAS, the Parties have executed various Ancillary Agreements, including a transitional cross-license of rights in Trademarks (the "**TTLA**") of even date herewith, pursuant to the SDA in connection with the consummation of the transactions contemplated by the SDA, and to facilitate the ongoing operations of the Flash Business and the WDC Retained Business;

WHEREAS, following the Separation, each Party will own certain Patents, Copyrights and Trade Secrets which may be used in the other Party's business; and

WHEREAS, each Party desires to obtain anon-exclusive license from the other Party to use such Intellectual Property Rights on the terms set forth herein.

NOW, THEREFORE, in consideration of the premises and the mutual representations, warranties, covenants and agreements set forth in this Agreement, the SDA, the Parties agree as follows:

**AGREEMENT**

**I. DEFINITIONS**

Capitalized terms used, but not defined in this Agreement, shall have the meaning ascribed to such terms in the SDA. If a capitalized term is defined in both this Agreement and the SDA, the definition in this Agreement will control.

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

1.2 "**Confidential Information**" has the meaning ascribed to it inSection 8.1.

1.3 "**Disclosing Party**" has the meaning ascribed to it inSection 8.2.

1.4 "**Effective Date**" has the meaning ascribed to it in the Preamble.

1.5 "**Flash Business**" means the "Flash" operating segment of the WDC Group, as described in WDC'sForm 10-K for the fiscal year ended June 30, 2023, including the businesses of marketing, offering, selling, licensing, providing, distributing, developing, manufacturing, importing or exporting Flash Business Products.

1.6 "**Flash Business Products**" shall mean: (i) any semiconductor memory, including flash memory, MRAM, phase-change memory and ReRAM (collectively, "**Semiconductor Memory**"); (ii) any system or module primarily based on Semiconductor Memory; and (iii) any ancillary components, materials and software, including, but not limited to, controllers, firmware, housing, packaging and support means, to the extent incorporated into or primarily used with (i) and/or (ii).

1.7 "**Flash Business Field**" shall mean the field of the operation of the Flash Business.

1.8 "**HDD**" means a device designed to magnetically record and/or read digital information on or from a rotating disk (**Rotating Magnetic Storage**") that contains one or more spindle motors, one or more magnetic heads, one or more controllers, and one or more actuators, all of which are incorporated into a single enclosure. The term "HDD" shall exclude any device if the primary storage medium of such device is not Rotating Magnetic Storage.

1.9 "**HDD Business Field**" means all fields outside the Flash Business Field, and the field of the operation of the businesses of marketing, offering, selling, licensing, providing, distributing, developing, manufacturing, importing or exporting Platforms Products and standalone SSDs.

1.10 "**Intellectual Property Rights**" means any and all statutory and/or common law intellectual property rights throughout the world, including any of the following: (i) all rights in United States and foreign patents and utility models and applications therefor (including provisional applications) and all reissues, divisions, renewals, extensions, provisionals, reexaminations, continuations and continuations in part thereof (collectively, "**Patents**"); (ii) all

trade secret rights and similar rights in know-how, Information or other materials (collectively, "**Trade Secrets**"); (iii) all registered and unregistered copyrights and all other rights corresponding thereto in any works of authorship, including Software (collectively, "**Copyrights**"); (iv) all Trademarks; (v) all design rights, maskwork rights, rights in databases and data collections (including knowledge databases, customer lists and customer databases); (vi) all rights to Uniform Resource Locators, Web site addresses, domain names and social media accounts; (vii) any similar, corresponding or equivalent rights to any of the foregoing; (viii) all intangible rights in Technology and (ix) any registrations and renewals of or applications to register any of the foregoing.

1.11 "**Intellectual Property Rights Obligations**" has the meaning ascribed to it in Section 9.1(b).

1.12 "**Licensable**" means, with respect to any Intellectual Property Right, the right to grant a license or sublicense to a Party within the scope of the licenses set forth in Article II or Article III, as applicable, without (i) the requirement to obtain consent from, give notice to, or take any other action with respect to any third party or Governmental Body or (ii) incurring additional fees, royalties or other costs in connection with such license or sublicense.

1.13 "**Open Source Materials**" means open source software owned by a third party and subject to the licenses granted by either Party to the other Party pursuant to this Agreement.

1.14 "**Party**" or "**Parties**" have the meaning ascribed to them in the Preamble.

1.15 "**Platforms Products**" means:

(i) any storage system having one or more hard disk drive (HDD) slots,

(ii) any storage system having two or more solid state drive (SSD) slots, and if included, any SSD installed with and sold with such a system,

(iii) any standalone ASIC or semiconductor IC core that provides PCIe-to-NVMe-oF protocol bridge functionality,

(iv) any controller or controller card that encompasses (iii),

(v) any storage device (except for a standalone SSD) or system (except for one having a single SSD slot) that encompasses (iii) or (iv),

(vi) any storage device that is attached to a controller card that encompasses (iii), and

(vii) any standalone SSD for post-sale installation into a storage system in (i) or (ii) that was previously sold by WDC.

1.16 "**Receiving Party**" has the meaning ascribed to it in Section 8.2.

1.17 "**Representatives**" has the meaning ascribed to it in Section 8.2.

1.18 "**SDA**" has the meaning ascribed to it in the Recitals.

1.19 "**Spinco**" has the meaning ascribed to it in the Preamble.

1.20 "**Spinco Improvements**" means all modifications, derivative works, enhancements and improvements to any Intellectual Property Rights or Technology, which modifications, derivative works, enhancements and improvements are created, developed, discovered or conceived by or for the Spinco Group.

1.21 "**Spinco Licensed IP**" means the Intellectual Property Rights owned or Licensable by the Spinco Group (other than Trademarks, domain names (and similar internet properties), social media accounts and Patents), that (i) were used in the conduct of the WDC Retained Business prior to the Effective Date or (ii) are otherwise retained in the unaided memory of any WDC Personnel as of the Effective Date.

1.22 "**Spinco Licensed Patents**" means the Spinco Patents (for the avoidance of doubt, as defined in the SDA).

1.23 "**Spinco Licensed Products**" means all Flash Business Products and any Technology, products or services that are licensed, under development or sold by the Spinco Group as of the Effective Date, and natural evolutions thereof.

1.24 "**Spinco Personnel**" means the officers, directors, employees, contractors and agents of the Spinco Group as of the Effective Date.

1.25 "**Technology**" means all technology, techniques, processes, designs, design rules, inventions (whether or not patented or patentable), plans, discoveries, ideas, concepts, methods, specifications, communication protocols, algorithms, routines, logic information, register-transfer levels, netlists, Verilog files, simulations, emulation and simulation reports, test vectors and procedures, protocols, works of authorship, mask works, software (in both source code and object code form), files, information, documentation, data, databases, firmware, devices and hardware and other scientific or technical information or materials, in whatever form, whether or not embodying proprietary Intellectual Property Rights. For the avoidance of doubt, Technology does not include any Intellectual Property Rights.

1.26 "**Trademarks**" shall have the meaning set forth in the TTLA.

1.27 "**Third-Party Materials**" means any Intellectual Property Rights or Technology, including any Open Source Materials, owned by a third party and subject to the licenses granted by either Party to the other Party pursuant to this Agreement.

1.28 "**WDC**" has the meaning ascribed to it in the Preamble.

1.29 "**WDC Improvements**" means all modifications, derivative works, enhancements and improvements to any Intellectual Property Rights or Technology, which modifications, derivative works, enhancements and improvements are created, developed, discovered or conceived by or for the WDC Group.

1.30 "**WDC Licensed IP**" means the Intellectual Property Rights owned or Licensable by the WDC Group (other than Trademarks, domain names (and similar internet properties), social media accounts and Patents), that (i) were used in the conduct of the Flash Business prior to the Effective Date or (ii) are otherwise retained in the unaided memory of any Spinco Personnel as of the Effective Date.

1.31 "**WDC Licensed Patents**" means the Patents (other than Spinco Patents (for the avoidance of doubt, as defined in the SDA)) owned by the WDC Group as of the Effective Date, together with: (i) any Patent that claims (or is entitled to validly claim) priority from any of the foregoing Patents; (ii) any Patent that is a continuation, continuation in part, divisional or reissue, of any of the foregoing Patents, or that is linked to any of the foregoing Patents by a terminal disclaimer; and (iii) any foreign counterpart of any of the foregoing Patents.

1.32 "**WDC Licensed Products**" means HDDs, standalone SSDs, Platforms Products, and any Technology, products or services that are licensed, under development or sold by the WDC Group as of the Effective Date, and natural evolutions thereof. Notwithstanding the foregoing, WDC Licensed Products do not include: (i) SD™ family products, including embedded variations, that conform to an SD Association specification and (ii) any SD™ hosts and ancillary devices that conform to an SD Association specification ("**SD Products**").

1.33 "**WDC Personnel**" means the officers, directors, employees, contractors and agents of the WDC Group as of the Effective Date.

1.34 "**WDC Retained Business**" means the businesses, product and service lines of the WDC Group, excluding the Flash Business.

**II. LICENSE GRANTS TO SPINCO**

2.1 License Under the WDC Licensed Patents. Subject to the terms and conditions of this Agreement and the SDA, WDC grants, and causes each other member of the WDC Group to grant, to the Spinco Group a non-exclusive, worldwide, royalty-free, fully paid-up, perpetual, irrevocable, non-transferable (except as set forth in Section 9.1 below) license, without the right to sublicense (except as expressly provided in Section 2.3 below), under the WDC Licensed Patents, to make, have made, use, offer to sell, sell, lease, import, export, transfer and otherwise exploit or dispose of Spinco Licensed Products in the Flash Business Field.

2.2 License Under the WDC Licensed IP.

(a) Subject to the terms and conditions of this Agreement and the SDA, WDC grants, and causes each other member of the WDC Group to grant, to the Spinco Group a non-exclusive, worldwide, royalty-free, fully paid-up, perpetual, irrevocable, non-transferable (except as set forth in Section 9.1 below) license, without the right to sublicense (except as expressly provided in Section 2.3 below), (i) to use, reproduce, modify, create derivative works of, (ii) subject to Article VIII (Confidentiality), perform or display and (iii) subject to the restrictions set forth in Section 2.2(b) below, otherwise exploit the WDC Licensed IP in connection with the research, development, design, manufacture, supply, marketing, promotion, distribution, importing, exporting, sale and other disposition, use and post-sale service of Spinco Licensed Products in the Flash Business Field.

(b) Restrictions. The Spinco Group shall provide source code for proprietary Software that is included in the WDC Licensed IP (to the extent provided by WDC to the Spinco Group in source code form) to third parties solely on terms no less protective than those governing the Spinco Group's proprietary Software of similar nature, as provided in Section 2.3 below and subject to Section 9.2. Spinco agrees not to cause or permit the reverse engineering, disassembly or decompilation of any Software included in the WDC Licensed IP that is not delivered or authorized by WDC to be used by the Spinco Group in source code form. The right to modify or to prepare derivative works of WDC Licensed IP that is Software will apply solely to Software in source code form.

2.3 Sublicense Rights. The Spinco Group may grant sublicenses under the licenses granted inSection 2.1 and Section 2.2 above (i) in connection with the making, having made, use, offering to sell, sale, leasing, importing, exporting, transferring, or other exploitation or disposition, design, development, manufacture, supply, marketing, promotion, distribution or post-sale service of Spinco Licensed Products or (ii) to any Subsidiary, business or product or service line which is divested by the Spinco Group; *provided* that such sublicense shall be limited to the products and services that are the subject of such divestiture, including, for the avoidance of doubt, products and services that are in development and not currently being commercialized at the time of such divestiture; *provided, further*, that such sublicense shall not extend to any products or services of any third party that acquires such divested Subsidiary, business or product or service line, even if such acquirer's products or services are of the same kind or are otherwise similar to those licensed hereunder and even if made, sold or provided by the divested business. Other than as expressly provided in this Section 2.3, the Spinco Group shall not have the right to grant any sublicenses hereunder.

2.4 Reservation of Rights by WDC. All rights not expressly granted by WDC in this Article II are reserved by WDC. Without limiting the generality of the foregoing sentence, the Parties acknowledge and agree that (a) nothing in this Agreement shall be construed or interpreted as a grant, by implication or otherwise, of any license to the WDC Group's Intellectual Property Rights other than the licenses expressly set forth in Section 2.1 and Section 2.2 and (b) WDC grants no licenses or rights (implied or otherwise) to the Spinco Group under this Agreement with respect to any WDC Improvements developed, discovered or conceived after the Effective Date, including licenses or rights (implied or otherwise) in Patents that may issue on any such WDC Improvements reduced to practice after the Effective Date.

2.5 Limitation Regarding HDDs. Notwithstanding anything to the contrary set forth herein, WDC does not grant to the Spinco Group hereunder any license to make, have made, sell, offer for sale, import or export HDDs, regardless of whether such HDDs are standalone or incorporated into any other product.

**III. LICENSE GRANTS TO WDC**

3.1 License Under the Spinco Licensed Patents. Subject to the terms and conditions of this Agreement and the SDA, Spinco grants to the WDC Group a non-exclusive, worldwide, royalty-free, fully paid-up, perpetual, irrevocable, non-transferable (except as set forth in Section 9.1 below) license, without the right to sublicense (except as expressly provided in Section 3.3 below), under the Spinco Licensed Patents, to make, have made, use, offer to sell, sell, lease, import, export, transfer and otherwise exploit or dispose of WDC Licensed Products in the HDD Business Field.

3.2 License Under the Spinco Licensed IP.

(a) Subject to the terms and conditions of this Agreement and the SDA, Spinco grants, and causes each other member of the Spinco Group to grant, to the WDC Group a non-exclusive, worldwide, royalty-free, fully paid-up, perpetual, irrevocable, non-transferable (except as set forth in Section 9.1 below) license, without the right to sublicense (except as expressly provided in Section 3.3 below), to (i) use, reproduce, modify, create derivative works of, (ii) subject to Article VIII (Confidentiality), perform or display and (iii) subject to the restrictions set forth in Section 3.2(b) below, otherwise exploit the Spinco Licensed IP in connection with the research, development, design, manufacture, supply, marketing, promotion, distribution, importing, exporting, sale and other disposition, use and post-sale service of WDC Licensed Products in the HDD Business Field.

(b) Restrictions. The WDC Group shall provide source code for proprietary Software that is included in the Spinco Licensed IP (to the extent provided by Spinco to the WDC Group in source code form) to third parties solely on terms no less protective than those governing the WDC Group's proprietary Software of similar nature, as provided in Section 3.3 below and subject to Section 9.2. WDC agrees not to cause or permit the reverse engineering, disassembly or decompilation of any Software included in the Spinco Licensed IP that is not retained by the WDC Group prior to the Effective Date or is delivered by Spinco to the WDC Group in source code form. The right to modify or to prepare derivative works of Spinco Licensed IP that is Software will apply solely to Software in source code form.

3.3 Sublicense Rights. The WDC Group may grant sublicenses under the licenses granted in Section 3.1 and Section 3.2 above (i) in connection with the making, having made, use, offering to sell, sale, leasing, importing, exporting, transferring, or other exploitation or disposition, design, development, manufacture, supply, marketing, promotion, distribution or post-sale service of WDC Licensed Products or (ii) to any Subsidiary, business or product or service line which is divested by the WDC Group; *provided* that such sublicense shall be limited to the products and services that are the subject of such divestiture, including, for the avoidance of doubt, products and services that are in development and not currently being commercialized at the time of such divestiture; *provided, further*, that such sublicense shall not extend to any products or services of any third party that acquires such divested Subsidiary, business or product or service line, even if such acquirer's products or services are of the same kind or are otherwise similar to those licensed hereunder and even if made, sold or provided by the divested business. Other than as expressly provided in this Section 3.3, the WDC Group shall not have the right to grant any sublicenses hereunder.

3.4 Reservation of Rights by Spinco. All rights not expressly granted by Spinco in this Article III are reserved by Spinco. Without limiting the generality of the foregoing sentence, the Parties acknowledge and agree that (a) nothing in this Agreement shall be construed or interpreted as a grant, by implication or otherwise, of any license to the Spinco Group's Intellectual Property Rights other than the licenses expressly set forth in Section 3.1 and Section 3.2 and (b) Spinco grants no licenses or rights (implied or otherwise) to the WDC Group under this Agreement with respect to any Spinco Improvements developed, discovered or conceived after the Effective Date, including licenses or rights (implied or otherwise) in Patents that may issue on any such Spinco Improvements reduced to practice after the Effective Date.

3.5 Limitation Regarding NAND Flash Memory Integrated Circuits. Notwithstanding anything to the contrary set forth herein, Spinco does not grant to the WDC Group hereunder any license to make, have made, sell, offer for sale, import or export NAND flash memory integrated circuits, regardless of whether such NAND flash memory integrated circuits are standalone or incorporated into any other product.

**IV. OWNERSHIP**

4.1 Ownership by WDC. As between the Parties, subject to the licenses granted by the WDC Group to the Spinco Group under Section 2.1 and Section 2.2, WDC owns all right, title and interest in and to (a) the WDC Licensed Patents and all WDC Improvements thereto and (b) the WDC Licensed IP and all WDC Improvements thereto.

4.2 Ownership by Spinco. As between the Parties, subject to the licenses granted by the Spinco Group to the WDC Group under Section 3.1 and Section 3.2, Spinco owns all right, title and interest in and to (a) the Spinco Licensed Patents and all Spinco Improvements thereto and (b) the Spinco Licensed IP and all Spinco Improvements thereto.

**V. TERM**

The term of this Agreement shall commence as of the Effective Date and shall continue in perpetuity; *provided* that the licenses granted under each of Section 2.1 and Section 3.1 above will terminate upon the expiration of the last-to-expire of the WDC Licensed Patents or the Spinco Licensed Patents, respectively.

**VI. REPRESENTATIONS AND WARRANTIES**

6.1 Mutual Representations and Warranties. Each Party represents and warrants to the other Party that (a) it has all requisite power and authority to execute and deliver this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby, (b) the execution, delivery and performance of this Agreement has been duly authorized by all requisite corporate action on the part of such Party, (c) this Agreement has been duly and validly executed and delivered by such Party and constitutes legal, valid and binding obligations of such Party enforceable against such Party, except as such enforceability may be limited by bankruptcy, insolvency, moratorium and other similar applicable Laws affecting creditors' rights generally and by general principles of equity and (d) it has the right to grant the licenses granted by such Party pursuant to this Agreement.

6.2 Disclaimer of Representations and Warranties. EXCEPT AS EXPRESSLY SET FORTH IN SECTION 6.1 ABOVE AND EXCEPT AS SET FORTH IN THE SDA, (a) NEITHER WDC NOR SPINCO MAKES ANY REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT (INCLUDING THE WDC LICENSED IP, THE WDC LICENSED PATENTS, THE SPINCO LICENSED IP OR THE SPINCO LICENSED PATENTS), (b) WDC SPECIFICALLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE WDC LICENSED IP OR THE WDC LICENSED PATENTS AND (c) SPINCO SPECIFICALLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE SPINCO LICENSED IP OR THE SPINCO LICENSED PATENTS. WITHOUT LIMITING THE FOREGOING, EXCEPT AS SET FORTH IN THE SDA, EACH PARTY SPECIFICALLY DISCLAIMS ANY WARRANTY THAT ANY OF THE THIRD-PARTY INTELLECTUAL PROPERTY RIGHTS USED IN THE FLASH BUSINESS OR THE WDC RETAINED BUSINESS ARE SUBLICENSABLE TO THE OTHER PARTY OR ITS AFFILIATES OR SUBSIDIARIES, AS APPLICABLE.

**VII. LIMITATION OF LIABILITY**

SUBJECT TO THE TERMS AND CONDITIONS OF THE SDA, NOTWITHSTANDING ANYTHING ELSE IN THIS AGREEMENT OR OTHERWISE, EXCEPT WITH RESPECT TO A BREACH OF SECTION 9.1 OR ARTICLE VIII, IN NO EVENT SHALL A PARTY OR ITS AFFILIATES BE LIABLE WITH RESPECT TO THE SUBJECT MATTER OF THIS AGREEMENT UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR ANY (a) CONSEQUENTIAL, INDIRECT, INCIDENTAL OR SPECIAL DAMAGES OR (b) LOST PROFITS OR LOST BUSINESS, IN THE CASE OF EACH OF (a) AND (b), EVEN IF THE REMEDIES PROVIDED FOR IN THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE AND EVEN IF EITHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OR PROBABILITY OF SUCH DAMAGES.

**VIII. CONFIDENTIALITY**

8.1 Confidential Information. "**Confidential Information**" means any confidential and proprietary information of a Party, including know-how, trade secrets, algorithms, source code, specifications, methods of processing, techniques, research, development, inventions (whether or not patentable and whether or not reduced to practice), data, ideas, concepts, drawings, designs and schematics.

8.2 Confidentiality Obligations. Each Party (the "**Receiving Party**") that receives or otherwise obtains under this Agreement any Confidential Information of the other Party (the "**Disclosing Party**") shall, and shall cause its Affiliates to, (a) keep the Disclosing Party's Confidential Information confidential and not disclose or make available any of the Disclosing Party's Confidential Information to any third party without the prior written consent of the Disclosing Party (except in accordance with subclause (d) or subclause (e) in this Section 8.2 or in accordance with Section 8.4), (b) use the Disclosing Party's Confidential Information only as necessary to perform its obligations and exercise its rights under this Agreement, (c) use at least the same degree of care in keeping the Disclosing Party's Confidential Information confidential as it uses for its own Confidential Information of a similar nature (but in no event less than a reasonable degree of care), (d) limit access to the Disclosing Party's Confidential Information to its Affiliates and its authorized sublicensees who have a need to access or know such Confidential Information for the purpose of exercising such Affiliate's rights under this Agreement; *provided* that such Affiliate or sublicensee (other than any customer or end user of either Party) is bound in writing to confidentiality obligations at least as protective of the Disclosing Party's Confidential Information as the confidentiality provisions of this Agreement, and (e) limit access to the Disclosing Party's Confidential Information to its directors, employees, agents, consultants, advisors, Affiliates, sublicensees and contractors ("**Representatives**") who have a need to access or know such Confidential Information for the purpose of the Receiving Party's exercise of its rights under this Agreement; *provided* that such Representatives are bound in writing to confidentiality obligations at least as protective of the Disclosing Party's Confidential Information as the confidentiality provisions of this Agreement. Except as otherwise expressly provided in this Agreement, including in Article II and Article III, nothing in this Agreement is intended to grant to the Receiving Party any rights in or to any Confidential Information of the Disclosing Party.

8.3 Exceptions. The Receiving Party shall not be obligated under Section 8.2 above with respect to any information the Receiving Party can document (a) is or, through no improper action or inaction by the Receiving Party or any of its Representatives, becomes generally available and known to the public, (b) was rightfully in its possession or known by it without any obligation of confidentiality prior to receipt from the Disclosing Party, (c) was rightfully disclosed to it without restriction by a third party that, to the Receiving Party's knowledge, was authorized to make such disclosure, (d) was independently developed by the Receiving Party without the use of or reference to any Confidential Information of the Disclosing Party or (e) is disclosed by the Disclosing Party to a third party without restriction on such third party's rights to disclose or use the same.

8.4 Disclosure Required by Law. In the event the Receiving Party is requested or required by Law or judicial process to disclose any Confidential Information of the Disclosing Party, the Receiving Party shall, if legally permitted, provide reasonable advance written notice to the Disclosing Party of such request or requirement so that the Disclosing Party may seek confidential treatment of such Confidential Information prior to its disclosure (whether through protective orders or otherwise). If, in the absence of a protective order, other confidential treatment or waiver under this Agreement, the Receiving Party is advised by its legal counsel that it is legally required to disclose such Confidential Information, the Receiving Party may disclose such Confidential Information without liability under this Article VIII; *provided, however*, that the Receiving Party exercises commercially reasonable efforts to obtain reliable assurances that confidential treatment will be accorded any such Confidential Information prior to its disclosure and discloses only the minimum amount of such Confidential Information necessary to comply with such legal requirement.

8.5 Disclosure in Connection with Due Diligence. A Party may provide this Agreement to any third party (subject to appropriate confidentiality obligations) if required to do so in connection with any diligence for any actual or potential bona fide business transaction with such third party related to the subject matter of this Agreement (including an acquisition, divestiture, merger, consolidation, asset sale, financing or public offering).

**IX. MISCELLANEOUS**

9.1 Assignment.

(a) Subject to the restrictions set forth below, (i) either Party may assign or delegate this Agreement, in whole or in part, without the prior written consent of the other Party in connection with a merger, acquisition, consolidation, reorganization or sale of all or substantially all of the assets of a Party (whether by operation of law or otherwise), with written notice of such assignment to the other Party within thirty (30) days after the effective date of such assignment, (ii) in the event either Party sells or otherwise transfers (whether by sale of assets, merger or otherwise) one or more lines of products or services licensed under this Agreement (each a "**Divested Product Line**") to a third party ("**Product Line Acquirer**"), such Party may assign the rights and license granted to such Party in Article II or Article III (as applicable) hereunder to such Product Line Acquirer;*provided, however*, the rights and licenses granted to the Product Line Acquirer shall not extend to any products or services of another entity including from the Product Line Acquirer, and (iii) in the event a Party divests itself of a Subsidiary (the "**Divested Subsidiary**") to a third party ("**Divested Subsidiary Acquirer**"), upon written notice to the other Party, such Party may assign the rights and license granted to such Party in Article II or Article III (as applicable) hereunder to such Divested Subsidiary; *provided, however*, the rights and licenses granted to the Divested Subsidiary shall not extend to any products or services transferred into the Divested Subsidiary from another entity including from the Divested Subsidiary Acquirer. Except as set forth herein above, neither Party may assign this Agreement (or any of its rights or obligations under this Agreement) without the prior written consent of the other Party, which consent shall not be unreasonably withheld. Except as set forth herein above, any attempted assignment or delegation of this Agreement or any of such rights or obligations by any Party without the prior written consent of the other Party shall be void and of no effect. Any purported assignment or transfer in violation of this Section 9.1 shall be null and void ab initio.

(b) Each Party agrees that all of the licenses granted by it hereunder shall run with the applicable Intellectual Property Rights licensed by such Party hereunder ("**Intellectual Property Rights Obligations**") that are assigned or otherwise transferred to a third party. Each Party shall ensure that any assignee, transferee or successor to any of such Intellectual Property Rights (including the acquiring or surviving entity in connection with any acquisition or other change of control of either Party), or any other entity (such as an exclusive licensee) that obtains any proprietary or enforcement rights with respect to any such Intellectual Property Rights, is notified in advance of such assignment, transfer or grant, to acquire such Intellectual Property Rights subject to any and all applicable Intellectual Property Rights Obligations (including the obligation to provide such notice to any subsequent assignee, transferee, successor or grantee).

9.2 Third-Party Materials. The WDC Licensed IP and the Spinco Licensed IP may include Third-Party Materials, which Third-Party Materials are subject to third-party license agreements or open source license agreements. Each Party shall be solely responsible for its compliance (and the compliance of its Affiliates) with the applicable terms of such third-party or open source license agreements. To the extent of any conflict between this Agreement and the applicable third-party license agreement terms, the applicable third-party license agreement terms shall take precedence.

9.3 Export Control. The Technology included in the WDC Licensed IP and the Spinco Licensed IP may be subject to U.S. or foreign export control laws and regulations or licenses issued by the U.S. or foreign governments, and it may be subject to export or import regulations in other countries. Each Party agrees to comply with applicable U.S. and other relevant export control laws and regulations, as well as economic or financial sanctions or trade embargoes, imposed, administered or enforced from time-to-time by the U.S. and other relevant jurisdictions, with respect to the WDC Licensed IP (in the case of Spinco) and the Spinco Licensed IP (in the case of WDC).

9.4 Government Restricted Rights.

(a) The Technology covered by the WDC Licensed IP and the Spinco Licensed IP may be deemed "Commercial Product(s)" or "Commercial Services(s)" as defined in 48 C.F.R. § 2.101, and may consist of "**Commercial Computer Software**" and "**Commercial Computer Software Documentation**," as such terms are used in 48 C.F.R. § 12.212 or 48 C.F.R. § 227.7202, as applicable. Consistent with 48 C.F.R. § 12.212 or 48 C.F.R. § 227.7202-1 through 227.7202-4, as applicable, the Commercial Computer Software and Commercial Computer Software Documentation will be licensed by any member of the Spinco Group (with respect to licensing of WDC Licensed IP) or any member of the WDC Group (with respect to licensing of Spinco Licensed IP) to U.S. Government end users (i) only as Commercial Products or Commercial Services and (ii) with only those rights as are granted to all other end users pursuant to the terms and conditions herein except that the government customers' end user rights may be modified where the end user rights would otherwise conflict with federal Law, including the types of end user rights set forth in 48 C.F.R. § 552.212-4(u) and (w).

(b) Any Software covered by the WDC Licensed IP or the Spinco Licensed IP that is not Commercial Computer Software ("**Noncommercial Computer Software**") shall only be provided by any member of the Spinco Group (in the case of the provision of Software covered by WDC Licensed IP) or any member of the WDC Group (in the case of the provision of Software covered by Spinco Licensed IP) to the U.S. Government with no more than "restricted rights" as that term is defined in 48 C.F.R. Parts 27 and 227 and subparts 52.227 and 252.227. If any member of the Spinco Group provides Noncommercial Computer Software covered by WDC License IP or any member of the WDC Group provides Noncommercial Computer Software covered by Spinco Licensed IP, in each case, to the U.S. Government, it shall take all available measures to protect the Noncommercial Computer Software including, at a minimum, affixing a "Restricted Rights Notice," as set forth in 48 C.F.R. § 52.227-14, Alt. III paragraph (g)(4) or 48 C.F.R. § 252.227-7014(f)(3) or other applicable Federal Acquisition Regulation (or agency supplement) "Restricted Rights Notice" to the Noncommercial Computer Software.

(c) Technology covered by WDC Licensed IP or Spinco Licensed IP may also be deemed "Technical Data" as that term is defined in 48 C.F.R. § 2.101. Each member of the Spinco Group shall only provide Technical Data covered by WDC Licensed IP and each member of the WDC Group shall only provide Technical Data covered by Spinco Licensed IP (including, in each case, Computer Software Documentation that is not a Commercial Product or Commercial Service) to the U.S. Government with no more than "limited rights" as that term is defined in 48 C.F.R. Parts 27 and 227 and subparts 52.227 and/or 252.227. If any member of the Spinco Group provides Technical Data covered by WDC Licensed IP or if any member of the WDC Group provides Technical Data covered by Spinco Licensed IP to the U.S. Government, it shall take all available measures to protect the Technical Data including, at a minimum, affixing a "Limited Rights Notice," as set forth in 48 C.F.R. § 52.227-14, Alt. II paragraph (g)(3) or 48 C.F.R. § 252.227-7013(f)(3) or other applicable Federal Acquisition Regulation (or agency supplement) "Limited Rights Notice" to the Technical Data.

9.5 Binding Effect. This Agreement shall be binding upon, and shall be enforceable by and inure solely to the benefit of, the Parties and their respective successors and permitted assigns. Nothing in this Agreement, express or implied, is intended to or shall confer upon any Person (other than the Parties and their permitted successors and assigns) any power, right, privilege or remedy of any nature whatsoever under or by reason of this Agreement.

9.6 Notices. All notices and other communications hereunder shall be in writing and shall be deemed duly delivered: (a) four (4) Business Days after being sent by registered or certified mail, return receipt requested, postage prepaid; (b) one (1) Business Day after being sent for next Business Day delivery, fees prepaid, via a reputable nationwide overnight courier service; (c) if sent by email transmission prior to 6:00 p.m. recipient's local time, upon transmission when receipt is confirmed; or (d) if sent by email transmission after 6:00 p.m. recipient's local time, the Business Day following the date of transmission when receipt is confirmed:

If to WDC:

c/o Western Digital Corporation
**[**Address**]**
Attn: **[•]**
Email: **[•]**
Phone: **[•]**

with a copy to (which shall not constitute notice):

Skadden, Arps, Slate, Meagher & Flom LLP
525 University Avenue Suite 1400
Palo Alto, CA 94301
Attn: Thomas J. Ivey and Christopher J. Bors
Email: thomas.ivey@skadden.com and christopher.bors@skadden.com

If to Spinco:

c/o Sandisk Corporation
**[**Address**]**
Attn: **[•]**
Email: **[•]**
Phone: **[•]**

with a copy to (which shall not constitute notice):

Skadden, Arps, Slate, Meagher & Flom LLP
525 University Avenue, Suite 1400
Palo Alto, CA 94301
Attn: Thomas J. Ivey and Christopher J. Bors
Email: thomas.ivey@skadden.com and christopher.bors@skadden.com

9.7 Entire Agreement. This Agreement, including any schedules and amendments hereto and thereto, and the other agreements and documents referred to herein and therein, shall together constitute the entire agreement between the Parties with respect to the subject matter hereof and thereof and shall supersede all prior negotiations, agreements and understandings, both written and oral, between the Parties with respect to such subject matter hereof and thereof.

9.8 Amendment and Waiver.

(a) This Agreement may be amended or supplemented in any and all respects and any provision of this Agreement may be waived*provided, however,* that any such waiver shall be binding upon a Party, only if such waiver is set forth in a writing executed by such waiving Party bound thereby, and any such amendment or supplement shall be effective only if set forth in a writing executed by each of the Parties; and any such waiver, amendment or supplement shall not be applicable or have any effect except in the specific instance in which it is given. No course of dealing between or among any Persons having any interest in this Agreement shall be deemed effective to modify, amend, supplement or discharge any part of this Agreement or any rights or obligations of any Party under or by reason of this Agreement.

(b) Notwithstanding the foregoing, no failure on the part of any Party to exercise any power, right, privilege or remedy under this Agreement, and no delay on the part of any Party in exercising any power, right, privilege or remedy under this Agreement, shall operate as a waiver of such power, right, privilege or remedy; and no single or partial exercise of any such power, right, privilege or remedy shall preclude any other or further exercise thereof or of any other power, right, privilege or remedy. The rights and remedies hereunder are cumulative and not exclusive of any rights or remedies that any Party would otherwise have. Any waiver, permit, consent or approval of any kind or character of any breach or default under this Agreement or any such waiver of any provision of this Agreement must satisfy the conditions set forth in Section 9.8(a) and shall be effective only to the extent in such writing specifically set forth.

9.9 Severability. Any term or provision of this Agreement which is invalid or unenforceable in any situation in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement in any other jurisdiction or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction. If any provision of this Agreement is so broad as to be unenforceable, such provision shall be interpreted to be only so broad as is enforceable. If a final judgment of a court of competent jurisdiction declares that any term or provision of this Agreement is invalid or unenforceable, the Parties agree that the court making such determination shall have the power to limit such term or provision, to delete specific words or phrases or to replace such term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision, and this Agreement shall be valid and enforceable as so modified. In the event such court does not exercise the power granted to it in the prior sentence, the Parties agree to replace such invalid or unenforceable term or provision with a valid and enforceable term or provision that will achieve, to the extent possible, the economic, business and other purposes of such invalid or unenforceable term or provision.

9.10 Governing Law; Specific Performance; Forum.

(a) This Agreement and the consummation of the transactions contemplated hereby, and any Action (whether at law, in contract, in tort or otherwise) arising out of or relating to this Agreement and the consummation of the transactions contemplated hereby, or the negotiation, validity, interpretation, performance, breach or termination of this Agreement and the consummation of the transactions contemplated hereby, shall be governed by and construed in accordance with the internal law of the State of Delaware, regardless of the law that might otherwise govern under applicable principles of conflicts of law thereof.

(b) Except as otherwise provided herein, any and all remedies herein expressly conferred upon a Party shall be deemed cumulative with and not exclusive of any other remedy conferred hereby, or by law or equity upon such Party, and the exercise by a Party of any one remedy shall not preclude the exercise of any other remedy. Nothing in this Agreement shall

be deemed a waiver by any Party of any right to specific performance or injunctive relief. The Parties understand and agree that the covenants and agreements on each of their parts herein contained are uniquely related to the desire of the Parties and their respective Affiliates to consummate the transactions contemplated hereby, that the transactions contemplated hereby are a unique business opportunity at a unique time for each of WDS and Spinco and their respective Affiliates, and further agree that irreparable damage would occur in the event that any provision of this Agreement were not performed in accordance with its specific terms, and further agree that, although monetary damages may be available for the breach of such covenants and agreements, monetary damages would be an inadequate remedy therefor. It is accordingly agreed that, in addition to any other remedy that may be available to it, including monetary damages, each of the Parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement exclusively in the Delaware Court of Chancery and any state appellate court therefrom within the State of Delaware (or, if the Delaware Court of Chancery declines to accept jurisdiction over a particular matter, any state or federal court within the State of Delaware). Each of the Parties further agrees that no Party shall be required to obtain, furnish or post any bond or similar instrument in connection with or as a condition to obtaining any remedy referred to in this Section 9.10 and each Party waives any objection to the imposition of such relief or any right it may have to require the obtaining, furnishing or posting of any such bond or similar instrument.

(c) Each of the Parties irrevocably agrees that any legal action or proceeding with respect to this Agreement and the rights and obligations arising hereunder, or for recognition and enforcement of any judgment in respect of this Agreement and the rights and obligations arising hereunder, brought by the other Party or its respective successors or assigns, shall be brought and determined exclusively in the Delaware Court of Chancery and any state appellate court therefrom within the State of Delaware (or, if the Delaware Court of Chancery declines to accept jurisdiction over a particular matter, any state or federal court within the State of Delaware). Each of the Parties hereby irrevocably submits with regard to any such action or proceeding for itself and in respect of its property, generally and unconditionally, to the personal jurisdiction of the aforesaid courts and agrees that it will not bring any action relating to this Agreement or any of the transactions contemplated by this Agreement in any court other than the aforesaid courts. Each of the Parties hereby irrevocably waives, and agrees not to assert, by way of motion, as a defense, counterclaim or otherwise, in any action or proceeding with respect to this Agreement: (i) any claim that it is not personally subject to the jurisdiction of the above named courts for any reason other than the failure to serve in accordance with this Section 9.10; (ii) any claim that it or its property is exempt or immune from jurisdiction of any such court or from any legal process commenced in such courts (whether through service of notice, attachment prior to judgment, attachment in aid of execution of judgment, execution of judgment or otherwise); and (iii) to the fullest extent permitted by applicable Law, any claim that: (x) the suit, action or proceeding in such court is brought in an inconvenient forum; (y) the venue of such suit, action or proceeding is improper; or (z) this Agreement, or the subject matter hereof, may not be enforced in or by such courts. In the event that any suit or action is instituted to enforce any provision in this Agreement, the prevailing party in such dispute shall be entitled to recover from the losing party all fees, costs and expenses of enforcing any right of such prevailing party under or with respect to this Agreement, including, without limitation, such reasonable fees and expenses of attorneys and accountants, which shall include, without limitation, all fees, costs and expenses of appeals. The Parties agree that service of any court paper may be made in any manner as may be provided under the applicable Laws or court rules governing service of process in such court. The Parties agree that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by applicable Law.

9.11 Waiver of Jury Trial. EACH OF THE PARTIES IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY ACTION OR LEGAL PROCEEDING (WHETHER AT LAW, IN CONTRACT, IN TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

9.12 Construction; Interpretation.

(a) For purposes of this Agreement, whenever the context requires: (i) the singular number shall include the plural, and vice versa; (ii) the masculine gender shall include the feminine and neuter genders; (iii) the feminine gender shall include the masculine and neuter genders; and (iv) the neuter gender shall include masculine and feminine genders.

(b) The Parties agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in the construction or interpretation of this Agreement.

(c) As used in this Agreement, the words “include” and “including,” and variations thereof, shall not be deemed to be terms of limitation, but rather shall be deemed to be followed by the words “without limitation.”

(d) As used in this Agreement, the words “hereof,” “herein,” “hereto” and “hereunder” and words of similar import shall refer to this Agreement as a whole and not to any particular provision of this Agreement.

(e) The measure of a period of one (1) month or year for purposes of this Agreement will be the date of the following month or year corresponding to the starting date; and, if no corresponding date exists, then the end date of such period being measured will be the next actual date of the following month or year (for example, one month following February 18 is March 18 and one month following March 31 is May 1).

(f) As used in this Agreement, the word “extent” in the phrase “to the extent” shall mean the degree to which a subject or other thing extends, and such phrase shall not mean simply “if.”

(g) As used in this Agreement, the word “will” shall be deemed to have the same meaning and effect as the word “shall.”

(h) As used in this Agreement, the terms “or,” “any” or “either” are not exclusive and shall be deemed to be “and/or.”

(i) As used in this Agreement, references to “written” or “in writing” include in electronic form.

(j) As used in this Agreement, references to the "date hereof" are to the date of this Agreement.

(k) Except as otherwise indicated, all references in this Agreement to "Sections," "Articles" and "Schedules" are intended to refer to Sections or Articles of this Agreement and Schedules to this Agreement.

(l) As used in this Agreement, the terms "or," "any" or "either" are not exclusive.

(m) Except as otherwise indicated, all references in this Agreement to "Sections" and "Schedules" are intended to refer to Sections of this Agreement and Schedules to this Agreement.

(n) The section and other headings and subheadings contained in this Agreement are for convenience of reference only, shall not be deemed to be a part of this Agreement and shall not be referred to in connection with the construction, meaning or interpretation of this Agreement. The preamble and the recitals set forth at the beginning of this Agreement are incorporated by reference into and made a part of this Agreement.

(o) Any payment to be made pursuant hereto shall be made in U.S. dollars and by wire transfer of immediately available funds.

(p) All references to statutes shall include all regulations promulgated thereunder, and all references to statutes and related regulations shall include all amendments of the same and any successor or replacement statutes and regulations.

9.13 Counterpart Execution. This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument and shall become effective when counterparts have been signed by each of the Parties and delivered to the other Party, it being understood that all Parties need not sign the same counterpart. This Agreement may be executed and delivered by facsimile transmission, by electronic mail in "portable document format" (".pdf") form or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, or by combination of such means. The exchange of a fully executed Agreement (in counterparts or otherwise) by facsimile or electronic transmission shall be treated in all manner and respects as an original agreement and shall be considered to have the same binding legal effects as if it were the original signed version thereof delivered in person. At the request of any Party, the other Party shall re-execute original forms thereof and deliver them to the requesting Party. No Party shall raise the use of a facsimile machine or other electronic means to deliver a signature or the fact that any signature was transmitted or communicated through the use of a facsimile machine or other electronic means as a defense to the formation of a contract and each such Party forever waives any such defense.

9.14 No Third-Party Rights. Except as specifically provided in the SDA or any Ancillary Agreement, this Agreement is solely for the benefit of the Parties and their respective successors and permitted assigns and is not intended, and shall not be deemed, to (a) create any agreement of employment with any person, (b) confer on third parties (including any employees of the Parties and their respective Groups) any remedy, claim, reimbursement, claim of action or other right in addition to those existing without reference to this Agreement, or (c) otherwise create any third-party beneficiary hereto.

9.15 Ancillary Agreement. The Parties hereby acknowledge and agree that nothing in this Agreement (including any breach hereof) shall affect any obligation of any Party under the SDA or the other Ancillary Agreements.

9.16 Early Termination. This Agreement shall terminate without further action at any time before the Distribution upon termination of the SDA. If so terminated, no Party shall have any Liability of any kind to the other Party or any other Person on account of this Agreement, except as provided in the SDA, it being understood that this Section 9.16 shall not be deemed to limit or modify the provisions of Section 9.8 of the SDA (Termination).

9.17 Survival. The covenants in this Agreement that by their terms are to be performed following the Separation Time will survive each of the Internal Restructuring and the Distribution and will remain in full force and effect in accordance with their terms.

**[***SIGNATURE PAGE FOLLOWS***]**

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed by their respective authorized officers as of the Effective Date.

**Western Digital Corporation**

By: _____
Name:
Title:

**Sandisk Corporation**

By: _____
Name:
Title:

**Exhibit 10.5**

**FORM OF TRANSITIONAL TRADEMARK LICENSE AGREEMENT**

This Transitional Trademark License Agreement (this "**Agreement**"), dated as of **[•]**, **[•]** (the "**Effective Date**"), is made and entered into by and between Western Digital Corporation, a Delaware corporation ("**WDC**"), and Sandisk Corporation, a Delaware corporation and wholly owned Subsidiary of WDC ("**Spinco**") (each a "**Party**" and together, the "**Parties**"). Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in Article I.

**RECITALS**

WHEREAS, WDC and Spinco have entered into the Separation and Distribution Agreement, dated as of **[•]**, **[•]** (as amended, modified or supplemented from time-to-time in accordance with its terms, the "**SDA**"), pursuant to which (i) WDC has agreed to transfer to Spinco, and Spinco has agreed to receive and assume, certain assets and liabilities of the Flash Business and (ii) following such transfer and the other transactions specified in the SDA, WDC has agreed to effect the Distribution, all as more specifically described in, and subject to the terms of, the SDA;

WHEREAS, the Parties have executed various Ancillary Agreements, including a long-term cross-license ofnon-Trademark Intellectual Property Rights (the "**IPCLA**"), of even date herewith, pursuant to the SDA in connection with the consummation of the transactions contemplated by the SDA, and to facilitate the ongoing operations of the Flash Business and the WDC Retained Business;

WHEREAS, following the Separation, each Party will own certain Trademarks which may be used in the other Party's business; and

WHEREAS, each Party desires to obtain anon-exclusive license from the other Party to use such Trademarks on a transitional basis on the terms set forth herein.

NOW, THEREFORE, in consideration of the premises and the mutual representations, warranties, covenants and agreements set forth in this Agreement, the SDA, the Parties agree as follows:

## AGREEMENT

### I. DEFINITIONS

Capitalized terms used, but not defined in this Agreement, shall have the meaning ascribed to such terms in the SDA. If a capitalized term is defined in both this Agreement and the SDA, the definition in this Agreement will control.

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

1.2 "**Confidential Information**" has the meaning ascribed to it in Section 8.1.

1.3 "**Disclosing Party**" has the meaning ascribed to it in Section 8.2.

1.4 "**Effective Date**" has the meaning ascribed to it in the Preamble.

1.5 "**Flash Business**" shall have the meaning set forth in the SDA.

1.6 "**Indemnified Party**" has the meaning ascribed to it in Section 7.1.

1.7 "**Indemnifying Party**" has the meaning ascribed to it in Section 7.1.

1.8 "**Intellectual Property Rights**" shall have the meaning set forth in the IPCLA.

1.9 "**Intellectual Property Rights Obligations**" has the meaning ascribed to it in Section 9.1(b).

1.10 "**Internal Product Term**" means, with respect to any Specified Product, eight (8) years, and, with respect to any other Internal Trademark Product, five (5) years.

1.11 "**Internal Trademark Products**" means any products that, as of the Effective Date, are being actively commercialized, or are planned for commercialization on a written product roadmap, in the Flash Business, to the extent such products require Internal Use of the WDC Group Licensed Trademarks.

1.12 "**Internal Uses**" means, with respect to a Trademark, any uses of such Trademark: (i) as used as part of a model number or ID string within the firmware of a product; or (ii) by etching or other means, in an internal manner detectable by radiography but not the naked eye.

1.13 "**IPCLA**" has the meaning ascribed to it in the Recitals.

1.14 "**Licensed Product**" means (i) with respect to WDC or its Affiliates, a Spinco Group Licensed Product and (ii) with respect to Spinco or its Affiliates, a WDC Group Licensed Product.

1.15 “**Material Issue**” means any issue which would reasonably be expected to materially and adversely impact a Party’s rights, operations or business in connection with this Agreement, including: any issue which would reasonably be expected to materially and adversely impact (i) the ownership by such Party of a Trademark, (ii) the validity or enforceability of a Trademark owned or purported to be owned by such Party or (iii) the ability of such Party to control the assignment or sublicense of a Trademark owned or purported to be owned by such Party.

1.16 “**Net Sales**” means the net amount of sales of Licensed Products, which is defined as gross amount of sales of Licensed Products at the invoiced selling price (*e.g.*, number of units of the Licensed Products multiplied by the invoiced sales price), irrespective of revenues actually receives, less: (i) actual returns of damaged or defective Licensed Products made to Licensee; (ii) documented and normal and reasonable cash and quantity/volume discounts and rebates (including point-of-sale rebates), credits (including price protection credits), allowances, MDF and refunds for claims, damaged goods, rejections or returns of Licensed Products actually given or provided; and (iii) any applicable and documented excise, sale, use or value added taxes, other than income taxes, paid by Licensee or its Affiliates due to the sale of the Licensed Products; *provided* that where Licensed Products are sold to an Affiliate at a price less than Licensee’s regular price charged to third-party customers (unaffiliated with Licensee) in arms-length transactions, then Licensee shall use the comparable regular price that Licensee would have offered to third-party customers (unaffiliated with Licensee) as the price basis for the Earned Royalties calculation. For the avoidance of doubt, only a single Earned Royalty will be payable with respect to each Licensed Product, and it shall accrue on the date when such Licensed Product is first sold.

1.17 “**Party**” or “**Parties**” have the meaning ascribed to them in the Preamble.

1.18 “**Proceeding**” has the meaning ascribed to it in Section 2.8.

1.19 “**Quarterly Period**” means, with respect to any calendar year, each of the following three-month periods: (i) the three-month period commencing on the day after the Friday nearest to June 30; (ii) the three-month period immediately following the three-month period specified in (i); (iii) the three-month period immediately following the three-month period specified in (ii); and (iv) the three-month period immediately following the three-month period specified in (iii).

1.20 “**Receiving Party**” has the meaning ascribed to it in Section 8.2.

1.21 “**Representatives**” has the meaning ascribed to it in Section 8.2.

1.22 “**SDA**” has the meaning ascribed to it in the Recitals.

1.23 “**Specified Product**” means any of the following Internal Trademark Products (as identified by the applicable product name and marketing name (as of the Effective Date), which products shall remain “Specified Products” notwithstanding that such product name or marketing name may, in the future, change): (i) “Demeter” – ATEN610; and (ii) “SwiftProAuto” – EU552.

1.24 “**Spinco**” has the meaning ascribed to it in the Preamble.

1.25 "**Spinco Group Licensed Products**" means products or services manufactured, advertised, marketed, publicly displayed, distributed, offered for sale or sold using, displaying, bearing or under any Spinco Group Licensed Trademarks within the scope of the license grant to WDC and its Affiliates set forth in Section 3.1.

1.26 "**Spinco Group Licensed Trademarks**" means those certain Trademarks set forth on Schedule 3, as may be updated with additional or revised Trademarks from time-to-time upon the request or proposal of either Party and subsequent written approval of Spinco.

1.27 "**Spinco Guidelines**" has the meaning ascribed to it in Section 3.3.

1.28 "**Spinco Trademark Claim**" has the meaning ascribed to it in Section 3.8.

1.29 "**Spinco General Trademark License Term**" has the meaning ascribed to it in Section 2.1(a).

1.30 "**Spinco Internal-Use Trademark Term**" has the meaning ascribed to it in Section 2.1(d).

1.31 "**Spinco Royalty-Free Period**" has the meaning ascribed to it in Section 2.1(b).

1.32 "**Spinco Sell-Off Period**" has the meaning ascribed to it in Section 2.1(c).

1.33 "**Trademarks**" means all registered, applied-for and unregistered trademark rights and similar rights in trade names, logos, trade dress, trademarks and service marks, existing under the Laws of any jurisdiction anywhere in the world.

1.34 "**WDC**" has the meaning ascribed to it in the Preamble.

1.35 "**WDC Group Licensed Products**" means products or services manufactured, advertised, marketed, publicly displayed, distributed, offered for sale or sold using, displaying, bearing or under any WDC Group Licensed Trademarks within the scope of the license grant to Spinco and its Affiliates set forth in Section 2.1.

1.36 "**WDC Group Licensed Trademarks**" means those certain Trademarks set forth on Schedule 2, as may be updated with additional or revised Trademarks from time-to-time upon the request or proposal of either Party and subsequent written approval of WDC.

1.37 "**WDC Guidelines**" has the meaning ascribed to it in Section 2.3.

1.38 "**WDC Retained Business**" means the businesses, product and service lines of the WDC Group, excluding the Flash Business.

1.39 "**WDC Trademark Claim**" has the meaning ascribed to it in Section 2.8.

1.40 "**WDC General Trademark License Term**" has the meaning ascribed to it in Section 3.1(a).

1.41 "**WDC Royalty-Free Period**" has the meaning ascribed to it in Section 3.1(b).

1.42 "**WDC Sell-Off Period**" has the meaning ascribed to it in Section 3.1(c).

## II. TRADEMARK LICENSE TO SPINCO

2.1 Limited Transitional Trademark License Grant.

(a) Subject to the terms and conditions of this Agreement, WDC and its Affiliates, as applicable, hereby grant to Spinco and its Affiliates a worldwide, non-exclusive, non-transferable, license to use the WDC Group Licensed Trademarks for a period of three (3) years (unless otherwise specified in Section 9.15 (Survival) in the event that this Agreement terminates)(such period, including any authorized extension thereof, the "**Spinco General Trademark License Term**") solely in the manner in which they have been used during the twelve (12)-month period prior to the Effective Date in connection with the Flash Business, in furtherance of Spinco's efforts to rebrand, establish and develop its independent activities in the Flash Business and transition its operations following WDC's divestment of Spinco under the SDA; *provided* that Spinco and its Affiliates shall not, without express prior written permission from the WDC Group in accordance with Section 2.5, use any WDC Group Licensed Trademarks on any publicly facing or widely distributed branding, press materials, marketing collateral or the like.

(b) The licenses granted pursuant to this Section 2.1 shall be royalty-free for the first twelve (12) months following the Effective Date (such period, including any authorized extension thereof, the "**Spinco Royalty-Free Period**"). If, despite Spinco's and its Affiliates' best efforts to complete a rebranding and cease use of the WDC Group Licensed Trademarks, the Spinco Group has not completed such rebranding before the expiration of the Spinco Royalty-Free Period, Spinco may, no later than thirty (30) days prior to the one (1)-year anniversary of the Effective Date, provide written notice to WDC of its desire to extend the Spinco Royalty-Free Period for specific, identified products for which Spinco and its Affiliates were not able to complete rebranding and cease use of the WDC Group Licensed Trademarks. Upon timely receipt of such notice, the Spinco Royalty-Free Period shall, *one time only*, be extended for a period of six (6) months with respect to such specific, identified products (provided, for the avoidance of doubt, that any such extension of the Spinco Royalty-Free Period shall not operate as an extension of the Spinco General Trademark License Term). After the Spinco Royalty-Free Period, the licenses granted pursuant to this Section 2.1 shall be royalty-bearing in accordance with Section 4.1.

(c) Spinco and its Affiliates shall have the right, following the expiration of the Spinco General Trademark License Term, to continue selling and distributing its existing inventory of Licensed Products bearing the WDC Group Licensed Trademarks as of the date of such expiration for a period of four (4) months following such expiration (unless otherwise specified in Section 9.15 (Survival) in the event that this Agreement terminates) (such period, the "**Spinco Sell-Off Period**"), under and subject to the same terms and conditions applicable to the license granted in Section 2.1(a) during the Spinco General Trademark License Term (except as otherwise set forth in this sentence).

(d) Spinco and its Affiliates shall have the right, following the expiration of the Spinco General Trademark License Term, to continue making the existing Internal Uses (but no public-facing or other use in connection with marketing, promotion or sales of Internal Trademark Products) of the WDC Group Licensed Trademarks in connection with Internal Trademark Products until, on a product-by-product basis, the earlier of (i) the end-of-life (EOL) of each such Internal Trademark Product and (ii) the Internal Product Term (unless otherwise specified in Section 9.15 (Survival) in the event that this Agreement terminates) (such period, the "**Spinco Internal-Use Trademark Term**"), under and subject to the same terms and conditions applicable to the license granted in Section 2.1(a) during the Spinco General Trademark License Term (except as otherwise set forth in this sentence); *provided* that Spinco shall (and shall cause its Affiliates to) complete a rebranding and cease all such Internal Uses as soon as reasonably practicable. For the avoidance of doubt, Internal Uses shall be subject to the consideration set forth in Section 2.1(f) but shall not be subject to royalties under Section 4.1.

(e) The licenses granted in this Section 2.1 shall be sublicensable only to Spinco's third-party contractors, customers, partners and vendors, solely in connection with the aforementioned permitted purpose; *provided* that Spinco shall first obtain WDC's prior written approval of any such third-party contractor prior to any grant of sublicense thereto; *provided, further,* that, for the avoidance of doubt, the foregoing consent requirement shall not apply with respect to grants of sublicenses under written, executed contracts existing as of the Effective Date. Spinco shall in any event be responsible hereunder for its sublicensees' compliance with the terms and restrictions herein contained.

(f) In consideration for the right to make Internal Uses with respect to the WDC Group Licensed Trademarks in connection with Internal Trademark Products as expressly set forth in this Article II, Spinco shall pay WDC a one-time payment of three million dollars ($3,000,000), to be invoiced within thirty (30) days of the Effective Date and paid within ninety (90) days of the Effective Date, notwithstanding any provision hereof that would mandate a different timing for invoice or payment.

2.2 Ownership. Spinco acknowledges that, as between the Parties, (i) the WDC Group is the sole owner of all right, title and interest in and to the WDC Group Licensed Trademarks and all related goodwill and (ii) all goodwill accruing from Spinco and its Affiliates' use of the WDC Group Licensed Trademarks will inure solely to the benefit of the WDC Group. Spinco covenants that it will not do or cause to be done, and that it shall cause its Affiliates to not do or cause to be done, any act or omission to impair, dilute or tarnish the WDC Group Licensed Trademarks or the right, title, interest or goodwill of the WDC Group in the WDC Group Licensed Trademarks. In connection with the use of the WDC Group Licensed Trademarks, Spinco shall not, and it shall cause its Affiliates to not, represent, in any manner, that a member of the Spinco Group has any ownership interest in the WDC Group Licensed Trademarks.

2.3 Quality of Products. Spinco acknowledges that the WDC Group Licensed Trademarks indicate to the public that the goods and services covered under the WDC Group Licensed Trademarks are of a commercially consistent high quality and standard. Accordingly, Spinco agrees that it and its Affiliates' and sublicensee's use of the WDC Group Licensed Trademarks pursuant to this Agreement shall be in a manner that does not have any detrimental impact on the WDC Group's reputation or the goodwill associated with WDC Group's business

or the WDC Group Licensed Trademarks. Spinco and its Affiliates acknowledge and agree that the level of quality of the goods and services produced bearing the WDC Group Licensed Trademarks shall at all times comply with WDC's requirements with respect thereto. Spinco shall, and shall cause its Affiliates and sublicensee to, in its and their use of the WDC Group Licensed Trademarks, adhere to a general level of quality that is consistent with or better than that used with respect to all goods, services and business operations using or associated with the WDC Group Licensed Trademarks in the twelve (12) months prior to the Effective Date.

2.4 Quality Guidelines. Without limiting Section 2.3, Spinco shall, and shall cause its Affiliates and sublicensees to, adhere to the trademark brand or style guidelines related to the WDC Group Licensed Trademarks (collectively, the "**WDC Guidelines**"); *provided* that WDC gives Spinco reasonable advance written notice of any changes to the WDC Guidelines previously provided, and further provided that Spinco shall not be in breach of this paragraph for failure to conform with such changes to prior WDC Guidelines so long as it is actively exercising good faith, commercially reasonable efforts to bring the affected goods and services into compliance.

2.5 Prior Approval. Spinco shall, and shall cause its Affiliates and sublicensees to, only use the WDC Group Licensed Trademarks upon receiving prior written approval by WDC, and only in the manner, form, and medium and for the purpose so approved; *provided* that prior written approval shall not be required to use (i) a previously approved one of the WDC Group Licensed Trademarks (ii) that has been used previously on approved material (iii) in a form, manner and medium that are the same, in all material respects, as in the previous use subject to WDC's prior written approval. For the avoidance of doubt, any existing uses in commerce of the WDC Group Licensed Trademarks as of the Effective Date are deemed to have been approved for purposes of this Section 2.5.

2.6 Compliance with Law. Spinco shall, and shall cause its Affiliates and sublicensees to, comply with all applicable Laws in connection with its and their operations and its and their use of the WDC Group Licensed Trademarks, including using all WDC Group Licensed Trademark legends, notices and markings as required by applicable Law. Without limiting the generality of the foregoing, Spinco shall not, and shall cause its Affiliates and sublicensees to not, use the WDC Group Licensed Trademarks: (i) in connection with any fraudulent, defamatory, deceptive, or otherwise tortious purpose; or (ii) in any manner which constitutes false endorsement, false advertisement, false designation of origin, unfair competition or any other violation of Law governing consumer protection.

2.7 Quarterly Review. Once per calendar quarter during the license term set forth inSection 2.1, WDC shall conduct a quarterly review of goods and services using the WDC Group Licensed Trademarks. The schedule, specifications and procedures for such quarterly review shall be as set forth in Schedule 2.7 attached hereto and incorporated by reference. In connection with such reviews, Spinco and its Affiliates and sublicensees shall provide samples of the applicable goods and services for review and written approval by WDC, and WDC shall have the right to test, inspect and subsequently approve or reject such samples based on their conformity or nonconformity with the applicable WDC Guidelines. Such samples shall be identical in quality, performance, character and form to the goods and services intended for general sale and distribution. In the event that WDC rejects such samples during the applicable quarterly review, Spinco and its Affiliates and sublicensees shall revise, improve or otherwise submit new samples that conform to the applicable WDC Guidelines, and WDC shall have the

right to approve or reject such new samples according to the same procedures as for the initial samples. Spinco and its Affiliates and sublicensees shall not finalize, reproduce, distribute, display or otherwise use any goods and services bearing the WDC Group Licensed Trademarks that have been rejected in writing by WDC during a quarterly review due to material nonconformity with the applicable WDC Guidelines; *provided* that Spinco shall not be in breach of this paragraph for failure to conform to the WDC Guidelines so long as it is actively exercising good faith, commercially reasonable efforts to promptly bring the affected goods and services into compliance.

2.8 Cooperation. For as long as any such Trademarks are licensed hereunder, the Parties shall fully cooperate with each other in their efforts to maintain and enforce WDC's rights in the WDC Group Licensed Trademarks; *provided* that all reasonable, documented costs and expenses incurred by Spinco and its Affiliates and sublicensees in fulfilling its and their obligations hereunder shall be borne by Spinco, unless otherwise agreed in writing by the Parties. With respect to any action, suit, opposition or other proceeding (collectively, "**Proceeding**") alleging the infringement, dilution, tarnishment, unfair competition or passing off by a third party of, or with respect to the WDC Group Licensed Trademarks, or contesting the validity of the WDC Group Licensed Trademarks or the WDC Group's ownership thereof (each a "**WDC Trademark Claim**"), WDC shall have primary responsibility therefor and shall assume, conduct and direct the prosecution and/or defense of such Proceeding, as applicable, utilizing counsel and other resources of its own choosing; *provided* that Spinco shall, and shall cause its Affiliates and sublicensees to, upon request by WDC, provide reasonable assistance, including the provision of evidence, witnesses, information, communications, documentation and declarations in furtherance of WDC's conduct of the Proceeding, and to make its and their relevant personnel, records and facilities reasonably available in connection with such assistance, each at Spinco's expense. For as long as any such Trademarks are licensed hereunder, each Party will promptly notify the other Party of its receipt or firsthand knowledge of any active or threatened WDC Trademark Claim. In addition, Spinco and its Affiliates and sublicensees shall promptly notify WDC of any third-party acts or other circumstances that come to its and their attention which are reasonably likely to result in a future WDC Trademark Claim. Spinco and its Affiliates and sublicensees shall promptly (i) notify WDC of any material developments with respect to a Proceeding; and (ii) deliver to WDC a copy of all pleadings, correspondence and other material documents respecting a Proceeding. Spinco and its Affiliates and sublicensees shall not enter into any settlement, release, waiver, quitclaim or similar disposition of any Proceeding or WDC Trademark Claim without first obtaining WDC's prior written authorization, and any purported agreement or understanding made by Spinco or its Affiliates or sublicensees to such effect in absence of such written authorization shall be void.

2.9 Marking. Unless otherwise expressly specified in the WDC Guidelines or in writing by WDC, Spinco shall, and shall cause its Affiliates and sublicensees to, cause the designation of "®" to be placed adjacent to the versions of the WDC Group Licensed Trademarks that are federally registered and "TM" or "SM" as appropriate, for any versions of the WDC Group Licensed Trademarks that are not federally registered, in connection with each use or display of the WDC Group Licensed Trademarks in connection with goods and services in the United States. In foreign jurisdictions, Spinco shall, and shall cause its Affiliates and sublicensees to, follow local rules and Laws, and apply the applicable trademark notices as designated by each such foreign jurisdiction, unless otherwise expressly specified in the WDC Guidelines or in writing by WDC.

2.10 Certain Agreed-Upon Restrictions. Spinco and its Affiliates and sublicensees shall not, on its or their own behalf, or on behalf of any other party, in any country or jurisdiction, register or attempt to register, or otherwise attempt to acquire any rights or ownership interests in or to, any of the WDC Group Licensed Trademarks or any other service mark, trademark, trade dress, design or trade name which is identical or confusingly similar to any of the WDC Group Licensed Trademarks without WDC's prior written consent. Spinco and its Affiliates and sublicensees shall not contest or assist any other party in contesting the validity of the WDC Group Licensed Trademarks or the WDC Group's ownership thereof.

2.11 Effects of Termination. Upon termination of the license rights granted in Section 2.1, all rights to use the WDC Group Licensed Trademarks shall expire and Spinco and its Affiliates and sublicensees shall immediately cease any and all use of the WDC Group Licensed Trademarks.

2.12 Reservation of Rights by WDC. All rights not expressly granted by WDC in this Article II are reserved by WDC. Without limiting the generality of the foregoing sentence, the Parties acknowledge and agree that nothing in this Agreement shall be construed or interpreted as a grant, by implication or otherwise, of any license to the WDC Group's Intellectual Property Rights other than the licenses expressly set forth in Section 2.1. Other than as expressly provided in Section 2.1(e), the Spinco Group shall not have the right to grant any sublicenses hereunder.

2.13 Suspension of Rights Under WDC Group Licensed Trademarks. Without limiting Section 9.7, if Spinco materially breaches any of its obligations under Section 2.3, Section 2.4, Section 2.5, Section 2.6, Section 2.7 or Section 2.9, then, for as long as such breach is ongoing, WDC may, upon written notice, suspend the licenses and rights granted by WDC under Section 2.1(a), Section 2.1(c) and Section 2.1(d) with respect to the applicable Trademarks, products or services, until such time as such material breach has been cured.

2.14 Derivative Mark Discussion. At Spinco's request no earlier than six (6) months prior to the end of the Spinco General Trademark License Term, the Parties will meet and confer in good faith to negotiate a royalty-bearing license for the use of a "BLACK" derivative mark or any other mark derived from a WDC Group Licensed Trademark to be used by the Spinco Group for a limited period as part of a brand-transition plan.

## III. TRADEMARK LICENSE TO WDC

3.1 Limited Transitional Trademark License Grant.

(a) Subject to the terms and conditions of this Agreement, Spinco and its Affiliates, as applicable, hereby grant to WDC and its Affiliates a worldwide, non-exclusive, non-transferable, license to use the Spinco Group Licensed Trademarks for a period of three (3) years (unless otherwise specified in Section 9.15 (Survival) in the event that this Agreement terminates) (such period, including any authorized extension thereof, the "**WDC General Trademark License Term**") solely in the manner in which they have been used during the

twelve (12)-month period prior to the Effective Date in connection with the WDC Retained Business, in furtherance of WDC's efforts to rebrand, establish and develop its independent activities in the WDC Retained Business and transition its operations following WDC's divestment of Spinco under the SDA; *provided* that WDC and its Affiliates shall not, without express written permission from the Spinco Group in accordance with Section 3.5, use any Spinco Group Licensed Trademarks on any publicly facing or widely distributed branding, press materials, marketing collateral or the like.

(b) The licenses granted pursuant to this Section 3.1 shall be royalty-free for the first twelve (12) months following the Effective Date (such period, including any authorized extension thereof, the "**WDC Royalty-Free Period**"). If, despite WDC's and its Affiliates' best efforts to complete a rebranding and cease use of the Spinco Group Licensed Trademarks, the WDC Group has not completed such rebranding before the expiration of the WDC Royalty-Free Period, WDC may, no later than thirty (30) days prior to the one (1)-year anniversary of the Effective Date, provide written notice to Spinco of its desire to extend the WDC Royalty-Free Period for specific, identified products for which WDC and its Affiliates were not able to complete rebranding and cease use of the Spinco Group Licensed Trademarks. Upon timely receipt of such notice, the WDC Royalty-Free Period shall, *one time only*, be extended for a period of six (6) months with respect to such specific, identified products (provided, for the avoidance of doubt, that any such extension of the WDC Royalty-Free Period shall not operate as an extension of the WDC General Trademark License Term). After the WDC Royalty-Free Period, the licenses granted pursuant to this Section 3.1 shall be royalty-bearing in accordance with Section 4.1.

(c) WDC and its Affiliates shall have the right, following the expiration of the WDC General Trademark License Term, to (i) continue selling and distributing its existing inventory of products bearing the Spinco Group Licensed Trademarks as of the date of such expiration for a period of four (4) months following such expiration (unless otherwise specified in Section 9.15 (Survival) in the event that this Agreement terminates) (such period, the "**WDC Sell-Off Period**"), under and subject to the same terms and conditions applicable to the license granted in Section 3.1(a) during the WDC General Trademark License Term (except as otherwise set forth in this sentence).

(d) The licenses granted in this Section 3.1 shall be sublicensable only to WDC's third-party contractors, customers, partners and vendors, solely in connection with the aforementioned permitted purpose; *provided* that WDC shall first obtain Spinco's prior written approval of any such third-party contractor prior to any grant of sublicense thereto; *provided, further,* that, for the avoidance of doubt, the foregoing consent requirement shall not apply with respect to grants of sublicenses under contracts existing as of the Effective Date. WDC shall in any event be responsible hereunder for its sublicensees' compliance with the terms and restrictions herein contained.

3.2 Ownership. WDC acknowledges that, as between the Parties, (i) the Spinco Group is the sole owner of all right, title and interest in and to the Spinco Group Licensed Trademarks and all related goodwill and (ii) all goodwill accruing from WDC and its Affiliates' use of the Spinco Group Licensed Trademarks will inure solely to the benefit of Spinco. WDC covenants that it will not do or cause to be done, and that it shall cause its Affiliates to not do or

cause to be done, any act or omission to impair, dilute or tarnish the Spinco Group Licensed Trademarks or the right, title, interest or goodwill of the Spinco Group in the Spinco Group Licensed Trademarks. In connection with the use of the Spinco Group Licensed Trademarks, WDC shall not, and it shall cause its Affiliates to not, represent, in any manner, that a member of the WDC Group has any ownership interest in the Spinco Group Licensed Trademarks.

3.3 Quality of Products. WDC acknowledges that the Spinco Group Licensed Trademarks indicate to the public that the goods and services covered under the Spinco Group Licensed Trademarks are of a commercially consistent high quality and standard. Accordingly, WDC agrees that it and its Affiliates' and sublicensee's use of the Spinco Group Licensed Trademarks pursuant to this Agreement shall be in a manner that does not have any detrimental impact on the Spinco Group's reputation or the goodwill associated with the Spinco Group's business or the Spinco Group Licensed Trademarks. WDC and its Affiliates acknowledge and agree that the level of quality of the goods and services produced bearing the Spinco Group Licensed Trademarks shall at all times comply with Spinco's requirements with respect thereto. WDC shall, and shall cause its Affiliates and sublicensee to, in its and their use of the Spinco Group Licensed Trademarks, adhere to a general level of quality that is consistent with or better than that used with respect to all goods, services and business operations using or associated with the Spinco Group Licensed Trademarks in the twelve (12) months prior to the Effective Date.

3.4 Quality Guidelines. Without limiting Section 3.3, WDC shall, and shall cause its Affiliates and sublicensees to, adhere to the trademark brand or style guidelines related to the Spinco Group Licensed Trademarks (collectively, the "**Spinco Guidelines**"); *provided* that Spinco gives WDC reasonable advance written notice of any changes to the Spinco Guidelines previously provided, and further provided that WDC shall not be in breach of this paragraph for failure to conform with such changes to prior Spinco Guidelines so long as it is actively exercising good faith, commercially reasonable efforts to bring the affected goods and services into compliance.

3.5 Prior Approval. WDC shall, and shall cause its Affiliates and sublicensees to, only use the Spinco Group Licensed Trademarks upon receiving prior written approval by Spinco, and only in the manner, form, and medium and for the purpose so approved; *provided* that prior written approval shall not be required to use (i) a previously approved one of the Spinco Group Licensed Trademarks (ii) that has been used previously on approved material (iii) in a form, manner and medium that are the same, in all material respects, as in the previous use subject to Spinco's prior written approval. For the avoidance of doubt, any existing uses in commerce of the Spinco Group Licensed Trademarks as of the Effective Date are deemed to have been approved for purposes of this Section 3.5.

3.6 Compliance with Law. WDC shall, and shall cause its Affiliates and sublicensees to, comply with all applicable Laws in connection with its and their operations and its and their use of the Spinco Group Licensed Trademarks, including using all Spinco Group Licensed Trademark legends, notices and markings as required by applicable Law. Without limiting the generality of the foregoing, WDC shall not, and shall cause its Affiliates and sublicensees to not, use the Spinco Group Licensed Trademarks: (i) in connection with any fraudulent, defamatory, deceptive, or otherwise tortious purpose; or (ii) in any manner which constitutes false endorsement, false advertisement, false designation of origin, unfair competition or any other violation of Law governing consumer protection.

3.7 Quarterly Review. Once per calendar quarter during the license term set forth inSection 3.1, Spinco shall conduct a quarterly review of goods and services using the Spinco Group Licensed Trademarks. The schedule, specifications and procedures for such quarterly review shall be as set forth in Schedule 3.7 attached hereto and incorporated by reference. In connection with such reviews, WDC and its Affiliates and sublicensees shall provide samples of the applicable goods and services for review and written approval by Spinco, and Spinco shall have the right to test, inspect and subsequently approve or reject such samples based on their conformity or nonconformity with the applicable Spinco Guidelines. Such samples shall be identical in quality, performance, character and form to the goods and services intended for general sale and distribution. In the event that Spinco rejects such samples during the applicable quarterly review, WDC and its Affiliates and sublicensees shall revise, improve or otherwise submit new samples that conform to the applicable Spinco Guidelines, and Spinco shall have the right to approve or reject such new samples according to the same procedures as for the initial samples. WDC and its Affiliates and sublicensees shall not finalize, reproduce, distribute, display or otherwise use any goods and services bearing the Spinco Group Licensed Trademarks that have been rejected in writing by Spinco during a quarterly review due to material nonconformity with the applicable Spinco Guidelines; *provided* that WDC shall not be in breach of this paragraph for failure to conform to the Spinco Guidelines so long as it is actively exercising good faith, commercially reasonable efforts to promptly bring the affected goods and services into compliance.

3.8 Cooperation. For as long as any such Trademarks are licensed hereunder, the Parties shall fully cooperate with each other in their efforts to maintain and enforce Spinco's rights in the Spinco Group Licensed Trademarks; *provided* that all reasonable, documented costs and expenses incurred by WDC and its Affiliates and sublicensees in fulfilling its and their obligations hereunder shall be borne by WDC, unless otherwise agreed in writing by the Parties. With respect to any Proceeding alleging the infringement, dilution, tarnishment, unfair competition or passing off by a third party of, or with respect to the Spinco Group Licensed Trademarks, or contesting the validity of the Spinco Group Licensed Trademarks or the Spinco Group's ownership thereof (each a "**Spinco Trademark Claim**"), Spinco shall have primary responsibility therefor and shall assume, conduct and direct the prosecution and/or defense of such Proceeding, as applicable, utilizing counsel and other resources of its own choosing; *provided* that WDC shall, and shall cause its Affiliates and sublicensees to, upon request by Spinco, provide reasonable assistance, including the provision of evidence, witnesses, information, communications, documentation and declarations in furtherance of Spinco's conduct of the Proceeding, and to make its and their relevant personnel, records and facilities reasonably available in connection with such assistance, each at WDC's expense. For as long as any such Trademarks are licensed hereunder, each Party will promptly notify the other Party of its receipt or firsthand knowledge of any active or threatened Spinco Trademark Claim. In addition, WDC and its Affiliates and sublicensees shall promptly notify Spinco of any third-party acts or other circumstances that come to its and their attention which are reasonably likely to result in a future Spinco Trademark Claim. WDC and its Affiliates and sublicensees shall promptly (i) notify Spinco of any material developments with respect to a Proceeding; and (ii) deliver to Spinco a copy of all pleadings, correspondence and other material documents respecting a Proceeding. WDC and its Affiliates and sublicensees shall not enter into any settlement, release, waiver, quitclaim or similar disposition of any Proceeding or Spinco Trademark Claim without first obtaining Spinco's prior written authorization, and any purported agreement or understanding made by WDC or its Affiliates or sublicensees to such effect in absence of such written authorization shall be void.

3.9 Marking. Unless otherwise expressly specified in the WDC Guidelines or in writing by Spinco, WDC shall, and shall cause its Affiliates and sublicensees to, cause the designation of "®" to be placed adjacent to the versions of the Spinco Group Licensed Trademarks that are federally registered and "TM" or "SM" as appropriate, for any versions of the Spinco Group Licensed Trademarks that are not federally registered, in connection with each use or display of the Spinco Group Licensed Trademarks in connection with goods and services in the United States. In foreign jurisdictions, WDC shall, and shall cause its Affiliates and sublicensees to, follow local rules and Laws, and apply the applicable trademark notices as designated by each such foreign jurisdiction, unless otherwise expressly specified in the WDC Guidelines or in writing by Spinco.

3.10 Certain Agreed-Upon Restrictions. WDC and its Affiliates and sublicensees shall not, on its or their own behalf, or on behalf of any other party, in any country or jurisdiction, register or attempt to register, or otherwise attempt to acquire any rights or ownership interests in or to, any of the Spinco Group Licensed Trademarks or any other service mark, trademark, trade dress, design or trade name which is identical or confusingly similar to any of the Spinco Group Licensed Trademarks without Spinco's prior written consent. WDC and its Affiliates and sublicensees shall not contest or assist any other party in contesting the validity of the Spinco Group Licensed Trademarks or the Spinco Group's ownership thereof.

3.11 Effects of Termination. Upon termination of the license rights granted in Section 3.1, all rights to use the Spinco Group Licensed Trademarks shall expire and WDC and its Affiliates and sublicensees shall immediately cease any and all use of the Spinco Group Licensed Trademarks.

3.12 Reservation of Rights by Spinco. All rights not expressly granted by Spinco in this Article III are reserved by Spinco. Without limiting the generality of the foregoing sentence, the Parties acknowledge and agree that nothing in this Agreement shall be construed or interpreted as a grant, by implication or otherwise, of any license to the Spinco Group's Intellectual Property Rights other than the licenses expressly set forth in Section 3.1. Other than as expressly provided in Section 3.1(d), the WDC Group shall not have the right to grant any sublicenses hereunder.

3.13 Suspension of Rights Under Spinco Group Licensed Trademarks. Without limiting Section 9.7, if Spinco materially breaches any of its obligations under Section 3.3, Section 3.4, Section 3.5, Section 3.6, Section 3.7 or Section 3.9, then, for as long as such breach is ongoing, Spinco may, upon written notice, suspend the licenses and rights granted by Spinco under Section 3.1(a) and Section 3.1(c) with respect to the applicable Trademarks, products or services, until such time as such material breach has been cured.

## IV. PAYMENT OBLIGATIONS AND FORM OF PAYMENTS

4.1 Earned Royalty. Starting after the Spinco Royalty-Free Period or the WDC Royalty-Free Period, as applicable, each Party (as "**Licensee**") shall, subject to Section 9.15(c) and Section 9.15(d), according to the terms and conditions of this Article IV, pay to the other Party (as "**Licensor**") a royalty (the "**Earned Royalty**") of four percent (4%) of Net Sales. Notwithstanding anything to the contrary herein, without limiting Section 2.1(f), no Earned Royalties shall accrue or be payable with respect to any Licensed Product solely as a result of an Internal Use of a Trademark in accordance with the terms and conditions of this Agreement.

4.2 Taxes. Earned Royalties and any other sums payable under this Agreement are exclusive of any taxes, including any direct or indirect taxes, customs duties, levies, fees, excises, tariffs, claims, counterclaims, deductions and demands, and must be paid free and clear of all deductions and withholdings whatsoever, unless the deduction or withholding is required by applicable Law. If any deduction or withholding is required by Law (the "**Withholding Taxes**"), Licensee shall (a) remit Withholding Taxes to the appropriate tax authority, (b) provide all original receipts or necessary documentation evidencing payment to the relevant government to Licensor, (c) cooperate with Licensor as reasonably requested to support foreign tax credits Licensor may claim attributable to Withholding Taxes, and (d) indemnify Licensor for any foreign tax credits disallowed by a tax authority, including any associated interest and penalties, solely attributable to Licensee's failure to timely provide the documentation required hereunder. The Parties shall cooperate in good faith to minimize any required deduction or withholding, to the extent consistent with applicable Law.

4.3 Royalty Statements. No later than three (3) weeks following the end of each Quarterly Period, Licensee shall submit or cause to be submitted to Licensor a true and correct statement in writing that includes the following information relevant to the calculation of such Earned Royalties:

(a) the Quarterly Period for which the Earned Royalties were calculated;

(b) the number of Licensed Products sold during such Quarterly Period;

(c) the Net Sales during such Quarterly Period;

(d) the amount of any applicable and documented excise, sale, use or value added taxes, other than income taxes, paid by Licensee due to the sale of the Licensed Products during such Quarterly Period, deductible or due to be deducted from the amount of Earned Royalties due and payable; and

(e) the total net amount of Earned Royalties due and payable for such Quarterly Period.

4.4 Invoicing; Manner of Payment. Promptly following receipt of a royalty statement pursuant to Section 4.3, Licensor shall issue an invoice to Licensee for the amounts due thereunder. Earned Royalties and any other sums payable under this Agreement must be paid within ninety (90) days after the receipt of an invoice from Licensor therefor, in U.S. dollars by wire transfer to a bank account to be designated in writing by Licensor. For the purpose of converting the local currency in which any royalties arise into U.S. dollars, the rate of exchange to be applied will be the rate of exchange in effect for the date when the relevant payment first becomes due as reported in the Wall Street Journal. For the avoidance of doubt, issuing an invoice or accepting a payment does not preclude Licensor from subsequently challenging (a) the validity or accuracy of any royalty statement or (b) the amount of Earned Royalties due and payable hereunder.

4.5 Late Payments. In the event Licensor does not receive payments due under this Agreement by the due date, Licensee shall pay to Licensor interest on the overdue payment from the date such payment was due to the date of actual payment at a rate of 1.5% per month, or if lower, the maximum amount permitted under Law.

4.6 Records and Audits. Licensee shall (and shall cause its Affiliates to) keep complete and accurate books and records showing the description, price, quantity, and date of manufacture and sale, distribution or supply of all Licensed Products manufactured, sold or distributed. Such books and records must be kept separate from any books and records not relating solely to the Licensed Products and be available during normal business hours for inspection and audit by Licensor's authorized representative, who may take copies of or extracts from the same. If any such inspection or audit shows that any payment is deficient, (a) Licensee shall immediately pay Licensor the deficient amount, including interest calculated in accordance with Section 4.5, and (b) if such payment is found deficient by more than five percent (5%), Licensee shall bear the cost of the audit or inspection and reimburse Licensor for any professional charges incurred. Such inspection and audit right of Licensor remains in effect for a period of two (2) years after the termination of this Agreement.

## V. TERM AND TERMINATION

The term of this Agreement shall commence as of the Effective Date and shall, unless earlier terminated, continue until the expiration of the last to expire of the Spinco Sell-Off Period (if any), WDC Sell-Off Period (if any), Spinco General Trademark License Term, WDC General Trademark License Term and Spinco Internal-Use Trademark Term (if any), as set forth in Section 2.1 and Section 3.1 according to the terms and conditions of this Agreement. This Agreement may be terminated by either Party immediately upon written notice if the other Party materially breaches this Agreement and the breaching Party fails to cure such breach within thirty (30) days of receipt of a written notice specifying the nature of such breach; *provided* that if the existence of any such material breach is the subject of a good faith Dispute between the Parties, then this Agreement shall not be terminable prior to the resolution of the Second-Level Negotiation Period, in accordance with Section 9.7.

## VI. REPRESENTATIONS AND WARRANTIES

6.1 Mutual Representations and Warranties. Each Party represents and warrants to the other Party that (a) it has all requisite power and authority to execute and deliver this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby, (b) the execution, delivery and performance of this Agreement has been duly authorized by all requisite corporate action on the part of such Party, (c) this Agreement has been duly and validly executed and delivered by such Party and constitutes legal, valid and binding obligations of such Party enforceable against such Party, except as such enforceability may be limited by bankruptcy, insolvency, moratorium and other similar applicable Laws affecting creditors' rights generally and by general principles of equity and (d) it has the right to grant the licenses granted by such Party pursuant to this Agreement.

6.2 Disclaimer of Representations and Warranties. EXCEPT AS EXPRESSLY SET FORTH IN SECTION 6.1 ABOVE AND EXCEPT AS SET FORTH IN THE SDA, (a) NEITHER WDC NOR SPINCO MAKES ANY REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT (INCLUDING THE WDC GROUP LICENSED TRADEMARKS AND THE SPINCO GROUP LICENSED TRADEMARKS), (b) WDC SPECIFICALLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE WDC GROUP LICENSED TRADEMARKS AND (c) SPINCO SPECIFICALLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE SPINCO GROUP LICENSED TRADEMARKS. WITHOUT LIMITING THE FOREGOING, EXCEPT AS SET FORTH IN THE SDA, EACH PARTY SPECIFICALLY DISCLAIMS ANY WARRANTY THAT ANY OF THE THIRD-PARTY INTELLECTUAL PROPERTY RIGHTS USED IN THE FLASH BUSINESS OR THE WDC RETAINED BUSINESS ARE SUBLICENSABLE TO THE OTHER PARTY OR ITS AFFILIATES OR SUBSIDIARIES, AS APPLICABLE.

## VII. INDEMNIFICATION AND LIMITATION OF LIABILITY

7.1 Indemnification. Each Party (the "**Indemnifying Party**") shall indemnify, defend and hold harmless the other Party and its Affiliates and its and their officers, directors, employees, agents, successors and assigns (collectively, "**Indemnified Parties**") from and against any and all Losses (as defined in the SDA) arising out of, relating to or resulting from any third-party claims based on (a) the Indemnifying Party's breach of Article II or Article III this Agreement; (b) in the context of the Indemnifying Party as a licensee of Trademarks hereunder, use of such licensed Trademarks by or on behalf of the Indemnifying Party or its Affiliates or sublicensees after the Effective Date; or (c) in the context of the Indemnifying Party as a licensee of Trademarks hereunder, any products or services of the Indemnifying Party or its Affiliates bearing or commercialized in connection with such licensed Trademarks after the Effective Date, except, in each case, to the extent that such Losses are caused by compliance with the WDC Guidelines or the express written instructions of WDC pursuant to the terms and conditions of Article II (in the case of Spinco as the Indemnifying Party) or by the Spinco Guidelines or the express written instructions of Spinco pursuant to Article III (in the case of WDC as the Indemnifying Party) or are subject to indemnification by the other Party pursuant to this Article VII or the SDA.

7.2 Indemnification Procedures. Upon an Indemnified Party's receipt of a claim subject to the Indemnifying Party's obligations under this Article VII, the Indemnified Party shall notify the Indemnifying Party in writing of such receipt; *provided* that any failure to so notify shall not relieve the Indemnifying Party of its indemnification obligations hereunder, except to the extent the Indemnifying Party is materially prejudiced by such failure. In addition, (i) the Indemnifying Party will assume the defense of any such Indemnifiable Claim, and the

Indemnified Party shall reasonably assist and cooperate with such defense, at the Indemnifying Party's cost and expense; and (ii) the Indemnifying Party must obtain the prior written approval of the Indemnified Party prior to entering into any settlement of any indemnifiable claim hereunder which involves the admission of any guilt, liability or wrongdoing on behalf of the Indemnified Party.

7.3 SUBJECT TO THE TERMS AND CONDITIONS OF THE SDA, NOTWITHSTANDING ANYTHING ELSE IN THIS AGREEMENT OR OTHERWISE, EXCEPT WITH RESPECT TO A PARTY'S INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTION 7.1 OR A BREACH OF SECTION 9.1 OR ARTICLE VIII, IN NO EVENT SHALL A PARTY OR ITS AFFILIATES BE LIABLE WITH RESPECT TO THE SUBJECT MATTER OF THIS AGREEMENT UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR ANY (a) CONSEQUENTIAL, INDIRECT, INCIDENTAL OR SPECIAL DAMAGES OR (b) LOST PROFITS OR LOST BUSINESS, IN THE CASE OF EACH OF (a) AND (b), EVEN IF THE REMEDIES PROVIDED FOR IN THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE AND EVEN IF EITHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OR PROBABILITY OF SUCH DAMAGES.

**VIII. CONFIDENTIALITY**

8.1 Confidential Information. "**Confidential Information**" means any confidential and proprietary information of a Party, including know-how, trade secrets, algorithms, source code, specifications, methods of processing, techniques, research, development, inventions (whether or not patentable and whether or not reduced to practice), data, ideas, concepts, drawings, designs and schematics.

8.2 Confidentiality Obligations. Each Party (the "**Receiving Party**") that receives or otherwise obtains under this Agreement any Confidential Information of the other Party (the "**Disclosing Party**") shall, and shall cause its Affiliates to, (a) keep the Disclosing Party's Confidential Information confidential and not disclose or make available any of the Disclosing Party's Confidential Information to any third party without the prior written consent of the Disclosing Party (except in accordance with subclause (d) or subclause (e) in this Section 8.2 or in accordance with Section 8.4), (b) use the Disclosing Party's Confidential Information only as necessary to perform its obligations and exercise its rights under this Agreement, (c) use at least the same degree of care in keeping the Disclosing Party's Confidential Information confidential as it uses for its own Confidential Information of a similar nature (but in no event less than a reasonable degree of care), (d) limit access to the Disclosing Party's Confidential Information to its Affiliates and its authorized sublicensees who have a need to access or know such Confidential Information for the purpose of exercising such Affiliate's rights under this Agreement; *provided* that such Affiliate or sublicensee (other than any customer or end user of either Party) is bound in writing to confidentiality obligations at least as protective of the Disclosing Party's Confidential Information as the confidentiality provisions of this Agreement, and (e) limit access to the Disclosing Party's Confidential Information to its directors, employees, agents, consultants, advisors, Affiliates, sublicensees and contractors ("**Representatives**") who have a need to access or know such Confidential Information for the purpose of the Receiving Party's exercise of its rights under this Agreement; *provided* that such Representatives are bound in writing to confidentiality obligations at least as protective of the Disclosing Party's Confidential Information as the confidentiality provisions of this Agreement.

8.3 Exceptions. The Receiving Party shall not be obligated under Section 8.2 above with respect to any information the Receiving Party can document (a) is or, through no improper action or inaction by the Receiving Party or any of its Representatives, becomes generally available and known to the public, (b) was rightfully in its possession or known by it without any obligation of confidentiality prior to receipt from the Disclosing Party, (c) was rightfully disclosed to it without restriction by a third party that, to the Receiving Party's knowledge, was authorized to make such disclosure, (d) was independently developed by the Receiving Party without the use of or reference to any Confidential Information of the Disclosing Party or (e) is disclosed by the Disclosing Party to a third party without restriction on such third party's rights to disclose or use the same.

8.4 Disclosure Required by Law. In the event the Receiving Party is requested or required by Law or judicial process to disclose any Confidential Information of the Disclosing Party, the Receiving Party shall, if legally permitted, provide reasonable advance written notice to the Disclosing Party of such request or requirement so that the Disclosing Party may seek confidential treatment of such Confidential Information prior to its disclosure (whether through protective orders or otherwise). If, in the absence of a protective order, other confidential treatment or waiver under this Agreement, the Receiving Party is advised by its legal counsel that it is legally required to disclose such Confidential Information, the Receiving Party may disclose such Confidential Information without liability under this Article VIII; *provided, however*, that the Receiving Party exercises commercially reasonable efforts to obtain reliable assurances that confidential treatment will be accorded any such Confidential Information prior to its disclosure and discloses only the minimum amount of such Confidential Information necessary to comply with such legal requirement.

8.5 Disclosure in Connection with Due Diligence. A Party may provide this Agreement to any third party (subject to appropriate confidentiality obligations) if required to do so in connection with any diligence for any actual or potential bona fide business transaction with such third party related to the subject matter of this Agreement (including an acquisition, divestiture, merger, consolidation, asset sale, financing or public offering).

## IX. MISCELLANEOUS

9.1 Assignment.

(a) Subject to the restrictions set forth below, (i) either Party may assign or delegate this Agreement, in whole or in part, without the prior written consent of the other Party in connection with a merger, acquisition, consolidation, reorganization or sale of all or substantially all of the assets of a Party (whether by operation of law or otherwise), with written notice of such assignment to the other Party within thirty (30) days after the effective date of such assignment, (ii) in the event either Party sells or otherwise transfers (whether by sale of assets, merger or otherwise) one or more lines of products or services licensed under this Agreement (each a "**Divested Product Line**") to a third party ("**Product Line Acquirer**"), such Party may assign the rights and license granted to such Party in Article II or Article III (as applicable) hereunder to such Product Line Acquirer;*provided, however*, the rights and licenses granted to the Product Line Acquirer shall not extend to any products or services of another entity including from the Product Line Acquirer, and (iii) in the event a Party divests itself of a Subsidiary (the "**Divested Subsidiary**") to a third party ("**Divested Subsidiary Acquirer**"), upon written notice to the other Party, such Party may assign the rights and license granted to such Party in Article II or Article III (as applicable) hereunder to such Divested Subsidiary; *provided, however*, the rights and licenses granted to the Divested Subsidiary shall not extend to any products or services transferred into the Divested Subsidiary from another entity including from the Divested Subsidiary Acquirer. Except as set forth herein above, neither Party may assign this Agreement (or any of its rights or obligations under this Agreement) without the prior written consent of the other Party, which consent shall not be unreasonably withheld. Except as set forth herein above, any attempted assignment or delegation of this Agreement or any of such rights or obligations by any Party without the prior written consent of the other Party shall be void and of no effect. Any purported assignment or transfer in violation of this Section 9.1 shall be null and void ab initio.

(b) Each Party agrees that all of the licenses granted by it hereunder shall run with the applicable Intellectual Property Rights licensed by such Party hereunder ("**Intellectual Property Rights Obligations**") that are assigned or otherwise transferred to a third party. Each Party shall ensure that any assignee, transferee or successor to any of such Intellectual Property Rights (including the acquiring or surviving entity in connection with any acquisition or other change of control of either Party), or any other entity (such as an exclusive licensee) that obtains any proprietary or enforcement rights with respect to any such Intellectual Property Rights, is notified in advance of such assignment, transfer or grant, to acquire such Intellectual Property Rights subject to any and all applicable Intellectual Property Rights Obligations (including the obligation to provide such notice to any subsequent assignee, transferee, successor or grantee).

9.2 Binding Effect. This Agreement shall be binding upon, and shall be enforceable by and inure solely to the benefit of, the Parties and their respective successors and permitted assigns. Nothing in this Agreement, express or implied, is intended to or shall confer upon any Person (other than the Parties and their permitted successors and assigns) any power, right, privilege or remedy of any nature whatsoever under or by reason of this Agreement.

9.3 Notices. All notices and other communications hereunder shall be in writing and shall be deemed duly delivered: (a) four (4) Business Days after being sent by registered or certified mail, return receipt requested, postage prepaid; (b) one (1) Business Day after being sent for next Business Day delivery, fees prepaid, via a reputable nationwide overnight courier service; (c) if sent by email transmission prior to 6:00 p.m. recipient's local time, upon transmission when receipt is confirmed; or (d) if sent by email transmission after 6:00 p.m. recipient's local time, the Business Day following the date of transmission when receipt is confirmed:

If to WDC:

c/o Western Digital Corporation
**[**Address**]**
Attn: **[•]**
Email: **[•]**
Phone: **[•]**

with a copy to (which shall not constitute notice):

Skadden, Arps, Slate, Meagher & Flom LLP
525 University Avenue Suite 1400
Palo Alto, CA 94301
Attn: Thomas J. Ivey and Christopher J. Bors
Email: thomas.ivey@skadden.com and christopher.bors@skadden.com

If to Spinco:

c/o Sandisk Corporation
**[**Address**]**
Attn: **[•]**
Email: **[•]**
Phone: **[•]**

with a copy to (which shall not constitute notice):

Skadden, Arps, Slate, Meagher & Flom LLP
525 University Avenue, Suite 1400
Palo Alto, CA 94301
Attn: Thomas J. Ivey and Christopher J. Bors
Email: thomas.ivey@skadden.com and christopher.bors@skadden.com

9.4 Entire Agreement. This Agreement, including any schedules and amendments hereto and thereto, and the other agreements and documents referred to herein and therein, shall together constitute the entire agreement between the Parties with respect to the subject matter hereof and thereof and shall supersede all prior negotiations, agreements and understandings, both written and oral, between the Parties with respect to such subject matter hereof and thereof.

9.5 Amendment and Waiver.

(a) This Agreement may be amended or supplemented in any and all respects and any provision of this Agreement may be waived*provided, however,* that any such waiver shall be binding upon a Party, only if such waiver is set forth in a writing executed by such waiving Party bound thereby, and any such amendment or supplement shall be effective only if set forth in a writing executed by each of the Parties; and any such waiver, amendment or supplement shall not be applicable or have any effect except in the specific instance in which it is given. No course of dealing between or among any Persons having any interest in this Agreement shall be deemed effective to modify, amend, supplement or discharge any part of this Agreement or any rights or obligations of any Party under or by reason of this Agreement.

(b) Notwithstanding the foregoing, no failure on the part of any Party to exercise any power, right, privilege or remedy under this Agreement, and no delay on the part of any Party in exercising any power, right, privilege or remedy under this Agreement, shall operate as a waiver of such power, right, privilege or remedy; and no single or partial exercise of any such power, right, privilege or remedy shall preclude any other or further exercise thereof or of any other power, right, privilege or remedy. The rights and remedies hereunder are cumulative and not exclusive of any rights or remedies that any Party would otherwise have. Any waiver, permit, consent or approval of any kind or character of any breach or default under this Agreement or any such waiver of any provision of this Agreement must satisfy the conditions set forth in Section 9.5(a) and shall be effective only to the extent in such writing specifically set forth.

9.6 Severability. Any term or provision of this Agreement which is invalid or unenforceable in any situation in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement in any other jurisdiction or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction. If any provision of this Agreement is so broad as to be unenforceable, such provision shall be interpreted to be only so broad as is enforceable. If a final judgment of a court of competent jurisdiction declares that any term or provision of this Agreement is invalid or unenforceable, the Parties agree that the court making such determination shall have the power to limit such term or provision, to delete specific words or phrases or to replace such term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision, and this Agreement shall be valid and enforceable as so modified. In the event such court does not exercise the power granted to it in the prior sentence, the Parties agree to replace such invalid or unenforceable term or provision with a valid and enforceable term or provision that will achieve, to the extent possible, the economic, business and other purposes of such invalid or unenforceable term or provision.

9.7 Disputes.

(a) All disputes and other controversies arising out of or relating to this Agreement or the breach, termination or validity thereof, including all issues relating to a Person's ownership of or right to use any Intellectual Property Rights under this Agreement (each, a "**Dispute**"), shall be finally resolved in accordance with the procedures set forth in this Section 9.7.

(b) At such time as a Dispute arises, any Party may deliver notice of such Dispute in accordance with Section 9.3 (a "**Dispute Notice**"). Upon delivery of a Dispute Notice, the Dispute (unless concerning a Material Issue) will be referred to the designated representatives of the Parties set forth in Schedule 9.7(b) (the "**First-Level Negotiators**") for good faith discussion and negotiations for a period of thirty (30) days from the date of receipt by a Party of the Dispute Notice (such period, including any extension thereof mutually agreed to by the Parties in writing, the "**First-Level Negotiation Period**"); *provided* that (i) if the Dispute concerns a Material Issue or (ii) the First-Level Negotiators are unable to resolve the Dispute to each Party's satisfaction during the First-Level Negotiation Period, the Dispute will be referred to the senior management of the Parties (the "**Second-Level Negotiators**") for good faith discussion and negotiations for a period of thirty (30) days from the date of receipt by a Party of the Dispute Notice regarding the Material Issue or the expiration of the First-Level Negotiation Period, as applicable (such period, including any extension thereof mutually agreed to by the Parties in writing, the "**Second-Level Negotiation Period**"). The Parties shall use commercially reasonable efforts to resolve any Dispute during the First-Level Negotiation Period and Second-Level Negotiation Period, as applicable. Any resolution by the First-Level Negotiators or Second-Level Negotiators that is reduced to writing and executed by the First-Level Negotiators or Second-Level Negotiators, as applicable, shall be final and binding on the Parties. If, and only if, the Second-Level Negotiators do not reach a mutually acceptable written resolution of the Dispute by the end of the Second-Level Negotiation Period, without limiting any right of a Party to terminate this Agreement pursuant to Article V, either Party may seek resolution of the Dispute through the courts pursuant to Section 9.8.

(c) All offers, promises, conduct and statements, whether oral or written, made in the course of the Negotiation Period by any of the Parties or their agents, employees, experts or attorneys are confidential, privileged and inadmissible for any purpose, including impeachment, in any court proceeding involving the Parties; *provided* that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible ornon-disclosable as a result of its use in the negotiation.

9.8 Governing Law; Specific Performance; Forum.

(a) This Agreement and the consummation of the transactions contemplated hereby, and any Dispute or Action (whether at law, in contract, in tort or otherwise) arising out of or relating to this Agreement and the consummation of the transactions contemplated hereby, or the negotiation, validity, interpretation, performance, breach or termination of this Agreement and the consummation of the transactions contemplated hereby, shall be governed by and construed in accordance with the internal law of the State of Delaware, regardless of the law that might otherwise govern under applicable principles of conflicts of law thereof.

(b) Except as otherwise provided herein, any and all remedies herein expressly conferred upon a Party shall be deemed cumulative with and not exclusive of any other remedy conferred hereby, or by law or equity upon such Party, and the exercise by a Party of any one remedy shall not preclude the exercise of any other remedy. Nothing in this Agreement shall be deemed a waiver by any Party of any right to specific performance or injunctive relief. The Parties understand and agree that the covenants and agreements on each of their parts herein contained are uniquely related to the desire of the Parties and their respective Affiliates to consummate the transactions contemplated hereby, that the transactions contemplated hereby are a unique business opportunity at a unique time for each of WDC and Spinco and their respective Affiliates, and further agree that irreparable damage would occur in the event that any provision of this Agreement were not performed in accordance with its specific terms, and further agree that, although monetary damages may be available for the breach of such covenants and agreements, monetary damages would be an inadequate remedy therefor. It is accordingly agreed that, in addition to any other remedy that may be available to it, including monetary damages, each of the Parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement exclusively in the Delaware Court of Chancery and any state appellate court therefrom within the State of Delaware (or, if the Delaware Court of Chancery declines to accept jurisdiction over a particular matter, any state or federal court within the State of Delaware).

(c) Each of the Parties further agrees that no Party shall be required to obtain, furnish or post any bond or similar instrument in connection with or as a condition to obtaining any remedy referred to in this Section 9.8 and each Party waives any objection to the imposition of such relief or any right it may have to require the obtaining, furnishing or posting of any such bond or similar instrument. In addition, each of the Parties irrevocably agrees that any legal action or proceeding with respect to this Agreement and the rights and obligations arising hereunder, or for recognition and enforcement of any judgment in respect of this Agreement and the rights and obligations arising hereunder, brought by the other Party or its respective successors or assigns, shall be brought and determined exclusively in the Delaware Court of Chancery and any state appellate court therefrom within the State of Delaware (or, if the Delaware Court of Chancery declines to accept jurisdiction over a particular matter, any state or federal court within the State of Delaware). Each of the Parties hereby irrevocably submits with regard to any such action or proceeding for itself and in respect of its property, generally and unconditionally, to the personal jurisdiction of the aforesaid courts and agrees that it will not bring any action relating to this Agreement or any of the transactions contemplated by this Agreement in any court other than the aforesaid courts. Each of the Parties hereby irrevocably waives, and agrees not to assert, by way of motion, as a defense, counterclaim or otherwise, in any action or proceeding with respect to this Agreement: (i) any claim that it is not personally subject to the jurisdiction of the above named courts for any reason other than the failure to serve in accordance with this Section 9.8; (ii) any claim that it or its property is exempt or immune from jurisdiction of any such court or from any legal process commenced in such courts (whether through service of notice, attachment prior to judgment, attachment in aid of execution of judgment, execution of judgment or otherwise); and (iii) to the fullest extent permitted by applicable Law, any claim that: (x) the suit, action or proceeding in such court is brought in an inconvenient forum; (y) the venue of such suit, action or proceeding is improper; or (z) this Agreement, or the subject matter hereof, may not be enforced in or by such courts. In the event that any suit or action is instituted to enforce any provision in this Agreement, the prevailing party in such Dispute shall be entitled to recover from the losing party all fees, costs and expenses of enforcing any right of such prevailing party under or with respect to this Agreement, including, without limitation, such reasonable fees and expenses of attorneys and accountants,

which shall include, without limitation, all fees, costs and expenses of appeals. The Parties agree that service of any court paper may be made in any manner as may be provided under the applicable Laws or court rules governing service of process in such court. The Parties agree that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by applicable Law.

9.9 Waiver of Jury Trial. EACH OF THE PARTIES IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY ACTION OR LEGAL PROCEEDING (WHETHER AT LAW, IN CONTRACT, IN TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

9.10 Construction; Interpretation.

(a) For purposes of this Agreement, whenever the context requires: (i) the singular number shall include the plural, and vice versa; (ii) the masculine gender shall include the feminine and neuter genders; (iii) the feminine gender shall include the masculine and neuter genders; and (iv) the neuter gender shall include masculine and feminine genders.

(b) The Parties agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in the construction or interpretation of this Agreement.

(c) As used in this Agreement, the words “include” and “including,” and variations thereof, shall not be deemed to be terms of limitation, but rather shall be deemed to be followed by the words “without limitation.”

(d) As used in this Agreement, the words “hereof,” “herein,” “hereto” and “hereunder” and words of similar import shall refer to this Agreement as a whole and not to any particular provision of this Agreement.

(e) The measure of a period of one (1) month or year for purposes of this Agreement will be the date of the following month or year corresponding to the starting date; and, if no corresponding date exists, then the end date of such period being measured will be the next actual date of the following month or year (for example, one month following February 18 is March 18 and one month following March 31 is May 1).

(f) As used in this Agreement, the word “extent” in the phrase “to the extent” shall mean the degree to which a subject or other thing extends, and such phrase shall not mean simply “if.”

(g) As used in this Agreement, the word “will” shall be deemed to have the same meaning and effect as the word “shall.”

(h) As used in this Agreement, the terms “or,” “any” or “either” are not exclusive and shall be deemed to be “and/or.”

(i) As used in this Agreement, references to "written" or "in writing" include in electronic form.

(j) As used in this Agreement, references to the "date hereof" are to the date of this Agreement.

(k) Except as otherwise indicated, all references in this Agreement to "Sections," "Articles" and "Schedules" are intended to refer to Sections or Articles of this Agreement and Schedules to this Agreement.

(l) As used in this Agreement, the terms "or," "any" or "either" are not exclusive.

(m) Except as otherwise indicated, all references in this Agreement to "Sections" and "Schedules" are intended to refer to Sections of this Agreement and Schedules to this Agreement.

(n) The section and other headings and subheadings contained in this Agreement are for convenience of reference only, shall not be deemed to be a part of this Agreement and shall not be referred to in connection with the construction, meaning or interpretation of this Agreement. The preamble and the recitals set forth at the beginning of this Agreement are incorporated by reference into and made a part of this Agreement.

(o) Any payment to be made pursuant hereto shall be made in U.S. dollars and by wire transfer of immediately available funds.

(p) All references to statutes shall include all regulations promulgated thereunder, and all references to statutes and related regulations shall include all amendments of the same and any successor or replacement statutes and regulations.

9.11 Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument and shall become effective when counterparts have been signed by each of the Parties and delivered to the other Party, it being understood that all Parties need not sign the same counterpart. This Agreement may be executed and delivered by facsimile transmission, by electronic mail in "portable document format" (".pdf") form or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, or by combination of such means. The exchange of a fully executed Agreement (in counterparts or otherwise) by facsimile or electronic transmission shall be treated in all manner and respects as an original agreement and shall be considered to have the same binding legal effects as if it were the original signed version thereof delivered in person. At the request of any Party, the other Party shall re-execute original forms thereof and deliver them to the requesting Party. No Party shall raise the use of a facsimile machine or other electronic means to deliver a signature or the fact that any signature was transmitted or communicated through the use of a facsimile machine or other electronic means as a defense to the formation of a contract and each such Party forever waives any such defense.

9.12 No Third-Party Rights. Except as specifically provided in the SDA or any Ancillary Agreement, except for the provisions of Article VII with respect to indemnification of the Indemnified Parties, which is intended to benefit and be enforceable by the Persons specified therein as the Indemnified Parties, this Agreement is solely for the benefit of the Parties and their respective successors and permitted assigns and is not intended, and shall not be deemed, to (a) create any agreement of employment with any person, (b) confer on third parties (including any employees of the Parties and their respective Groups) any remedy, claim, reimbursement, claim of action or other right in addition to those existing without reference to this Agreement, or (c) otherwise create any third-party beneficiary hereto.

9.13 Ancillary Agreement. The Parties hereby acknowledge and agree that nothing in this Agreement (including any breach hereof) shall affect any obligation of any Party under the SDA or the other Ancillary Agreements.

9.14 Early Termination. This Agreement shall terminate (with absolutely no surviving rights or obligations with respect to either Party) without further action at any time before the Distribution upon termination of the SDA. If so terminated, no Party shall have any Liability of any kind to the other Party or any other Person on account of this Agreement, except as provided in the SDA, it being understood that this Section 9.14 shall not be deemed to limit or modify the provisions of Section 9.8 of the SDA (Termination).

9.15 Survival.

(a) The covenants in this Agreement that by their terms are to be performed following the Separation Time will survive each of the Internal Restructuring and the Distribution and will remain in full force and effect in accordance with their terms.

(b) The rights and obligations of the Parties set forth in the following provisions of this Agreement shall survive any termination or expiration of this Agreement (except pursuant to Section 9.14 (Early Termination)): Article I (Definitions), Section 2.11 (Effects of Termination), Section 3.11 (Effects of Termination), Section 6.2 (Disclaimer of Warranties), Article VII (Indemnification), Article VIII (Confidentiality) and Article IX (Miscellaneous).

(c) In the event that WDC terminates this Agreement pursuant to Article V in response to a material uncured breach of this Agreement by Spinco, (i) the licenses and rights granted by WDC under Section 2.1(a), Section 2.1(c) and Section 2.1(d) shall immediately terminate and (ii) the licenses and rights granted by Spinco under Section 3.1(a) and Section 3.1(c) survive in accordance with their terms as set forth in this Agreement.

(d) In the event that Spinco terminates this Agreement pursuant to Article V in response to a material uncured breach of this Agreement by WDC, (i) the licenses and rights granted by Spinco under Section 3.1(a) and Section 3.1(c) shall immediately terminate and (ii) the licenses and rights granted by WDC under Section 2.1(a), Section 2.1(c) and Section 2.1(d) survive in accordance with their terms as set forth in this Agreement.

(e) Additionally, each Party acknowledges and agrees that any termination or expiration of this Agreement shall not release a Party from any liability or obligation that already has accrued as of the effective date of such termination or expiration nor not constitute a waiver or release of, or otherwise be deemed to adversely affect, any rights, remedies or claims which a Party may have hereunder, at law, in equity or otherwise, or which may arise out of or in connection with such termination or expiration.

**[***SIGNATURE PAGE FOLLOWS***]**

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed by their respective authorized officers as of the Effective Date.

**Western Digital Corporation**

By: _____
Name:
Title:

**Sandisk Corporation**

By: _____
Name:
Title:

*[Signature Page to the Intellectual Property Cross-License Agreement]*

**Exhibit 10.6**

**FORM OF STOCKHOLDER'S AND REGISTRATION RIGHTS AGREEMENT**

This STOCKHOLDER'S AND REGISTRATION RIGHTS AGREEMENT, dated as of [•] (this "Agreement"), is by and between Sandisk Corporation, a Delaware corporation ("Spinco"), and Western Digital Corporation, a Delaware corporation ("WDC").

WHEREAS, WDC currently owns all of the issued and outstanding shares of common stock, par value $0.01 per share, of Spinco ("Spinco Common Stock");

WHEREAS, pursuant to the Separation and Distribution Agreement, dated as of [•], by and between WDC and Spinco (the "SDA"), WDC will distribute 80.1% of the issued and outstanding shares of Spinco Common Stock to holders of shares of WDC common stock, on a pro rata basis (the "Distribution");

WHEREAS, WDC intends for the Distribution to take place pursuant to a registration statement on Form 10 (the "Distribution Registration Statement");

WHEREAS, following the Distribution, WDC shall retain 19.9% of the outstanding shares of Spinco Common Stock (the "Retained Shares") and within twelve (12) months following the date of the Distribution effect one or more distributions of the Retained Shares (i) to holders of WDC stock as dividends or in exchange for outstanding shares of WDC stock and/or (ii) through one or more transfers of the Retained Shares to certain Persons in exchange for certain debt obligations of WDC held by such Persons as principals for their own account;

WHEREAS, Spinco desires to grant to WDC the Registration Rights (as defined below) for the Registrable Securities (as defined below), subject to the terms and conditions of this Agreement; and

WHEREAS, WDC desires to grant to Spinco a proxy to vote the Retained Shares in proportion to the votes cast by Spinco's other stockholders, subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises, covenants and agreements of the parties hereto, and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

## ARTICLE I

## DEFINITIONS

1.1 Defined Terms. As used in this Agreement, the following terms shall have the following meanings:

"Action" has the meaning set forth in the SDA.

"Affiliate" has the meaning set forth in the SDA.

"Agreement" has the meaning set forth in the preamble to this Agreement.

"Ancillary Filings" has the meaning set forth in Section 2.4(a)(i).

"Business Day" has the meaning set forth in the SDA.

"Convertible or Exchange Registration" has the meaning set forth in Section 2.7(a).

"Debt" means any indebtedness of any member of the WDC Group, including debt securities, notes, credit facilities, credit agreements and other debt instruments, including, in each case, any amounts due thereunder.

"Demand Registration" has the meaning set forth in Section 2.1(a).

"Distribution" has the meaning set forth in the recitals to this Agreement.

"Distribution Registration Statement" has the meaning set forth in the recitals to this Agreement.

"Exchange Act" shall mean the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

"Exchange Offer" means an exchange offer of Registrable Securities for outstanding securities of a Holder.

"Exchanges" means one or more Public Exchanges or Private Exchanges.

"Governmental Authority" has the meaning set forth in the SDA.

"Holder" means WDC or any of its Subsidiaries, so long as such Person holds any Registrable Securities, and any Person owning Registrable Securities who is a Permitted Transferee of rights under Section 4.4.

"Holder Indemnified Parties" has the meaning set forth in Section 2.9(a).

"Indemnified Parties" has the meaning set forth in Section 2.9(b).

"Initiating Holder" has the meaning set forth in Section 2.1(a).

"Loss" or "Losses" has the meaning set forth in Section 2.9(a).

"Participating Investors" means such investment banks or other Persons that are not part of the WDC Group that engage, directly or indirectly, in any Exchange with one or more members of the WDC Group.

"Permitted Transferee" means any Transferee and any Subsequent Transferee.

"Person" has the meaning set forth in the SDA.

"Piggyback Registration" has the meaning set forth in Section 2.2(a).

"Private Exchange" means a private exchange pursuant to which one or more members of the WDC Group shall Sell some or all of their Registrable Securities to one or more Participating Investors in exchange, directly or indirectly, for any equity interest of WDC or the satisfaction of Debt, in a transaction or series of transactions not required to be registered under the Securities Act.

"Prospectus" means the prospectus included in any Registration Statement, all amendments and supplements to such prospectus, including post-effective amendments, and all other material incorporated by reference in such prospectus.

"Public Exchange" means a public exchange pursuant to which one or more members of the WDC Group shall Sell some or all of their Registrable Securities to one or more Participating Investors in exchange, directly or indirectly, for any equity interest of WDC or the satisfaction of Debt, in a transaction or series of transactions registered under the Securities Act.

"Registrable Securities" means any Retained Shares and any securities issued or issuable directly or indirectly with respect to, in exchange for, upon the conversion of or in replacement of the Retained Shares, whether by way of a dividend or distribution or stock split or in connection with a combination of shares, recapitalization, merger, consolidation, exchange or other reorganization. The term "Registrable Securities" excludes any security (i) the offering and Sale of which has been effectively Registered under the Securities Act and which has been Sold in accordance with a Registration Statement, (ii) that has been Sold pursuant to Rule 144 (or any successor provision) under the Securities Act, (iii) that may be Sold pursuant to Rule 144 (or any successor provision) under the Securities Act without being subject to the volume limitations in subsection (e) of such rule or (iv) that has been sold by a Holder in a transaction in which such Holder's rights under this Agreement are not, or cannot be, assigned.

"Registration" means a registration with the SEC of the offer and Sale to the public of any Spinco Common Stock under a Registration Statement. The terms "Register," "Registered" and "Registering" shall have a correlative meaning.

"Registration Expenses" means all expenses incident to Spinco's performance of or compliance with this Agreement, including all (i) registration, qualification and filing fees; (ii) expenses incurred in connection with the preparation, printing and filing under the Securities Act of the Registration Statement, any Prospectus and any issuer free writing prospectus and the distribution thereof; (iii) the fees and expenses of Spinco's counsel and independent accountants (including the expenses of any comfort letters or costs associated with the delivery by Spinco Group members' independent certified public accountants of comfort letters customarily requested by underwriters); (iv) the reasonable fees and expenses of not more than one firm of attorneys acting as legal counsel for all of the Holders in the relevant Registration and Sale; (v) the fees and expenses incurred in connection with the registration or qualification and determination of eligibility for investment of the Shares under the state or foreign securities or blue sky laws and the preparation, printing and distribution of a Blue Sky Memorandum (including the related fees and expenses of counsel); (vi) the costs and charges of any transfer agent and any registrar; (vii) all expenses and application fees incurred in connection with any filing with, and clearance of an

offering by, Financial Industry Regulatory Authority, Inc.; (viii) expenses incurred in connection with any "road show" presentation to potential investors; (ix) printing expenses, messenger, telephone and delivery expenses; (x) internal expenses of Spinco (including all salaries and expenses of employees of Spinco performing legal or accounting duties); and (xi) fees and expenses of listing any Registrable Securities on any securities exchange on which shares of Spinco Common Stock are then listed; but excluding any internal expenses of the Holder, any underwriting discounts or commissions attributable to the Sale of any Registrable Securities and any stock transfer taxes.

"Registration Period" has the meaning set forth in Section 2.1(c).

"Registration Rights" means the rights of the Holders to cause Spinco to Register Registrable Securities pursuant to this Agreement.

"Registration Statement" means any registration statement of Spinco filed with, or to be filed with, the SEC under the rules and regulations promulgated under the Securities Act, including the related Prospectus, amendments and supplements to such registration statement, including post-effective amendments, and all exhibits and all material incorporated by reference in such registration statement.

"Retained Shares" has the meaning set forth in the recitals to this Agreement.

"Sale" means the direct or indirect transfer, sale, assignment or other disposition of a security. The terms "Sell" and "Sold" have correlative meanings.

"SEC" means the U.S. Securities and Exchange Commission.

"Securities Act" shall mean the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

"Shares" means all shares of Spinco Common Stock that are beneficially owned by WDC or any Permitted Transferee from time to time, whether or not held immediately following the Distribution.

"Shelf Registration" means a Registration Statement of Spinco for an offering to be made on a delayed or continuous basis of Spinco Common Stock pursuant to Rule 415 under the Securities Act (or similar provisions then in effect).

"Spinco" has the meaning set forth in the preamble to this Agreement and shall include its successors, by merger, acquisition, reorganization or otherwise.

"Spinco Common Stock" has the meaning set forth in the recitals to this Agreement.

"Spinco Group" has the meaning set forth in the SDA.

"Spinco Indemnified Parties" has the meaning set forth in Section 2.9(b).

"Spinco Notice" has the meaning set forth in Section 2.1(a).

"Spinco Public Sale" has the meaning set forth in Section 2.2(a).

"Spinco Takedown Notice" has the meaning set forth in Section 2.1(f).

"Subsequent Transferee" has the meaning set forth in Section 4.4(b).

"Subsidiary" has the meaning set forth in the SDA.

"Takedown Notice" has the meaning set forth in Section 2.1(f).

"Transferee" has the meaning set forth in Section 4.4(b).

"Underwritten Offering" means a Registration in which securities of Spinco are sold to an underwriter or underwriters on a firm commitment basis for reoffering to the public.

"WDC" has the meaning set forth in the preamble to this Agreement and shall include its successors, by merger, acquisition, reorganization or otherwise.

"WDC Group" has the meaning set forth in the SDA.

1.2 General Interpretive Principles.

(a) For purposes of this Agreement, whenever the context requires: (i) the singular number shall include the plural, and vice versa; (ii) the masculine gender shall include the feminine and neuter genders; (iii) the feminine gender shall include the masculine and neuter genders; and (iv) the neuter gender shall include masculine and feminine genders.

(b) The Parties agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in the construction or interpretation of this Agreement.

(c) As used in this Agreement, the words "include" and "including," and variations thereof, shall not be deemed to be terms of limitation, but rather shall be deemed to be followed by the words "without limitation."

(d) As used in this Agreement, the words "hereof," "herein," "hereto" and "hereunder" and words of similar import shall refer to this Agreement as a whole and not to any particular provision of this Agreement.

(e) The measure of a period of one (1) month or year for purposes of this Agreement will be the date of the following month or year corresponding to the starting date; and, if no corresponding date exists, then the end date of such period being measured will be the next actual date of the following month or year (for example, one month following February 18 is March 18 and one month following March 31 is May 1).

(f) As used in this Agreement, the word "extent" in the phrase "to the extent" shall mean the degree to which a subject or other thing extends, and such phrase shall not mean simply "if."

(g) As used in this Agreement, the word "will" shall be deemed to have the same meaning and effect as the word "shall."

(h) As used in this Agreement, the terms "or," "any" or "either" are not exclusive and shall be deemed to be "and/or."

(i) As used in this Agreement, references to "written" or "in writing" include in electronic form.

(j) As used in this Agreement, references to the "date hereof" are to the date of this Agreement.

(k) Except as otherwise indicated, all references in this Agreement to "Sections" and "Exhibits" are intended to refer to Sections of this Agreement and Exhibits to this Agreement.

(l) The section and other headings and subheadings contained in this Agreement and the Exhibit hereto are for convenience of reference only, shall not be deemed to be a part of this Agreement and shall not be referred to in connection with the construction, meaning or interpretation of this Agreement. The preamble and the recitals set forth at the beginning of this Agreement are incorporated by reference into and made a part of this Agreement.

(m) Any payment to be made pursuant hereto shall be made in U.S. dollars and by wire transfer of immediately available funds.

(n) As used in this Agreement, references to "$" in this report are to the lawful currency of the United States of America.

## ARTICLE II

## REGISTRATION RIGHTS

2.1 Registration.

(a) Request. Any Holder(s) of Registrable Securities (collectively, the "Initiating Holder") shall have the right (including, for the avoidance of doubt, in connection with its rights pursuant to Section 2.7) to request that Spinco file a Registration Statement with the SEC on the appropriate registration form for all or part of the Registrable Securities held by such Initiating Holder by delivering a written request to Spinco specifying the number of shares of Registrable Securities such Initiating Holder wishes to Register (a "Demand Registration"). Spinco shall (i) within five (5) days of the receipt of such request, give written notice of such Demand Registration to all Holders of Registrable Securities (the "Spinco Notice"), (ii) use its reasonable best efforts to prepare and file a Registration Statement as expeditiously as possible in respect of such Demand Registration and in any event within thirty (30) days of receipt of the request, and (iii) use its reasonable best efforts to cause such Registration Statement to become effective as expeditiously as possible. Spinco shall include in such Registration all Registrable Securities that the Holders request to be included within the ten (10) days following their receipt of the Spinco Notice.

(b) Limitations of Demand Registrations. There shall be no limitation on the number of Demand Registrations pursuant to Section 2.1(a); provided, however, that the Holder(s) may not require Spinco to effect a Demand Registration within sixty (60) days after the effective date of a previous registration by Spinco, other than a Shelf Registration, effected pursuant to this Section 2.1 (it being understood that the Distribution Registration Statement shall not be treated as a Demand Registration). In the event that any Person shall have received rights to Demand Registrations pursuant to Section 2.7 or Section 4.4, and such Person shall have made a Demand Registration request, such request shall be treated as having been made by the Holder(s). The Registrable Securities requested to be Registered pursuant to Section 2.1(a) must represent (i) an aggregate offering price of Registrable Securities that is reasonably expected to equal at least $10,000,000 (or its equivalent if the Registrable Securities are to be offered in an Exchange Offer) or (ii) all of the remaining Registrable Securities owned by the requesting Holder and its Affiliates.

(c) Effective Registration. Spinco shall be deemed to have effected a Registration for purposes of Section 2.1(a) if the Registration Statement is declared effective by the SEC or becomes effective upon filing with the SEC, and remains effective until the earlier of (i) the date when all Registrable Securities thereunder have been sold and (ii) ninety (90) days from the effective date of the Registration Statement (the "Registration Period"). No Registration shall be deemed to have been effective if the conditions to closing specified in the underwriting agreement or dealer-manager agreement, if any, entered into in connection with such Registration are not satisfied by reason of any member of the Spinco Group. If, during the Registration Period, such Registration is interfered with by any stop order, injunction or other order or requirement of the SEC or other Governmental Authority or the need to update or supplement the Registration Statement, the Registration Period shall be extended on a day-for-day basis for any period the Holder is unable to complete an offering as a result of such stop order, injunction or other order or requirement of the SEC or other Governmental Authority.

(d) Underwritten Offering; Exchange Offer. If the Initiating Holder so indicates at the time of its request pursuant to Section 2.1(a), such offering of Registrable Securities shall be in the form of an Underwritten Offering or an Exchange Offer and Spinco shall include such information in the Spinco Notice. In the event that the Initiating Holder intends to Sell the Registrable Securities by means of an Underwritten Offering or Exchange Offer, the right of any Holder to include Registrable Securities in such Registration shall be conditioned upon such Holder's participation in such Underwritten Offering or Exchange Offer and the inclusion of such Holder's Registrable Securities in the Underwritten Offering or Exchange Offer.

(e) Priority of Securities in an Underwritten Offering. If the managing underwriter or underwriters of a proposed Underwritten Offering, including an Underwritten Offering from a Shelf Registration, pursuant to this Section 2.1 informs the Holders with Registrable Securities in the proposed Underwritten Offering in writing that, in its or their opinion, the number of Registrable Securities requested to be included in such Underwritten Offering exceeds the number that can be sold in such Underwritten Offering without being likely to have an adverse effect on the price, timing or distribution of the Registrable Securities offered or the market for the Registrable Securities offered, then the number of Registrable Securities to be included in such Underwritten Offering shall be reduced to such number that can be sold without such adverse effect and the Registrable Securities to be included in such Underwritten Offering shall be: (i) first, Registrable Securities requested by WDC to be included in such Underwritten

Offering; (ii) second, Registrable Securities requested by all other Holders to be included in such Underwritten Offering on a pro rata basis calculated based on the number of shares requested to be registered; and (iii) third, all other Registrable Securities requested and otherwise eligible to be included in such Underwritten Offering (including Registrable Securities to be sold for the account of Spinco) on a pro rata basis calculated based on the number of shares requested to be registered. In the event the Initiating Holder notifies Spinco that such Registration Statement shall be abandoned or withdrawn, such Holder shall not be deemed to have requested a Demand Registration pursuant to Section 2.1(a), and Spinco shall not be deemed to have made a Demand Registration request pursuant to Section 2.1(a) and Section 2.1(c).

(f) Shelf Registration. At any time after the date hereof when Spinco is eligible to Register the applicable Registrable Securities on Form S-3 (or a successor form) and the Holder may request Demand Registrations, the requesting Holders may request Spinco to effect a Demand Registration as a Shelf Registration. There shall be no limitations on the number of Underwritten Offerings pursuant to a Shelf Registration. Any Holder of Registrable Securities included on a Shelf Registration shall have the right to request that Spinco cooperate in a shelf takedown at any time, including an Underwritten Offering, by delivering a written request thereof to Spinco specifying the number of shares of Registrable Securities such Holder wishes to include in the shelf takedown ("Takedown Notice"). Spinco shall (i) within five (5) days of the receipt of a Takedown Notice for an Underwritten Offering, give written notice of such Takedown Notice to all Holders of Registrable Securities included on such Shelf Registration ("Spinco Takedown Notice"), and (ii) take all actions reasonably requested by such Holder, including the filing of a Prospectus supplement and the other actions described in Section 2.4, in accordance with the intended method of distribution set forth in the Takedown Notice as expeditiously as possible. If the takedown is an Underwritten Offering, Spinco shall include in such Underwritten Offering all Registrable Securities that that the Holders request to be included within the two (2) days following their receipt of the Spinco Takedown Notice. If the takedown is an Underwritten Offering, the Registrable Securities requested to be included in a shelf takedown must represent (i) an aggregate offering price of Registrable Securities that is reasonably expected to equal at least $10,000,000 or (ii) all of the remaining Registrable Securities owned by the requesting Holder and its Affiliates. Notwithstanding anything else to the contrary in this Agreement, the requirement to deliver a Takedown Notice and the piggyback rights described in this Section 2.1(f) shall not apply to an Underwritten Offering that constitutes a block trade.

(g) SEC Form. Except as set forth in the next sentence, Spinco shall use its reasonable best efforts to cause Demand Registrations to be Registered on Form S-3 (or any successor form), and if Spinco is not then eligible under the Securities Act to use FormS-3, Demand Registrations shall be Registered on Form S-1 (or any successor form) or Form S-4 (in the case of an Exchange Offer). If a Demand Registration is a Convertible or Exchange Registration, Spinco shall effect such Registration on the appropriate Form under the Securities Act for such Registrations. Spinco shall use its reasonable best efforts to become eligible to use Form S-3 and, after becoming eligible to use FormS-3, shall use its reasonable best efforts to remain so eligible. All Demand Registrations shall comply with applicable requirements of the Securities Act and, together with each Prospectus included, filed or otherwise furnished by Spinco in connection therewith, shall not contain any untrue statement of material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading.

2.2 Piggyback Registrations.

(a) Participation. If Spinco proposes to file a Registration Statement under the Securities Act with respect to any offering of Spinco Common Stock for its own account and/or for the account of any other Persons (other than a Registration (i) under Section 2.1 hereof, (ii) pursuant to a Registration Statement on Form S-8 or Form S-4 or similar form that relates to a transaction subject to Rule 145 under the Securities Act, (iii) pursuant to any form that does not include substantially the same information as would be required to be included in a Registration Statement covering the Sale of Registrable Securities, (iv) in connection with any dividend reinvestment or similar plan, (v) for the sole purpose of offering securities to another entity or its security holders in connection with the acquisition of assets or securities of such entity or any similar transaction or (vi) in which the only Spinco Common Stock being Registered is Spinco Common Stock issuable upon conversion of debt securities that are also being Registered) (a "Spinco Public Sale"), then, as soon as practicable (but in no event less than fifteen (15) days prior to the proposed date of filing such Registration Statement), Spinco shall give written notice of such proposed filing to each Holder, and such notice shall offer such Holders the opportunity to Register under such Registration Statement such number of Registrable Securities as each such Holder may request in writing (a "Piggyback Registration"). Subject to Section 2.2(a) and Section 2.2(c), Spinco shall include in such Registration Statement all such Registrable Securities that are requested to be included therein within fifteen (15) days after the receipt of any such notice; provided, however, that if, at any time after giving written notice of its intention to Register any securities and prior to the effective date of the Registration Statement filed in connection with such Registration, Spinco shall determine for any reason not to Register or to delay Registration of such securities, Spinco may, at its election, give written notice of such determination to each such Holder and, thereupon, (i) in the case of a determination not to Register, shall be relieved of its obligation to Register any Registrable Securities in connection with such Registration, without prejudice, however, to the rights of any Holder to request that such Registration be effected as a Demand Registration under Section 2.1, and (ii) in the case of a determination to delay Registration, shall be permitted to delay Registering any Registrable Securities for the same period as the delay in Registering such other shares of Spinco Common Stock. No Registration effected under this Section 2.2 shall relieve Spinco of its obligation to effect any Demand Registration under Section 2.1. If the offering pursuant to a Registration Statement pursuant to this Section 2.2 is to be an Underwritten Offering, then each Holder making a request for a Piggyback Registration pursuant to this Section 2.2(a) shall, and Spinco shall use reasonable best efforts to coordinate arrangements with the underwriters so that each such Holder may, participate in such Underwritten Offering. If the offering pursuant to such Registration Statement is to be on any other basis, then each Holder making a request for a Piggyback Registration pursuant to this Section 2.2(a) shall, and Spinco shall use reasonable best efforts to coordinate arrangements so that each such Holder may, participate in such offering on such basis. Spinco's filing of a Shelf Registration shall not be deemed to be a Spinco Public Sale; provided, however, that the proposal to file any Prospectus supplement filed pursuant to a Shelf Registration with respect to an offering of Spinco Common Stock for its own account and/or for the account of any other Persons will be a Spinco Public Sale unless such offering qualifies for an exemption from the Spinco Public Sale definition in this Section 2.2(a); provided, further that if Spinco files a Shelf Registration for its own account and/or for the account of any other Persons, Spinco agrees that it shall use its reasonable best efforts to include in such Registration Statement such disclosures as may be required by Rule 430B under the Securities Act in order to ensure that the Holders may be added to such Shelf Registration at a later time through the filing of a Prospectus supplement rather than a post-effective amendment.

(b) Right to Withdraw. Each Holder shall have the right to withdraw such Holder's request for inclusion of its Registrable Securities in any Underwritten Offering pursuant to this Section 2.2 at any time prior to the execution of an underwriting agreement with respect thereto by giving written notice to Spinco of such Holder's request to withdraw and, subject to the preceding clause, each Holder shall be permitted to withdraw all or part of such Holder's Registrable Securities from a Piggyback Registration at any time prior to the effective date thereof.

(c) Priority of Piggyback Registration. If the managing underwriter or underwriters of any proposed Underwritten Offering of a class of Registrable Securities included in a Piggyback Registration informs Spinco and the Holders in writing that, in its or their opinion, the number of securities of such class which such Holder and any other Persons intend to include in such Underwritten Offering exceeds the number which can be sold in such Underwritten Offering without being likely to have an adverse effect on the price, timing or distribution of the securities offered or the market for the securities offered, then the securities to be included in such Underwritten Offering shall be reduced to such number that can be sold without such adverse effect and the securities to be included in the Underwritten Offering shall be (i) first, all securities of Spinco or any other Persons for whom Spinco is effecting the Underwritten Offering, as the case may be, proposes to Sell; (ii) second, Registrable Securities requested by WDC to be included in such Underwritten Offering; (iii) third, Registrable Securities requested by all other Holders to be included in such Underwritten Offering on a pro rata basis calculated based on the number of shares requested to be registered; and (iv) fourth, all other securities requested and otherwise eligible to be included in such Underwritten Offering (including securities to be sold for the account of Spinco) on a pro rata basis calculated based on the number of shares requested to be registered.

2.3 Selection of Underwriter(s), Etc. In any Underwritten Offering pursuant to Section 2.1 or Section 2.2 that is not a Spinco Public Sale, WDC, in the event WDC is participating in such Underwritten Offering, or the Holders of a majority of the outstanding Registrable Securities being included in the Underwritten Offering or Exchange Offer, in the event WDC is not participating in such Underwritten Offering or Exchange Offer, shall select the underwriter(s), dealer-manager(s), financial printer, solicitation and/or exchange agent (if any) and Holder's counsel for such Underwritten Offering or Exchange Offer. In any Spinco Public Sale, Spinco shall select the underwriter(s), dealer-manager(s), financial printer, solicitation and/or exchange agent (if any) and WDC, in the event WDC is participating in such Underwritten Offering or Exchange Offer, or the Holders of a majority of the outstanding Registrable Securities being included in the Spinco Public Sale, in the event WDC is not participating in such Underwritten Offering or Exchange Offer, shall select counsel to the Holder(s).

2.4 Registration Procedures.

(a) In connection with the Registration and/or Sale of Registrable Securities pursuant to this Agreement, through an Underwritten Offering or otherwise, Spinco shall use reasonable best efforts to effect or cause the Registration and the Sale of such Registrable Securities in accordance with the intended methods of Sale thereof and:

(i) prepare and file the required Registration Statement including all exhibits and financial statements and, in the case of an Exchange Offer, any document required under Rule 425 or Rule 165 with respect to such Exchange Offer (collectively, the "Ancillary Filings") required under the Securities Act to be filed therewith, and before filing with the SEC a Registration Statement or Prospectus, or any amendments or supplements thereto, (A) furnish to the underwriters or dealer-managers, if any, and to the Holders, copies of all documents prepared to be filed, which documents shall be subject to the review and comment of such underwriters or dealer-managers and such Holders and their respective counsel, and provide such underwriters or dealers managers, if any, and such Holders and their respective counsel reasonable time to review and comment thereon and (B) not file with the SEC any Registration Statement or Prospectus or amendments or supplements thereto or any Ancillary Filing to which the Holders or the underwriters or dealer-managers, if any, shall reasonably object;

(ii) except in the case of a Shelf Registration or Convertible or Exchange Registration, prepare and file with the SEC such amendments and supplements to such Registration Statement and the Prospectus used in connection therewith as may be necessary to keep such Registration Statement effective and to comply with the provisions of the Securities Act with respect to the Sale of all of the Shares Registered thereon until the earlier of (A) such time as all of such Shares have been Sold in accordance with the intended methods of Sale set forth in such Registration Statement or (B) the expiration of nine (9) months after such Registration Statement becomes effective;

(iii) in the case of a Shelf Registration, prepare and file with the SEC such amendments and supplements to such Registration Statement and the Prospectus used in connection therewith as may be necessary to keep such Registration Statement effective and to comply with the provisions of the Securities Act with respect to the Sale of all Shares subject thereto for a period ending thirty-six (36) months after the effective date of such Registration Statement;

(iv) in the case of a Convertible or Exchange Registration, prepare and file with the SEC such amendments and supplements to such Registration Statement and the Prospectus used in connection therewith as may be necessary to keep such Registration Statement effective and to comply with the provisions of the Securities Act with respect to the Sale of all of the Shares subject thereto until such time as the rules, regulations and requirements of the Securities Act and the terms of any applicable convertible securities no longer require such Shares to be Registered under the Securities Act;

(v) notify the participating Holders and the managing underwriter or underwriters or dealer-managers, if any, and (if requested) confirm such advice in writing and provide copies of the relevant documents, as soon as reasonably practicable after notice thereof is received by Spinco (A) when the applicable Registration Statement or any amendment thereto has been filed or becomes effective, when the applicable Prospectus or any amendment or supplement to such Prospectus has been filed, or any Ancillary Filing has been filed, (B) of any written comments by the SEC or any request by the SEC or any other Governmental Authority for amendments or supplements

to such Registration Statement or such Prospectus or any Ancillary Filing or for additional information, (C) of the issuance by the SEC of any stop order suspending the effectiveness of such Registration Statement or any order preventing or suspending the use of any preliminary or final Prospectus or any Ancillary Filing or the initiation or threatening of any proceedings for such purposes, (D) if, at any time, the representations and warranties of Spinco in any applicable underwriting agreement or dealer-manager agreements cease to be true and correct in all material respects, and (E) of the receipt by Spinco of any notification with respect to the suspension of the qualification of the Registrable Securities for offering or Sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose;

(vi) promptly notify each selling Holder and the managing underwriter or underwriters or dealer-managers, if any, when Spinco becomes aware of the occurrence of any event as a result of which the applicable Registration Statement or the Prospectus included in such Registration Statement (as then in effect) or any Ancillary Filing contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements therein (in the case of such Prospectus and any preliminary Prospectus, in light of the circumstances under which they were made) not misleading or, if for any other reason it shall be necessary during such time period to amend or supplement such Registration Statement or Prospectus or any Ancillary Filing in order to comply with the Securities Act and, in either case as promptly as reasonably practicable thereafter, prepare and file with the SEC, and furnish without charge to the selling Holder and the managing underwriter or underwriters or dealer-managers, if any, an amendment or supplement to such Registration Statement or Prospectus or any Ancillary Filing which will correct such statement or omission or effect such compliance;

(vii) use its reasonable best efforts to prevent or obtain the withdrawal of any stop order or other order suspending the use of any preliminary or final Prospectus;

(viii) promptly incorporate in a Prospectus supplement or post-effective amendment such information as the managing underwriters or dealer-managers, if any, and the Holders may reasonably request in order to permit the intended method of distribution of the Registrable Securities; and make all required filings of such Prospectus supplement or post-effective amendment as soon as reasonably practicable after being notified of the matters to be incorporated in such Prospectus supplement or post-effective amendment;

(ix) furnish to each selling Holder and each underwriter or dealer-manager, if any, without charge, as many conformed copies as such Holder or underwriter or dealer-manager may reasonably request of the applicable Registration Statement and any amendment or post-effective amendment thereto, including financial statements and schedules, all documents incorporated therein by reference and all exhibits (including those incorporated by reference);

(x) deliver to each selling Holder and each underwriter or dealer-manager, if any, without charge, as many copies of the applicable Prospectus (including each preliminary Prospectus) and any amendment or supplement thereto as such Holder or underwriter or dealer-manager may reasonably request (it being understood that Spinco consents to the use of such Prospectus or any amendment or supplement thereto by each selling Holder and the underwriters or dealer-managers, if any, in connection with the offering and Sale of the Registrable Securities covered by such Prospectus or any amendment or supplement thereto) and such other documents as such selling Holder or underwriter or dealer-manager may reasonably request in order to facilitate the Sale of the Registrable Securities by such Holder or underwriter or dealer-manager;

(xi) on or prior to the date on which the applicable Registration Statement is declared effective or becomes effective, use its reasonable best efforts to register or qualify, and cooperate with each selling Holder, the managing underwriter or underwriters or dealer-managers, if any, and their respective counsel, in connection with the registration or qualification of such Registrable Securities for offer and Sale under the securities or "Blue Sky" laws of each state and other jurisdiction of the United States as any selling Holder or managing underwriter or underwriters or dealer-managers, if any, or their respective counsel reasonably request, and in any foreign jurisdiction mutually agreeable to Spinco and the participating Holders, in writing and do any and all other acts or things reasonably necessary or advisable to keep such registration or qualification in effect for so long as such Registration Statement remains in effect and so as to permit the continuance of Sales and dealings in such jurisdictions of the United States for so long as may be necessary to complete the distribution of the Registrable Securities covered by the Registration Statement; provided that Spinco will not be required to qualify generally to do business in any jurisdiction where it is not then so qualified or to take any action which would subject it to taxation or general service of process in any such jurisdiction where it is not then so subject;

(xii) in connection with any Sale of Registrable Securities that will result in such securities no longer being Registrable Securities, cooperate with each participating Holder and the managing underwriter or underwriters or dealer-managers, if any, to facilitate the timely preparation and delivery of certificates representing Registrable Securities to be sold and not bearing any restrictive Securities Act legends; and to register such Registrable Securities in such denominations and such names as such selling Holder or the underwriters or dealer-managers, if any, may request at least two (2) Business Days prior to such Sale of Registrable Securities; provided that Spinco may satisfy its obligations hereunder without issuing physical stock certificates through the use of the Depository Trust Company's Direct Registration System;

(xiii) cooperate and assist in any filings required to be made with the Financial Industry Regulatory Authority and each securities exchange, if any, on which any of Spinco's securities are then listed or quoted and on each inter-dealer quotation system on which any of Spinco's securities are then quoted, and in the performance of any due diligence investigation by any underwriter or dealer-manager (including any "qualified independent underwriter") that is required to be retained in accordance with the rules and regulations of each such exchange, and use its reasonable best efforts to cause the Registrable Securities covered by the applicable Registration Statement to be registered with or approved by such other governmental agencies or authorities as may be necessary to enable the seller or sellers thereof or the underwriter or underwriters or dealer-managers, if any, to consummate the Sale of such Registrable Securities;

(xiv) not later than the effective date of the applicable Registration Statement, provide a CUSIP number for all Registrable Securities and provide the applicable transfer agent with printed certificates for the Registrable Securities which are in a form eligible for deposit with The Depository Trust Company; provided that Spinco may satisfy its obligations hereunder without issuing physical stock certificates through the use of the Depository Trust Company's Direct Registration System;

(xv) obtain for delivery to and addressed to each selling Holder and to the underwriter or underwriters or dealer-managers, if any, opinions from outside counsel and the general counsel for Spinco, in each case dated the effective date of the Registration Statement or, in the event of an Underwritten Offering, the date of the closing under the underwriting agreement or, in the event of an Exchange Offer, the date of the closing under the dealer-manager agreement or similar agreement or otherwise, and in each such case in customary form and content for the type of Underwritten Offering or Exchange Offer, as applicable;

(xvi) in the case of an Underwritten Offering or Exchange Offer, obtain for delivery to and addressed to Spinco and the underwriter or underwriters or dealer-managers and, to the extent requested, each participating Holder, a comfort letter from Spinco's or other applicable independent certified public accountants in customary form and content for the type of Underwritten Offering or Exchange Offer, dated the date of execution of the underwriting agreement or dealer-manager agreement, or, if none, the date of commencement of the Exchange Offer, and brought down to the closing, whether under the underwriting agreement or dealer-manager agreement, if applicable, or otherwise;

(xvii) in the case of an Exchange Offer that does not involve a dealer-manager, provide to each participating Holder such customary written representations and warranties or other covenants or agreements as may be requested by any participating Holder comparable to those that would be included in an underwriting agreement or dealer-manager agreement;

(xviii) use its reasonable best efforts to comply with all applicable rules and regulations of the SEC and make generally available to its security holders, as soon as reasonably practicable, but no later than ninety (90) days after the end of the twelve (12)-month period beginning with the first day of Spinco's first quarter commencing after the effective date of the applicable Registration Statement, an earnings statement satisfying the provisions of Section 11(a) of the Securities Act and the rules and regulations promulgated thereunder and covering the period of at least twelve (12) months, but not more than eighteen (18) months, beginning with the first month after the effective date of the Registration Statement;

(xix) provide and cause to be maintained a transfer agent and registrar for all Registrable Securities covered by the applicable Registration Statement from and after a date not later than the effective date of such Registration Statement;

(xx) cause all Registrable Securities covered by the applicable Registration Statement to be listed on each securities exchange on which any of Spinco's securities are then listed or quoted and on each inter-dealer quotation system on which any of Spinco's securities are then quoted;

(xxi) provide (A) each Holder participating in the Registration, (B) the underwriters (which term, for purposes of this Agreement, shall include a Person deemed to be an underwriter within the meaning of Section 2(11) of the Securities Act), if any, of the Registrable Securities to be Registered, (C) the Sale or placement agent therefor, if any, (D) the dealer-manager therefor, (E) counsel for such underwriters or agent or dealer-manager, and (F) any attorney, accountant or other agent or representative retained by such Holder or any such underwriter or dealer-manager, as selected by such Holder, the opportunity to participate in the preparation of such Registration Statement, each Prospectus included therein or filed with the SEC, and each amendment or supplement thereto, and to require the insertion therein of material, furnished to Spinco in writing, which in the reasonable judgment of such Holder(s) and their counsel should be included; and for a reasonable period prior to the filing of such Registration Statement, upon receipt of such confidentiality agreements as Spinco may reasonably request, make available upon reasonable notice at reasonable times and for reasonable periods for inspection by the parties referred to in (A) through (F) above, all pertinent financial and other records, pertinent corporate and other documents and properties of Spinco that are available to Spinco, and cause all of Spinco's officers, directors and employees and the independent public accountants who have certified its financial statements to make themselves available at reasonable times and for reasonable periods to discuss the business of Spinco and to supply all information available to Spinco reasonably requested by any such Person in connection with such Registration Statement as shall be necessary to enable them to exercise their due diligence responsibility, subject to the foregoing;

(xxii) to cause the executive officers of Spinco to participate in customary "road show" presentations that may be reasonably requested by the managing underwriter or underwriters or dealer-managers in any Underwritten Offering or Exchange Offer and otherwise to facilitate, cooperate with, and participate in each proposed offering contemplated herein and customary selling efforts related thereto; and

(xxiii) take all other customary steps reasonably necessary to effect the Registration, offering and Sale of the Registrable Securities.

(b) As a condition precedent to any Registration hereunder, Spinco may require each Holder as to which any Registration is being effected to furnish to Spinco such information regarding the distribution of such securities and such other information relating to such Holder, its ownership of Registrable Securities and other matters as Spinco may from time to time reasonably request in writing. Each such Holder agrees to furnish such information to Spinco and to cooperate with Spinco as reasonably necessary to enable Spinco to comply with the provisions of this Agreement.

(c) WDC agrees, and any other Holder agrees by acquisition of such Registrable Securities, that, upon receipt of any written notice from Spinco of the occurrence of any event of the kind described in Section 2.4(a)(vi), such Holder will forthwith discontinue the Sale of Registrable Securities pursuant to such Registration Statement until such Holder's receipt of the copies of the supplemented or amended Prospectus contemplated by Section 2.4(a)(vi), or until such Holder is advised in writing by Spinco that the use of the Prospectus may be resumed, and if so directed by Spinco, such Holder will deliver to Spinco (at Spinco's expense) all copies, other than permanent file copies then in such Holder's possession, of the Prospectus covering such Registrable Securities current at the time of receipt of such notice. In the event Spinco shall give any such notice, the period during which the applicable Registration Statement is required to be maintained effective shall be extended by the number of days during the period from and including the date of the giving of such notice to and including the date when each seller of Registrable Securities covered by such Registration Statement either receives the copies of the supplemented or amended Prospectus contemplated by Section 2.4(a)(vi) or is advised in writing by Spinco that the use of the Prospectus may be resumed.

2.5 Holdback Agreements. To the extent requested in writing by the managing underwriter or underwriters of any Underwritten Offering, Spinco agrees not to, and shall exercise reasonable best efforts to obtain agreements (in the underwriters' customary form) from its directors, executive officers and beneficial owners of five percent (5%) or more of Spinco Common Stock not to, directly or indirectly offer, Sell, pledge, contract to Sell (including any short Sale), grant any option to purchase or otherwise Sell any equity securities of Spinco or enter into any hedging transaction relating to any equity securities of Spinco during the ninety (90) days beginning on pricing date of such Underwritten Offering (except as part of such Underwritten Offering or any Distribution or pursuant to registrations on Form S-8 or S-4 or any successor forms thereto) unless the managing underwriter or underwriters otherwise agree to a shorter period.

2.6 Underwritten Offerings; Exchange Offers. If requested by the managing underwriters for any Underwritten Offering or dealer-managers for any Exchange Offer, Spinco shall enter into an underwriting agreement or dealer-manager agreement with such underwriters or dealer-managers for such offering; provided, however, that no Holder shall be required to make any representations or warranties to Spinco or the underwriters or dealer-managers (other than representations and warranties regarding such Holder and such Holder's intended method of distribution) or to undertake any indemnification obligations to Spinco or the underwriters or dealer-managers with respect thereto, except as otherwise provided in Section 2.9 hereof.

2.7 Convertible or Exchange Registration; Registration Rights with Participating Investors.

(a) If any Holder of Registrable Securities offers any options, rights, warrants or other securities issued by it or any other Person that are offered with, convertible into or exercisable or exchangeable for any Registrable Securities, the Registrable Securities underlying such options, rights, warrants or other securities shall be eligible for Registration pursuant to Section 2.1 and Section 2.2 hereof (a "Convertible or Exchange Registration").

(b) If one or more members of the WDC Group decides to engage, directly or indirectly, in an Exchange with one or more Participating Investors, Spinco shall, upon WDC's request, enter into a registration rights agreement with the Participating Investors in connection with such Exchange, as applicable, on terms and conditions consistent with this Agreement (other than the voting provisions contained in Article III hereof) and reasonably satisfactory to Spinco and the WDC Group.

2.8 Registration Expenses Paid By Spinco. In the case of any Registration of Registrable Securities required pursuant to this Agreement (including any Registration that is delayed or withdrawn) or proposed Underwritten Offering pursuant to this Agreement, Spinco shall pay all Registration Expenses regardless of whether the Registration Statement becomes effective or the Underwritten Offering is completed.

2.9 Indemnification.

(a) Indemnification by Spinco. Spinco agrees to indemnify and hold harmless, to the fullest extent permitted by law, each Holder, such Holder's Affiliates and its and their respective officers, directors, employees, advisors, and agents and each Person who controls (within the meaning of the Securities Act or the Exchange Act) such Persons (collectively, the "Holder Indemnified Parties") from and against any and all losses, claims, damages, liabilities (or actions in respect thereof, whether or not such Holder Indemnified Party is a party thereto) and expenses, joint or several (including reasonable costs of investigation and legal expenses) (each, a "Loss" and collectively "Losses") arising out of or based upon (i) any untrue or alleged untrue statement of a material fact contained in any Registration Statement under which the Sale of such Registrable Securities was Registered under the Securities Act (including any final or preliminary Prospectus contained therein or any amendment thereof or supplement thereto or any documents incorporated by reference therein), or any such statement made in any free writing prospectus (as defined in Rule 405 under the Securities Act) that Spinco has filed or is required to file pursuant to Rule 433(d) under the Securities Act, or (ii) any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein (in the case of a Prospectus, preliminary Prospectus or free writing prospectus, in light of the circumstances under which they were made) not misleading; provided, however, that Spinco shall not be liable to any particular Holder Indemnified Party in any such case to the extent that any such Loss arises out of or is based upon an untrue statement or alleged untrue statement or omission or alleged omission made in any such Registration Statement in reliance upon and in conformity with written information furnished to Spinco by such Holder Indemnified Party expressly for use in the preparation thereof. This indemnity shall be in addition to any liability Spinco may otherwise have. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of such Holder or any Holder Indemnified Party and shall survive the transfer of such securities by such Holder.

(b) Indemnification by the Selling Holder. Each selling Holder agrees (severally and not jointly) to indemnify and hold harmless, to the fullest extent permitted by law, Spinco and its directors, officers, employees, advisors, agents and each Person who controls Spinco (within the meaning of the Securities Act and the Exchange Act) (collectively, the "Spinco Indemnified Parties" and, together with the Holder Indemnified Parties, the "Indemnified Parties") from and against any Losses arising out of or based upon (i) any untrue or alleged untrue statement of a material fact contained in any Registration Statement under which the Sale of such Registrable Securities was Registered under the Securities Act (including any final or preliminary Prospectus contained therein or any amendment thereof or supplement thereto or any documents incorporated by reference therein), or any such statement made in any free writing prospectus that Spinco has filed or is required to file pursuant to Rule 433(d) under the Securities Act, or (ii) any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein (in the case of a Prospectus, preliminary Prospectus or free writing prospectus, in light of the circumstances under which they were made) not misleading to the extent, but, in each case (i) or (ii), only to the extent, that such untrue statement or omission is contained in any information furnished in writing by such selling Holder to Spinco specifically for inclusion in such Registration Statement, Prospectus, preliminary Prospectus or free writing prospectus. In no event shall the liability of any selling Holder hereunder be greater in amount than the dollar amount of the net proceeds received by such Holder under the Sale of the Registrable Securities giving rise to such indemnification obligation. This indemnity shall be in addition to any liability the selling Holder may otherwise have. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of Spinco or any Spinco Indemnified Party.

(c) Conduct of Indemnification Proceedings. Any Person entitled to indemnification hereunder will (i) give prompt written notice to the indemnifying party of any claim with respect to which it seeks indemnification (*provided* that any delay or failure to so notify the indemnifying party shall relieve the indemnifying party of its obligations hereunder only to the extent that it is materially prejudiced by reason of such delay or failure) and (ii) permit such indemnifying party to assume the defense of such claim with counsel reasonably satisfactory to the applicable Indemnified Party; provided, however, that any Person entitled to indemnification hereunder shall have the right to select and employ separate counsel and to participate in the defense of such claim, but the fees and expenses of such counsel shall be at the expense of such Person unless (i) the indemnifying party has agreed in writing to pay such fees or expenses, (ii) the indemnifying party shall have failed to assume the defense of such claim within a reasonable time after receipt of notice of such claim from the Person entitled to indemnification hereunder and employ counsel reasonably satisfactory to such Person, (iii) the applicable Indemnified Party has reasonably concluded (based on advice of counsel) that there may be legal defenses available to it or other Indemnified Parties that are different from or in addition to those available to the indemnifying party, or (iv) in the reasonable judgment of any such Person, based upon advice of its counsel, a conflict of interest may exist between such Person and the indemnifying party with respect to such claims (in which case, if the Person notifies the indemnifying party in writing that such Person elects to employ separate counsel at the expense of the indemnifying party, the indemnifying party shall not have the right to assume the defense of such claim on behalf of such Person). If such defense is not assumed by the indemnifying party, the indemnifying party will not be subject to any liability for any settlement made without its consent, but such consent may not be unreasonably withheld, conditioned or delayed. If the indemnifying party assumes the defense, the indemnifying party shall not have the right to settle such action without the consent of the applicable Indemnified Party, which consent may not be unreasonably withheld, conditioned or delayed. No indemnifying party shall consent to entry of any judgment or enter into any settlement that does not include as an unconditional term thereof the giving by the claimant or

plaintiff to such Indemnified Party of an unconditional release from all liability in respect to such claim or litigation. It is understood that the indemnifying party or parties shall not, in connection with any proceeding or related proceedings in the same jurisdiction, be liable for the reasonable fees, disbursements and other charges of more than one separate firm admitted to practice in such jurisdiction at any one time from all such Indemnified Party or Indemnified Parties unless (x) the employment of more than one counsel has been authorized in writing by the indemnifying party, (y) an applicable Indemnified Party has reasonably concluded (based on advice of counsel) that there may be legal defenses available to it that are different from or in addition to those available to the other Indemnified Parties or (z) a conflict or potential conflict exists or may exist (based on advice of counsel to an applicable Indemnified Party) between such Indemnified Party and the other Indemnified Parties, in each of which cases the indemnifying party shall be obligated to pay the reasonable fees and expenses of such additional counsel or counsels.

(d) Contribution. If for any reason the indemnification provided for inSection 2.9(a) or Section 2.9(b) is unavailable to an Indemnified Party or insufficient to hold it harmless as contemplated by Section 2.9(a) or Section 2.9(b), then the indemnifying party shall contribute to the amount paid or payable by the Indemnified Party as a result of such Loss in such proportion as is appropriate to reflect the relative fault of the indemnifying party on the one hand and the Indemnified Party on the other hand. The relative fault shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the indemnifying party or the Indemnified Party and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such untrue statement or omission. Notwithstanding anything in this Section 2.9(d) to the contrary, no indemnifying party (other than Spinco) shall be required pursuant to this Section 2.9(d) to contribute any amount in excess of the amount by which the net proceeds received by such indemnifying party from the Sale of Registrable Securities in the offering to which the Losses of the Indemnified Parties relate (before deducting expenses, if any) exceeds the amount of any damages which such indemnifying party has otherwise been required to pay by reason of such untrue statement or omission. The parties hereto agree that it would not be just and equitable if contribution pursuant to this Section 2.9(d) were determined by pro rata allocation or by any other method of allocation that does not take account of the equitable considerations referred to in this Section 2.9(d). No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any Person who was not guilty of such fraudulent misrepresentation. The amount paid or payable by an Indemnified Party hereunder shall be deemed to include, for purposes of this Section 2.9(d), any legal or other expenses reasonably incurred by such Indemnified Party in connection with investigating, preparing to defend or defending against or appearing as a third party witness in respect of, or otherwise incurred in connection with, any such loss, claim, damage, expense, liability, action, investigation or proceeding. If indemnification is available under this Section 2.9, the indemnifying parties shall indemnify each Indemnified Party to the fullest extent provided inSection 2.9(a) and Section 2.9(b) hereof without regard to the relative fault of said indemnifying parties or Indemnified Party.

2.10 Reporting Requirements; Rule 144. Until the expiration or termination of this Agreement in accordance with its terms, Spinco shall be and remain in compliance with the periodic filing requirements imposed under the SEC's rules and regulations, including the Exchange Act, and any other applicable laws or rules, and shall timely file such information, documents and reports as the SEC may require or prescribe under Section 13 or 15(d) (whichever is applicable) of the Exchange Act. If Spinco is not required to file such reports, it will, upon the request of any Holder, make publicly available such necessary information for so long as necessary to permit Sales pursuant to Rule 144 or Regulation S under the Securities Act, and it will take such further action as any Holder may reasonably request, all to the extent required from time to time to enable such Holder to Sell Registrable Securities without Registration under the Securities Act within the limitation of the exemptions provided by (a) Rule 144 or Regulation S under the Securities Act, as such Rules may be amended from time to time, or (b) any rule or regulation hereafter adopted by the SEC. From and after the date hereof through the first anniversary of the date upon which no Holder owns any Registrable Securities, Spinco shall forthwith upon request furnish any Holder (i) a written statement by Spinco as to whether it has complied with such requirements and, if not, the specifics thereof, (ii) a copy of the most recent annual or quarterly report of Spinco, and (iii) such other reports and documents filed by Spinco with the SEC as such Holder may reasonably request in availing itself of an exemption for the Sale of Registrable Securities without registration under the Securities Act.

2.11 Other Registration Rights. Spinco shall not grant to any Persons the right to request Spinco to Register any equity securities of Spinco, or any securities convertible or exchangeable into or exercisable for such securities, whether pursuant to "demand," "piggyback," or other rights, unless such rights are subject and subordinate to the rights of the Holders under this Agreement.

## ARTICLE III

## VOTING RESTRICTIONS

3.1 Voting of Spinco Common Stock.

(a) From the date of the Distribution until the earlier of (x) the date that the WDC Group ceases to own any Retained Shares and (y) the termination of this Agreement, WDC shall, and shall cause each member of the WDC Group to (in each case, to the extent that they own any Retained Shares), be present, in person or by proxy, at each and every Spinco stockholder meeting, and otherwise to cause all Retained Shares owned by them to be counted as present for purposes of establishing a quorum at any such meeting, and to vote or consent on any matter (including waivers of contractual or statutory rights), or cause to be voted or consented on any such matter, all such Retained Shares in proportion to the votes cast by the other holders of Spinco Common Stock on such matter.

(b) WDC hereby revokes, and shall cause each member of the WDC Group (to the extent that they own any Retained Shares) to revoke, any and all previous proxies granted by them with respect to the Retained Shares owned (whether beneficially or of record) by them as of the date of this Agreement. From the date of the Distribution until the earlier of (x) the date that the WDC Group ceases to own any Retained Shares and (y) the termination of this Agreement, WDC hereby grants to, and shall cause each member of the WDC Group (to the extent that they own any Retained Shares) to grant to, Spinco or its designees (determined in Spinco's sole discretion) an irrevocable proxy, with full power of substitution and resubstitution, which shall be deemed coupled with an interest sufficient in law to support an irrevocable proxy to Spinco

or its designees (determined in Spinco's sole discretion), to vote, with respect to any matter (including waivers of contractual or statutory rights), all Retained Shares owned (whether beneficially or of record) by them, in proportion to the votes cast by the other holders of Spinco Common Stock on such matter; provided that (i) such proxy shall automatically be revoked as to a particular Retained Share upon any Sale of such Retained Share from a member of the WDC Group to a Person other than a member of the WDC Group and (ii) nothing in this Section 3.1 shall limit or prohibit any such Sale.

## ARTICLE IV
## MISCELLANEOUS

4.1 Term. This Agreement shall terminate upon the earlier of (x) such time as there are no Registrable Securities and (y) the mutual agreement of the parties hereto, except for the provisions of Section 2.8 and Section 2.9 and all of this Article IV, which shall survive any such termination.

4.2 Notices. All notices and other communications hereunder shall be in writing and shall be deemed duly delivered: (a) four (4) Business Days after being sent by registered or certified mail, return receipt requested, postage prepaid; (b) one (1) Business Day after being sent for next Business Day delivery, fees prepaid, via a reputable nationwide overnight courier service; (c) if sent by email transmission prior to 6:00 p.m. recipient's local time, upon transmission when receipt is confirmed; or (d) if sent by email transmission after 6:00 p.m. recipient's local time, the Business Day following the date of transmission when receipt is confirmed:

To WDC:

Western Digital Corporation
[Address]
Attn: **[•]**
Email: **[•]**

To Spinco:

Sandisk Corporation
c/o **[•]**
[Address]
Attn: **[•]**
Email: **[•]**

4.3 Entire Agreement. This Agreement including any exhibits and amendments hereto, and the other agreements and documents referred to herein and therein, shall together constitute the entire agreement between WDC and Spinco with respect to the subject matter hereof and thereof and shall supersede all prior negotiations, agreements and understandings, both written and oral, between WDC and Spinco with respect to such subject matter hereof.

4.4 Successors, Assigns and Transferees.

(a) The provisions of this Agreement and the obligations and rights hereunder shall be binding upon, inure to the benefit of and be enforceable by (and against) the parties and their respective successors and permitted assigns. Spinco may assign this Agreement at any time in connection with a Sale or acquisition of Spinco, whether by merger, consolidation, Sale of all or substantially all of Spinco's assets, or similar transaction, without the consent of the Holders; provided that the successor or acquiring Person agrees in writing to assume all of Spinco's rights and obligations under this Agreement. WDC may assign this Agreement to any member of the WDC Group or at any time in connection with a sale or acquisition of WDC, whether by merger, consolidation, sale of all or substantially all of WDC's assets, or similar transaction, without the consent of Spinco.

(b) In connection with the Sale of Registrable Securities, WDC may assign its Registration-related rights and obligations under this Agreement relating to such Registrable Securities to the following transferees in such Sale: (i) a member of the WDC Group to which Registrable Securities are Sold, (ii) one or more Participating Investors to which Registrable Securities are Sold, (iii) any other transferee to which Registrable Securities are Sold, if Spinco provides prior written consent to the transfer of such Registration-related rights and obligations along with the Sale of Registrable Securities or (iv) any other transferee that acquires at least five percent (5%) of the number of Registrable Securities beneficially owned by WDC immediately following the completion of the Distribution; provided, that in the case of clauses (i), (ii), (iii) or (iv), (x) Spinco is given written notice prior to or at the time of such Sale stating the name and address of the transferee and identifying the securities with respect to which the Registration-related rights and obligations are being Sold and (y) the transferee executes a counterpart in the form attached hereto as Exhibit A and delivers the same to Spinco (any such transferee in such Sale, a "Transferee"). In connection with the Sale of Registrable Securities, a Transferee or Subsequent Transferee (as defined below) may assign its Registration-related rights and obligations under this Agreement relating to such Registrable Securities to the following subsequent transferees: (A) an Affiliate of such Transferee to which Registrable Securities are Sold, (B) any subsequent transferee to which Registrable Securities are Sold, if Spinco provides prior written consent to the transfer of such Registration-related rights and obligations along with the Sale of Registrable Securities or (C) any other subsequent transferee that acquires at least five percent (5%) of the number of Registrable Securities beneficially owned by WDC immediately following the completion of the Distribution; provided, that in the case of clauses (A), (B) or (C), (x) Spinco is given written notice prior to or at the time of such Sale stating the name and address of the subsequent transferee and identifying the securities with respect to which the Registration-related rights and obligations are being assigned and (y) the subsequent transferee executes a counterpart in the form attached hereto as Exhibit A and delivers the same to Spinco (any such subsequent transferee, a "Subsequent Transferee").

4.5 GOVERNING LAW; NO JURY TRIAL.

(a) This Agreement and any Action (whether at law, in contract, in tort or otherwise) arising out of or relating to this Agreement or the negotiation, validity, interpretation, performance, breach or termination of this Agreement shall be governed by and construed in accordance with the internal law of the State of Delaware, regardless of the law that might otherwise govern under applicable principles of conflicts of law thereof.

(b) Each party hereto shall appoint a representative who shall be responsible for administering this dispute resolution provision (each, an "Appointed Representative"). The Appointed Representatives shall have the authority to resolve any such disputes. Except as otherwise provided in this Agreement, in the event of a controversy, dispute or claim arising out of, in connection with, or in relation to the interpretation, performance, nonperformance, validity, termination or breach of this Agreement or otherwise arising out of, or in any way related to, this Agreement (collectively, the "Agreement Disputes"), the Appointed Representatives shall negotiate in good faith for a reasonable period of time to settle such Agreement Dispute; *provided, however*, that: (i) such reasonable period shall not, unless otherwise agreed to by the parties hereto, exceed thirty (30) calendar days from the time of receipt by a party hereto; and (ii) the relevant employees from the relevant parties hereto shall first have tried to resolve the differences between the parties hereto. Nothing said or disclosed, nor any document produced, in the course of any negotiations, conferences and discussions in connection with efforts to settle an Agreement Dispute that is not otherwise independently discoverable shall be offered or received as evidence or used for impeachment or for any other purpose, but shall be considered as to have been disclosed for settlement purposes. Unless otherwise agreed in writing, the parties hereto will continue to honor all commitments under this Agreement during the course of dispute resolution pursuant to the provisions of this Section 4.5 with respect to all matters not specifically subject to such dispute resolution.

(c) Except as otherwise provided herein, any and all remedies herein expressly conferred upon a party hereto shall be deemed cumulative with and not exclusive of any other remedy conferred hereby, or by law or equity upon such party, and the exercise by a party hereto of any one remedy shall not preclude the exercise of any other remedy. Nothing in this Agreement shall be deemed a waiver by any party hereto of any right to specific performance or injunctive relief. The parties hereto understand and agree that the covenants and agreements on each of their parts herein contained are uniquely related to the desire of the parties hereto and their respective Affiliates to consummate the transactions contemplated herein, that the transactions contemplated herein are a unique business opportunity at a unique time for each of WDC and Spinco and their respective Affiliates, and further agree that irreparable damage would occur in the event that any provision of this Agreement were not performed in accordance with its specific terms, and further agree that, although monetary damages may be available for the breach of such covenants and agreements, monetary damages would be an inadequate remedy therefor. It is accordingly agreed that, in addition to any other remedy that may be available to it, including monetary damages, each of the parties hereto shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement exclusively in the Delaware Court of Chancery and any state appellate court therefrom within the State of Delaware (or, if the Delaware Court of Chancery declines to accept jurisdiction over a particular matter, any state or federal court within the State of Delaware). Each of the parties hereto further agrees that no party hereto shall be required to obtain, furnish or post any bond or similar instrument in connection with or as a condition to obtaining any remedy referred to in this Section 4.5 and each party hereto waives any objection to the imposition of such relief or any right it may have to require the obtaining, furnishing or posting of any such bond or similar instrument.

(d) Each of the parties hereto irrevocably agrees that, subject (except in the case of any legal action or proceeding seeking specific performance) to prior compliance with Section 4.5(b), any legal action or proceeding with respect to this Agreement and the rights and obligations arising hereunder, or for recognition and enforcement of any judgment in respect of this Agreement and the rights and obligations arising hereunder, brought by any other party hereto or its successors or assigns, shall be brought and determined exclusively in the Delaware Court of Chancery and any state appellate court therefrom within the State of Delaware (or, if the Delaware Court of Chancery declines to accept jurisdiction over a particular matter, any state or federal court within the State of Delaware). Each of the parties hereto hereby irrevocably submits with regard to any such action or proceeding for itself and in respect of its property, generally and unconditionally, to the personal jurisdiction of the aforesaid courts and agrees that it will not bring any action relating to this Agreement or any of the transactions contemplated by this Agreement in any court other than the aforesaid courts. Each of the parties hereto hereby irrevocably waives, and agrees not to assert, by way of motion, as a defense, counterclaim or otherwise, in any action or proceeding with respect to this Agreement: (i) any claim that it is not personally subject to the jurisdiction of the above named courts for any reason other than the failure to serve in accordance with this Section 4.5; (ii) any claim that it or its property is exempt or immune from jurisdiction of any such court or from any legal process commenced in such courts (whether through service of notice, attachment prior to judgment, attachment in aid of execution of judgment, execution of judgment or otherwise); and (iii) to the fullest extent permitted by the applicable law, any claim that: (x) the suit, action or proceeding in such court is brought in an inconvenient forum; (y) the venue of such suit, action or proceeding is improper; or (z) this Agreement, or the subject matter hereof, may not be enforced in or by such courts (other than by reason of, except in the case of any action or proceeding for specific performance, needing to first comply with the provisions of Section 4.5(b)). In the event that any suit or action is instituted to enforce any provision in this Agreement, the prevailing party in such dispute shall be entitled to recover from the losing party all fees, costs and expenses of enforcing any right of such prevailing party under or with respect to this Agreement, including, without limitation, such reasonable fees and expenses of attorneys and accountants, which shall include, without limitation, all fees, costs and expenses of appeals. The parties hereto agree that service of any court paper may be made in any manner as may be provided under the applicable laws or court rules governing service of process in such court. The parties hereto agree that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by applicable law.

(e) EACH OF THE PARTIES IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY ACTION OR LEGAL PROCEEDING (WHETHER AT LAW, IN CONTRACT, IN TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT.

4.6 Headings. The article, section and paragraph headings contained in this Agreement are inserted for the convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement.

4.7 Severability. In the event any one or more of the provisions contained in this Agreement should be held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and therein shall not in any way be affected or impaired thereby. The parties shall endeavor in good-faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions, the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

4.8 Amendment; Waiver.

(a) This Agreement may not be amended or modified and waivers and consents to departures from the provisions hereof may not be given, except by an instrument or instruments in writing making specific reference to this Agreement and signed by Spinco and the Holders of a majority of the Registrable Securities; provided that if WDC or any of its Affiliates owns Registrable Securities, no amendment to or waiver of any provision in this Agreement will be effected without the written consent of WDC if such amendment or waiver adversely affects the rights of WDC or such Affiliates of WDC. Any such waiver, amendment or supplement shall not be applicable or have any effect except in the specific instance in which it is given. No course of dealing between or among any Persons having any interest in this Agreement shall be deemed effective to modify, amend or discharge any part of this Agreement or any rights or obligations of any party hereto under or by reason of this Agreement.

(b) Notwithstanding the foregoing, no failure on the part of any party hereto to exercise any power, right, privilege or remedy under this Agreement, and no delay on the part of any party hereto in exercising any power, right, privilege or remedy under this Agreement, shall operate as a waiver of such power, right, privilege or remedy; and no single or partial exercise of any such power, right, privilege or remedy shall preclude any other or further exercise thereof or of any other power, right, privilege or remedy. The rights and remedies hereunder are cumulative and not exclusive of any rights or remedies that any party hereto would otherwise have. Any waiver, permit, consent or approval of any kind or character of any breach or default under this Agreement or any such waiver of any provision of this Agreement must satisfy the conditions set forth in Section 4.8(a) and shall be effective only to the extent in such writing specifically set forth.

4.9 Registrations, Exchanges, etc. Notwithstanding anything to the contrary that may be contained in this Agreement, the provisions of this Agreement shall apply to the fullest extent set forth herein with respect to (a) any shares of Spinco Common Stock, now or hereafter authorized to be issued, (b) any and all securities of Spinco into which the shares of Spinco Common Stock are converted, exchanged or substituted in any recapitalization or other capital reorganization by Spinco and (c) any and all securities of any kind whatsoever of Spinco or any successor or permitted assign of Spinco (whether by merger, consolidation, Sale of assets or otherwise) which may be issued on or after the date hereof in respect of, in conversion of, in exchange for or in substitution of, the shares of Spinco Common Stock, and shall be appropriately adjusted for any stock dividends, or other distributions, stock splits or reverse stock splits, combinations, recapitalizations, mergers, consolidations, exchange offers or other reorganizations occurring after the date hereof.

4.10 Further Assurances. In addition to and without limiting the actions specifically provided for elsewhere in this Agreement and subject to the limitations expressly set forth in this Agreement each of the parties shall cooperate with each other and use (and shall cause its respective Subsidiaries and Affiliates to use) commercially reasonable efforts to take, or to cause to be taken, all actions, and to do, or to cause to be done, all things reasonably necessary on its part under applicable law or contractual obligations to consummate and make effective the transactions contemplated by this Agreement.

4.11 Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument and shall become effective when counterparts have been signed by each of the parties hereto and delivered to the other party hereto, it being understood that all parties hereto need not sign the same counterpart. This Agreement may be executed and delivered by facsimile transmission, by electronic mail in "portable document format" (".pdf") form or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, or by a combination of such means. The exchange of a fully executed Agreement (in counterparts or otherwise) by facsimile or electronic transmission shall be treated in all manner and respects as an original agreement and shall be considered to have the same binding legal effects as if it were the original signed version thereof delivered in person.

*[The remainder of page intentionally left blank. Signature page follows.]*

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first written above.

Western Digital Corporation

By: _____
Name:
Title:

Sandisk Corporation

By: _____
Name:
Title:

[*Signature Page to Stockholder's and Registration Rights Agreement*]

**Exhibit 10.7**

CERTAIN CONFIDENTIAL PORTIONS HAVE BEEN REDACTED FROM THIS EXHIBIT BECAUSE THEY ARE BOTH (i) NOT MATERIAL AND (ii) A TYPE THAT THE REGISTRANT TREATS AS PRIVATE OR CONFIDENTIAL. INFORMATION THAT HAS BEEN OMITTED HAS BEEN IDENTIFIED IN THIS DOCUMENT WITH A PLACEHOLDER IDENTIFIED BY THE MARK "[***]".

Execution Version

---

# FLASH ALLIANCE MASTER AGREEMENT

Dated as of July 7, 2006

by and among

TOSHIBA CORPORATION,

SANDISK CORPORATION

and

SANDISK (IRELAND) LIMITED

---

Table of Contents

This **FLASH ALLIANCE MASTER AGREEMENT**, dated as of July 7, 2006, is entered into by and among, on one side, TOSHIBA CORPORATION, a Japanese corporation ("Toshiba"), and, on the other side, SANDISK CORPORATION, a Delaware corporation ("SanDisk Corporation"), and SANDISK (IRELAND) LIMITED, a company organized under the laws of the Republic of Ireland ("SanDisk Ireland," and collectively with SanDisk Corporation, "SanDisk" and SanDisk together with Toshiba, the "Parties").

WHEREAS, pursuant to that certain New Master Agreement between SanDisk Corporation and Toshiba, dated as of April 10, 2002, as amended by that certain Amendment to New Master Agreement between certain of the Parties dated as of August 13, 2002 (the "FVC Japan Master Agreement"), and the agreements referenced therein, the Parties have had a collaboration for development and manufacture of FVC Japan NAND Flash Memory Products (as hereinafter defined);

WHEREAS, pursuant to that certain Flash Partners Master Agreement by and among Toshiba, SanDisk Corporation and SanDisk (Cayman) Limited, dated as of September 10, 2004 (the "FP Master Agreement"), and the agreements referenced therein, the Parties have had a collaboration for development and manufacture of Y3 NAND Flash Memory Products (as defined in the FP Master Agreement);

WHEREAS, the Parties desire to extend their collaboration to encompass additional joint development and manufacture of Y4 NAND Flash Memory Products (as hereinafter defined) to be produced at the wafer fabrication facility known as "Y4"; and

WHEREAS, in order to realize these goals, the Parties desire to consummate or cause to be consummated the transactions described in this Agreement, and any other transactions which the Parties may from time to time consider necessary or appropriate to carry out the intent of the Parties as expressed herein.

NOW, THEREFORE, the Parties agree as follows:

## 1. DEFINITIONS AND INTERPRETATION.

1.1 Certain Definitions.

(a) Capitalized terms used but not defined in this Agreement shall have the respective meanings assigned to them in Appendix A (Definitions, Rules of Construction and General Terms and Conditions).

(b) As used herein, the term "Agreement" means this Flash Alliance Master Agreement together with any Exhibits, Schedules, Appendices and Attachments hereto.

1.2 Additional Definitions. The following capitalized terms used in this Agreement shall have the respective meanings assigned in this Agreement:

| Term | Defined In |
|---|---|
| Acquiring Party | Section 8.1(d) |
| Alternative Use | Section 6.5(c)(i) |
| Amendment No. 4 to Patent Cross License Agreement | Section 2.1(c)(iii) |
| Appointing Party | Section 6.9(b)(i) |
| [***] | Section 6.5(c)(ii)(B) |
| Closing | Section 2.1(a) |
| Committee Representatives | Section 6.9(b)(i) |
| Common R&D Agreement | Section 2.1(c)(i) |
| Common R&D Development Expenses | Section 6.8(a)(i) |
| Costs | Section 6.5(c)(i) |
| Cross License Agreement | Section 2.1(c)(iii) |
| Defaulting Party | Section 6.12(d) |
| EC Party/Excess Capacity Party | Section 6.7(b)(i) |
| Embedded NAND Product | Section 6.7(c)(ii) |
| Employer | Section 6.10(b)(vii) |
| Engineers | Section 6.10 |
| Environmental Indemnification Agreement | Section 2.1(b)(vii) |
| Equipment | Section 6.5(c)(i) |
| Evaluation Wafers | Section 6.8(a)(iii) |
| Financing | Section 6.12(b)(iii) |
| Flash Alliance | Section 2.1(b) |
| FA Foundry Agreement | Section 2.1(b)(iv) |
| FA Operating Agreement | Section 2.1(b)(ii) |
| FA Operative Documents | Section 2.1(b) |
| FA Patent Indemnification Agreement | Section 2.1(b)(vi) |
| FA Termination Date | Section 8.1(b) |
| FA Shares | Section 4.2(a) |
| FP Master Agreement | Recitals |
| FP NAND Flash Memory Products | Section 3.3(a) |
| FVC Japan Master Agreement | Recitals |
| FVC Japan NAND Flash Memory Products | Section 3.3(a) |
| Headcount Plan | Section 6.10 |
| ICs | Section 3.2 |
| Intellectual Property | Section 4.7 |
| Investing Party | Section 6.5(c)(i) |
| Joint Operative Documents | Section 2.1(c) |
| Lease Agreement | Section 2.1(b)(viii) |
| Management Committee | Section 6.9 |
| Minimum RUP Commitment | Section 6.5(c)(i) |
| Master Operative Documents | Section 2.2 |

| Term | Defined In |
|---|---|
| NAND Flash Memory Integrated Circuits | Section 6.13 |
| NAND Flash Memory Products | Section 3.2 |
| NAND Process Technology | Section 6.3(a) |
| Non-Defaulting Party | Section 6.12(d) |
| Non-Investing Party | Section 6.5(c)(i) |
| Non-Originating Party | Section 6.7(e) |
| Originating Party | Section 6.7(e) |
| Parties | Heading |
| Product Development Agreement | Section 2.1(c)(ii) |
| Proprietary NAND Flash Memory Products | Section 6.7(d) |
| Purchase and Supply Agreements | Section 2.1(b)(v) |
| Qualification Wafers | Section 6.8(a)(iv) |
| Ramp-Up Plan | Section 6.5(b) |
| Remaining Y4 Personnel | Section 8.1(j) |
| Requesting Party | Section 8.1(d)(i) |
| [***] | Section 6.5(c)(ii) |
| [***] | Section __ |
| SanDisk | Heading |
| SanDisk Corporation | Heading |
| SanDisk Financing | Section 6.12(b)(iii) |
| SanDisk Ireland | Heading |
| SanDisk Purchase and Supply Agreement | Section 2.1(b)(v) |
| SanDisk Team | Section __ |
| SanDisk Termination Capacity | Section 8.1(e)(i) |
| Selling Party | Section 8.1(d) |
| Share Purchase Agreement | Section 2.1(b)(i) |
| Start-Up Costs | Section 6.4 |
| Termination Capacity | Section 8.1(d)(i) |
| Third Party Sale | Section 6.5(c)(i) |
| Toshiba | Heading |
| Toshiba Financing | Section 6.12(b)(iii) |
| Toshiba Foundry NAND Flash Memory Products | Section 3.3(a) |
| Toshiba Purchase and Supply Agreement | Section 2.1(b)(v) |
| Toshiba-SanDisk Services Agreement | Section 2.1(b)(ix) |
| [***] | Section __ |
| Y3 NAND Flash Memory Products | Section 3.3(a) |
| Y3 Ramp-Up Plan | Section __ |
| Y4 Direct R&D Development Products | Section 6.8(a)(ii) |
| Y4 Facility | Section 3.1 |
| Y4 Facility Target Capacity | Section 7.3(b) |

| Term | Defined In |
|---|---|
| Y4 NAND Flash Memory Products | Section 3.3(a) |
| Y4 Staff | Section 8.1(j) |
| [***] | Section __ |

1.3 Rules of Construction and Documentary Conventions. The rules of construction and documentary conventions and general terms and conditions set forth in Appendix A shall apply to this Agreement.

1.4 Precedence. The terms and provisions of this Agreement are binding on the Parties;*provided*, *however*, that to the extent that a description in this Agreement of another agreement (whether an FA Operative Document or otherwise) conflicts with or differs from the provisions of that agreement, then the provisions of that agreement shall control as to such conflict or difference.

**2. CLOSING AND POST-CLOSING TRANSACTIONS**

2.1 Closing Transactions.

(a) Closing. The Parties shall effect the transactions set forth in this Section 2.1, all of which shall be considered to occur on the date hereof unless otherwise stipulated (the effecting of such transactions, collectively, the "Closing").

(b) Flash Alliance Documents. Unless otherwise indicated in this Section 2.1(b), as of the Closing Date, the Parties shall enter into or cause to be entered into or otherwise become effective the following agreements and documents (collectively with this Agreement, the "FA Operative Documents") to apply to their joint development, manufacture and selling of Y4 NAND Flash Memory Products by and through Flash Alliance, Ltd., a Japanese *tokurei yugen kaisha* ("Flash Alliance") (the description of each document below is for reference only and shall not be used in interpreting any such document):

(i) a Share Purchase Agreement between Toshiba and SanDisk Ireland, dated as of the date hereof, in the form ofExhibit A1 (the "Share Purchase Agreement"), and which concerns the sale by Toshiba and purchase by SanDisk Ireland at the Closing of 49.9% of the FA Shares;

(ii) an Operating Agreement between Toshiba and SanDisk Ireland, dated as of the date hereof, in the form ofExhibit A2 (the "FA Operating Agreement"), and which concerns governance of Flash Alliance;

(iii) Articles of Incorporation of Flash Alliance in the form of Exhibit A to the FA Operating Agreement;

(iv) a Foundry Agreement, dated as of the date hereof, between Flash Alliance and Toshiba in the form ofExhibit A3 (the "FA Foundry Agreement");

(v) a Purchase and Supply Agreement, dated as of the date hereof, by and between Flash Partners and SanDisk Ireland, in the form ofExhibit A4-1 (the "SanDisk Purchase and Supply Agreement") and a Purchase and Supply Agreement, dated as of the date hereof, between Flash Alliance and Toshiba in the form of Exhibit A4-2 (the "Toshiba Purchase and Supply Agreement" and together with the SanDisk Purchase and Supply Agreement, the "Purchase and Supply Agreements"), and which concern the forecasting and purchase commitments by SanDisk Ireland and Toshiba, respectively, of Y4 NAND Flash Memory Products;

(vi) a Patent Indemnification Agreement between SanDisk Corporation, [***] and Toshiba, dated as of the date hereof, in the form of Exhibit A5 (the "FA Patent Indemnification Agreement"), and which concerns patent indemnification obligations of Toshiba in favor of SanDisk, and certain contribution obligations of SanDisk with respect to Y4 NAND Flash Memory Products;

(vii) a Mutual Contribution and Environmental Indemnification Agreement between SanDisk Ireland and Toshiba, dated as of the date hereof, in the form of Exhibit A6 (the "Environmental Indemnification Agreement"), and which concerns indemnification obligations of the parties thereto in favor of one another with respect to Flash Alliance and the Yokkaichi Facility;

(viii) a Lease Agreement between Flash Alliance and Toshiba, as owner of the Yokkaichi Facility, dated as of the date hereof, in the form of Exhibit A7 (the "Lease Agreement"), and which concerns the leasing of Flash Alliance's equipment to Toshiba as owner of the Yokkaichi Facility;

(ix) a Services Agreement between SanDisk Ireland and Toshiba, dated as of the date hereof, in the form of Exhibit A8 ("Toshiba-SanDisk Ireland Services Agreement"), and which concerns Toshiba's provision of certain services to SanDisk and SanDisk Ireland's payment to Toshiba for such services;

(x) a Services Agreement between Flash Alliance and Toshiba, as owner of the Yokkaichi Facility, dated as of the date hereof, in the form of Exhibit A9 (the "Toshiba-Flash Alliance Services Agreement"), and which concerns Toshiba's provision of certain services to Flash Alliance and Flash Alliance's payment to Toshiba for such services; and

(xi) a Services Agreement between Flash Alliance and SanDisk Ireland, dated as of the date hereof, in the form of Exhibit A10 ("SanDisk Ireland-Flash Alliance Services Agreement"), and which concerns SanDisk Ireland's provision of certain services to Flash Alliance and Flash Alliance's payment to SanDisk Ireland for such services.

(c) Joint Operative Documents. The Parties acknowledge and agree that the following agreements shall remain in force or be amended or executed as indicated below and shall apply generally to the Parties' collaboration with respect to NAND Flash Memory Products and related products (collectively, the "Joint Operative Documents"):

(i) the Second Amended and Restated Common R&D and Participation Agreement, dated as of the date hereof, between SanDisk Corporation and Toshiba (the "Common R&D Agreement"), a copy of which is Exhibit B1 and which concerns collaboration between the Parties with respect to research and development activities;

(ii) the Second Amended and Restated Product Development Agreement, dated as of the date hereof, between the SanDisk Corporation and Toshiba (the "Product Development Agreement"), a copy of which is Exhibit B2 and which concerns collaboration between the Parties with respect to product development activities; and

(iii) an Amendment No. 4 to Patent Cross License Agreement, dated as of the date hereof, between SanDisk Corporation and Toshiba (the "Amendment No. 4 to Patent Cross License Agreement"), a copy of which is Exhibit B3, amending that certain Patent Cross License Agreement between SanDisk Corporation and Toshiba, dated as of July 30, 1997 (as amended by Amendment No. 1 to Patent Cross License Agreement, dated as of May 9, 2000, Amendment No. 3 to Patent Cross License Agreement, dated as of April 10,

2002, and Amendment No. 3 to Patent Cross License Agreement, dated as of September 10, 2004, the "Cross License Agreement"), and which concerns certain patent licenses granted by SanDisk Corporation and Toshiba to one another.

2.2 Further Assurances. Following the Closing, each Party shall, and shall cause its Affiliates and Flash Alliance to, take all reasonable actions necessary or appropriate to effectuate the transactions contemplated by this Agreement, the FA Operative Documents and the Joint Operative Documents (collectively, the "Master Operative Documents"), and to obtain (and cooperate with the other Party in obtaining) any Governmental Action or third party consent required to be obtained or made by it in connection with any of the transactions contemplated by the Master Operative Documents; *provided*, that no Burdensome Condition shall be made to exist with respect to such Party or any of its Affiliates in connection therewith.

2.3 Continuation of FVC Japan and FP Documents. The Parties agree that unless otherwise expressly stated herein (A) neither the FVC Japan Operative Documents nor the FP Operative Documents shall affect the interpretation of this Agreement, the governance or operation of Flash Alliance or the Y4 Facility and (B) the FA Operative Documents shall not affect the interpretation of the FVC Japan Master Agreement, the FP Master Agreement, the governance or operation of FVC Japan or the FVC Japan Equipment or the governance or operation of Flash Partners; *provided*, *however*, that Section 6.3(c)(iv) of the FP Master Agreement is hereby amended to preclude expansion under Section 6.4(a)(ii)(c) of the FP Master Agreement.

**3. PURPOSE OF FLASH ALLIANCE**

3.1 Purpose. The Parties acknowledge and agree that the purpose of the Master Operative Documents and Flash Alliance is the manufacture, including by subcontract to Toshiba pursuant to the FA Foundry Agreement, and sale to Toshiba and SanDisk Ireland of NAND Flash Memory Products manufactured at the facility of Flash Alliance known by the Parties as "Y4" (the "Y4 Facility"), which is a part of the Yokkaichi Facility (defined in Appendix A).

3.2 NAND Flash Memory Products. "NAND Flash Memory Products" are NAND (both binary and MLC Flash Memory) Flash Memory Integrated Circuits ("ICs"), excluding any products with process design rules generally greater than .25 microns. Embedded IC's incorporating NAND Flash Memory Products shall be considered to constitute "NAND Flash Memory Products" if the main function and value of such IC is flash memory, but shall not be considered to constitute "NAND Flash Memory Products" if the main function and value of such IC is logic. For the purpose of the foregoing, the "main function and value" of any product shall be considered to be flash memory if (x) the total NAND flash memory array area is greater than [***] of the total die area or (y) the product is a cut-down or derivative of a standard NAND Flash Memory Product.

3.3 Products.

(a) NAND Flash Memory Products manufactured at the Y4 Facility are referred to as "Y4 NAND Flash Memory Products;" NAND Flash Memory Products manufactured at the Y3 Facility are referred to as "Y3 NAND Flash Memory Products;" NAND Flash Memory Products manufactured for FVC Japan using the FVC Japan Equipment are referred to as "FVC Japan NAND Flash Memory Products;" and NAND Flash Memory Products manufactured at the Toshiba Foundry Facility (defined in Appendix A) are referred to as "Toshiba Foundry NAND Flash Memory Products".

(b) Each Party shall be permitted to market and sell all NAND Flash Memory Products to any third party in any form, including chips, packaged devices, wafers, die and cards.

**4. REPRESENTATIONS AND WARRANTIES OF THE PARTIES**

Except as may be disclosed in disclosure schedules attached to this Agreement, each Party represents and warrants to the other Party, as of the Closing, as follows:

4.1 Organization, Ownership Interest, etc.

(a) It and each of its Affiliates that is a party to any Master Operative Document is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization or incorporation and has the power and authority to carry on its business as conducted on the date hereof, to own or hold under lease its properties and to enter into and perform its obligations under each Master Operative Document to which it is a party.

(b) It and each of its Affiliates that is a party to any Master Operative Document is duly qualified to own or lease its properties and generally to conduct its business as currently, or proposed under the Master Operative Documents to be, conducted in each jurisdiction necessary for purposes of the transactions contemplated by the Master Operative Documents, except where failure to so qualify would not have a material adverse effect on either Party or Flash Alliance.

4.2 Authorization; No Conflict.

(a) It and each of its Affiliates has duly authorized by all necessary action (i) the execution, delivery and performance of each Master Operative Document to which it or any of its Affiliates is a party and (ii) the exercise of its rights as a holder of shares (*kabushiki*) of Flash Alliance (the "FA Shares") to approve the execution, delivery and performance by Flash Alliance of each Master Operative Document to which it is a party and for which the approval of the holders of FA Shares is required.

(b) Its and each of its Affiliates' execution and delivery of each Master Operative Document to which it is a party, its and each of its Affiliates' consummation of the transactions contemplated thereby and its and each of its Affiliates' compliance therewith does not and will not (i) require any approval of its or any of such Affiliates' stockholders or any approval or consent of any trustee or holder of any of its or any of such Affiliates' Indebtedness or obligations, (ii) contravene any Governmental Rule applicable to or binding on it or any of such Affiliates or any of its or their properties if such contravention would have a material adverse effect on it or any of such Affiliates or on its or their ability to perform any of its or any of such Affiliates' obligations under any Master Operative Document, (iii) contravene or result in any breach of, or constitute any default, with or without the passage of time, the giving of notice or both, under its charter or by-laws, or contravene or result in any breach of or constitute any default under, or result in the creation of any Lien (other than Permitted Liens) upon any of its or any of such Affiliates property or the property of Flash Alliance under, any material indenture, mortgage, chattel mortgage, deed of trust, conditional sales contract, loan or credit agreement, non-compete agreement, license agreement, partnership or joint venture agreement or other material agreement or document to which it or any of such Affiliates is a party or by which it or any of such Affiliates or any of its or their properties is or is intended to be bound or by which Flash Alliance or any of its properties is or is intended to be bound, (iv) require any negotiation with, or notice to, any labor union or violate, or require any procedure to be followed under, any collective bargaining or other agreement with employees or (v) require any Governmental Action (other than immaterial

Governmental Actions such as routine qualifications to do business intended to be obtained as needed or Governmental Actions needed in connection with the construction and operation of the Y4 Facility), except, in each case described in clauses (i) through (v) above, such as have been duly obtained, made, taken or otherwise accomplished and which are in full force and effect. All consents and approvals of any Governmental Authority (other than immaterial Governmental Actions such as routine qualifications to do business intended to be obtained as needed or Governmental Actions needed in connection with the operation of the Y4 Facility) or other third Person necessary or advisable for such Party or any of its Affiliates to consummate in all material respects the transactions contemplated by the Master Operative Documents have been obtained. No Burdensome Condition exists with respect to such Party, any of its Affiliates or Flash Alliance in connection with the transactions contemplated by the Master Operative Documents.

4.3 Enforceability.

(a) It has duly executed and delivered this Agreement and, upon the execution and delivery of this Agreement by the other Party, this Agreement will constitute its legal, valid and binding obligation, enforceable against it in accordance with its terms except as enforceability may be limited by bankruptcy, insolvency, fraudulent conveyance or similar laws affecting the enforcement of creditors' rights generally or the availability of equitable remedies (regardless of whether enforceability is considered in a proceeding at law or in equity).

(b) It and each of its Affiliates have duly executed and delivered each other Master Operative Document to which it or any such Affiliate is a party and, upon the execution and delivery of each such other Master Operative Document by each other party thereto, each such other Master Operative Document will constitute its legal, valid and binding obligation, enforceable against it or its Affiliates in accordance with its terms except as enforceability may be limited by bankruptcy, insolvency, fraudulent conveyance or similar laws affecting the enforcement of creditors' rights generally or the availability of equitable remedies (regardless of whether enforceability is considered in a proceeding at law or in equity).

4.4 Proceedings. There are no actions, claims, investigations or proceedings pending, or to its knowledge threatened, by or before any Governmental Authority that, if adversely determined, would have a material adverse effect on it or any of its Affiliates that is a party to any Master Operative Document or, on the conduct of the business of Flash Alliance following the Closing as contemplated in the Master Operative Documents or on it or any of its Affiliates' ability to perform any material obligation under any Master Operative Document.

4.5 Litigation; Decrees. Except as set forth in Schedule 4.5, there are no lawsuits, arbitrations or other legal proceedings pending, or to its knowledge threatened, by or against or affecting it or any of its Affiliates or any of their respective properties that (i) are reasonably likely, based on information known to it as of the date hereof, to have a material adverse effect on the conduct of the business of Flash Alliance following the Closing as contemplated by the Master Operative Documents or (ii) relate to any of the transactions contemplated by the Master Operative Documents in a manner which is material to it, any of its Affiliates' or Flash Alliance's ability of it to carry out the transactions contemplated hereby and in the FA Operative Documents or which could have a material adverse effect on the conduct of the business of Flash Alliance following the Closing as contemplated in the Master Operative Documents.

4.6 Compliance with Other Instruments. Neither it nor any of its Affiliates that is a party to any Master Operative Document is in default in any material respect in the performance of any material obligation, agreement, instrument or undertaking to which it or any of its Affiliates is a party or by which it or any of its Affiliates or any of its of their properties is bound, and there is no such obligation, agreement, instrument or undertaking to which it or any of its Affiliates is a party or by which it or any of its Affiliates or any of its or their properties is bound, in each case which is reasonably likely to have a material adverse effect on the conduct of the business of Flash Alliance following the Closing as contemplated by the Master Operative Documents.

4.7 Patents and Proprietary Rights. Except as set forth in Schedule 4.7, to its knowledge, it owns or possesses sufficient legal rights to all patents, utility models, trademarks, service marks, trade names, copyrights, applications for any of the foregoing, mask works, software, trade secrets, licenses, information and proprietary rights and processes (collectively, "Intellectual Property") necessary (i) to carry out its or any of its Affiliates' obligations under the Master Operative Documents and (ii) for the conduct of the business of Flash Alliance following the Closing as contemplated in the Master Operative Documents, without any conflict with or infringement of the rights of others, except as will not have a material adverse effect on either (i) or (ii) above. Except with respect to items referenced in Schedule 4.7, it has not received any communications alleging that its Intellectual Property violates, or by its or any of its Affiliates entering into the transactions contemplated by the Master Operative Documents, would violate the Intellectual Property of any other Person or entity, which violation could reasonably be expected to have a material adverse effect on either (i) or (ii) above.

4.8 Compliance with Laws. It and each of its Affiliates has complied and is complying in all material respects with all laws, statutes, permit requirements, licensing requirements, rules and regulations and judicial or administrative decisions, except where the failure to so comply would not have a material adverse effect on its or any of its Affiliates ability to perform its or their obligations hereunder or under any other Master Operative Document or on the conduct of the business of Flash Alliance following the Closing as contemplated by the Master Operative Documents.

4.9 Patent Cross Licenses. Except as set forth on Schedule 4.9, with respect to (a) Toshiba, there are no patent cross licenses between it and any third party that would require Flash Alliance to make any payment pursuant to Section 10 of the Cross License Agreement, and (b) SanDisk, there are no patent cross licenses between it and any third party that would require Flash Alliance to make any payment pursuant to Section 8 of the Cross License Agreement.

**5. COVENANTS**

5.1 Covenants of the Parties. Each Party agrees that, during the term of this Agreement:

(a) Performance of Obligations. It and each of its Affiliates shall fully and faithfully carry out (i) all its obligations under each Master Operative Document to which it or any Affiliate is a party, and (ii) once agreed, each applicable Business Plan (as defined in the FA Operating Agreement).

(b) Ownership Interest. Except as otherwise expressly permitted by the FA Operating Agreement and this Agreement, it shall not Transfer or permit any of its Affiliates to Transfer all or any portion of its FA Shares (or all or any portion of its interest in any Affiliate through which it beneficially owns its FA Shares), to any Person without the consent of the other Party.

5.2 Public Announcements.

(a) At or following the Closing, neither Party shall, nor shall it permit any of its Affiliates to, without the prior written consent of the other Party:

(i) issue any public release, announcement or other document, or otherwise publicly disclose any information or make any public statement, concerning the operations of Flash Alliance or that refers to the other Party or any of its Affiliates in connection therewith (other than a general reference to affiliation with Flash Alliance) that (A) concerns the financial condition or results of operations of Flash Alliance other than as required by any Governmental Rule, Japanese GAAP, Japanese GAAS, US GAAP or US GAAS, with respect to the financial disclosure obligations of either Party or (B) disparages either Party, or Flash Alliance's performance or reflects negatively on either Party's commitment to either of Flash Alliance; or

(ii) other than as may be required in connection with filings required to be made with Governmental Authorities with respect to the transactions contemplated by the FA Operative Documents pursuant to the Japanese Foreign Exchange and Foreign Trade Law and related regulations, (A) publicly file all or any part of any Master Operative Document or any description thereof or (B) issue or otherwise make publicly available any press release, announcement or other document that contains Confidential Information belonging to the other Party (or its Affiliates) or Flash Alliance, except as may be required by any applicable Governmental Rule, in which case such Party shall (or shall cause the Person required to make such filing to) cooperate with the other Party, to the extent reasonable and practicable, in obtaining any confidential treatment for such filing requested by the other Party.

(b) Each Party shall use commercially reasonable efforts to grant or deny any approval required under this Section 5.2 within five (5) days of receipt of written request by the other Party; *provided*, *however*, a Party's failure to respond within said time period shall not be deemed to constitute such Party's approval or consent.

5.3 Expenses. Each Party shall bear its own expenses in connection with the negotiation, execution and delivery of the Master Operative Documents.

5.4 Undertaking as to Affiliate Obligations. Each Party shall cause all covenants, conditions and agreements to be performed, observed or satisfied by each of its Affiliates that is a party to any Master Operative Documents to be fully and faithfully observed, performed and satisfied by such Affiliate, and shall not cause or permit to exist (i) an Event of Default with respect to such Affiliate or (ii) except as otherwise permitted by the FA Operating Agreement, any event of dissolution of Flash Alliance caused by such Affiliate. Nothing in Section 5.1 or in this Section 5.4 shall be construed to create any right in any Person other than the Parties. Without limiting the generality of the foregoing, SanDisk hereby guarantees the obligations of SanDisk Ireland hereunder and under any Master Operative Document to which SanDisk Ireland is a party.

5.5 Continuity and Maintenance of Operations. During the term of this Agreement, each Party agrees on behalf of itself and each of its Affiliates that is a party to any Master Operative Document to use all reasonable efforts consistent with past practice and policies to (i) preserve intact in all material respects its and their present business operations, (ii) keep available the services of its and their key employees as a group, and (iii) preserve its relationships with suppliers, licensors, licensees, and others having business relationships with it or them, each to the extent necessary to allow it and such Affiliates to perform its and their obligations under the Master Operative

Documents and to allow Flash Alliance to conduct its business as contemplated in its most recently approved Business Plan.

5.6 Certain Deliveries and Notices. Each Party shall promptly inform in writing the other Party of (i) any event or occurrences which could be reasonably expected to have a material adverse effect on its or any of its Affiliates' ability to perform its or their obligations under any of the Master Operative Documents or the ability of Flash Alliance to conduct its business as contemplated in its most recently approved Business Plan, or (ii) any breach or failure to satisfy any condition or covenant contained herein or in any other Master Operative Document by such Party or any of its Affiliates.

**6. COVENANTS CONCERNING NAND FLASH MEMORY PRODUCTS BUSINESS**

6.1 New Technology Development.

(a) Immediately after the Effective Date, each Party shall designate three (3) appropriate individuals who will constitute the Common R&D Representatives. The Common R&D Representatives will meet regularly (quarterly) to review, discuss and determine direction of NAND future project plans and SanDisk participation in the Development Work (as defined in the Common R&D Agreement). SanDisk will send, and Toshiba will receive, such number of SanDisk Personnel as are mutually agreed upon, at AMC or other Toshiba facilities during the term of the Common R&D Agreement in order for SanDisk to participate in the Development Work. The Parties have agreed to encourage utilization of tool vendors to perform Development Work where it is effective to do so.

(b) Provided Toshiba continues to develop and advance NAND Flash Memory technology for the benefit of both parties pursuant to the FVC Japan Operative Documents, the FP Operative Documents, the FA Operative Documents and the other Joint Operative Documents, SanDisk agrees to share Toshiba's Common R&D expenditures and shall pay to Toshiba its portion of such Common R&D expenditures as detailed in the Common R&D Agreement.

6.2 Purchased Tools. All tools for the Y4 Facility shall be purchased by Flash Alliance (or a lessor for Flash Alliance's benefit as contemplated by Section 6.12(a)) and all such purchases shall be agreed upon by the Parties. Toshiba shall, from the Toshiba Semiconductor Company headquarters and at its own expense, provide Flash Alliance with tool purchase service and support and negotiate with vendors on Flash Alliance's behalf, and SanDisk shall have the right to participate in such negotiations or other tool purchase activities of Toshiba, at SanDisk's own expense. For such purpose, a joint SanDisk/Toshiba tool procurement team ("Joint Tool Procurement Team") will be formed and each member of the team will have total participation, visibility and responsibility in tool selection and procurement negotiations, including tool evaluation activities of the Joint Procurement Team. Toshiba Semiconductor Company will provide to Flash Alliance the full benefit of its volume purchase agreements in order to maximize efficiency and minimize costs. Immediately after the effective date of this Agreement, the Parties will establish a process that enables equal participation and equal decision making by the Parties in tool evaluation and purchase (depending on SanDisk's ability to participate).

6.3 Technology Transfers.

(a) Toshiba will make available to Flash Alliance its 70 nanometer [***] process technology applicable to the manufacturing and testing of NAND Flash Memory Products ("NAND Process

Technology") on the fastest practicable schedule. All technology transfers will be jointly reviewed and discussed by the Parties and all technology transfers will be made in a mutually satisfactory manner, provided that all process integration for new processes will be led by Toshiba employees at the Yokkaichi Facility to the extent reasonably possible. Toshiba will cause its employees, including its advanced microelectronics center employees, to cooperate in achieving an efficient transition from development module to operating process and volume production. Substantially all tests for 300 millimeter NAND technology will be conducted at the pilot line established at the Y3 Facility or Y4 Facility.

(b) Whenever a technology transfer is required hereunder, Toshiba shall deliver such level of NAND Process Technology to the Y4 Facility as would be normal practice by the Toshiba Semiconductor Company whenever it transfers a technology to a new manufacturing facility or transfers a new or advanced technology to an existing manufacturing facility in order to achieve successful implementation of the newly transferred technology.

(c) A technology transfer hereunder shall be deemed complete when the transferred technology passes a reasonable qualification procedure to be mutually agreed upon by the Parties.

(d) [***]

(e) [***]

6.4 Start-Up Services for Y4. The Parties acknowledge that either or both of the Parties and Flash Alliance have incurred or will incur costs in connection with developing Flash Alliance and the Y4 Facility and preparing the Y4 Facility for production, including personnel costs, materials costs and other operating expenses, that are properly allocable to Flash Alliance and for which each Party has the obligation ultimately to bear 50% of the responsibility ("Start-Up Costs"). The Parties shall discuss in good faith and agree upon the Start-Up Costs, the allocation to Flash Alliance of Start-Up Costs borne by either Party and the means and timing of each Party, as applicable, being reimbursed or credited for having incurred more than 50% of the Start-Up Costs or of making payments due to having incurred less than 50% of the Start-Up Costs.

6.5 Y4 Facility Ramp-Up Plan.

(a) Equal Participation and Purchase Price Per Unit. The Parties intend to meet demand for increased capacity by equally investing in, and jointly building, and sharing, on equal or substantially equal terms, equal amounts of new capacity for Y4 NAND Flash Memory Products, except as they may otherwise agree as contemplated herein. Where the Parties purchase the same output volume of equivalent Y4 NAND Flash Memory Products, the Parties will pay the same purchase price per unit.

(b) Ramp-Up Plan. The Parties acknowledge that they intend to expand their Y4 NAND Flash Memory Product manufacturing capacity through development of the Y4 Facility according to volumes and timing set forth in Schedule 6.5(b) (including to [***] L/M, the "Ramp-Up Plan"). The Parties will discuss in good faith whether the production capacity of Y4 should be expanded by the Parties toward the Y4 Facility's targeted capacity of approximately [***] L/M.

(c) Ramp-Up Plan Commitments and Changes. The Parties agree as follows concerning the Ramp-Up Plan:

(i) The initial 1,000 L/M in aggregate increases in production capacity of the Y4 Facility identified on theRamp-Up Plan shall be considered firmly committed by each Party (i.e., 500 L/M each) as of the times specified in the Ramp-Up Plan and in accordance with this Section 6.5(c)(i) (the "Minimum RUP Commitment"). The Parties shall agree upon one or more Business Plans that provide for implementing the [***].

[***]

(ii) [***]

(A) [***]

(B) [***]

(iii) [***]

(iv) [***]

(A) [***]

(B) [***]

6.6 Capacity.

(a) Priority.

(i) SanDisk's manufacturing capacity for, and purchased supply of, NAND Flash Memory Products shall be sourced by SanDisk and its Subsidiaries from, and in, the following priority:

(A) from Flash Partners, to fulfill the capacity allocated to SanDisk, as provided for under the FP Operative Documents,

(B) from Flash Alliance, to fulfill the capacity allocated to SanDisk, as provided for under the FA Operative Documents,

(C) [***]

(D) [***]

(E) from [***] and/or from other third parties (so long as [***], and SanDisk shall have fulfilled its 50% share of the Ramp-Up Plan for the Y3 Facility (the "Y3 Ramp-Up Plan") and its 50% share of the increment of the Ramp-Up Plan set forth in the then-current Business Plan approved by the Parties for the Y4 Facility.) [***]

(ii) [***]

(A) [***]

(B) [***]

(C) [***]

(D) [***]

(E) [***]

(iii) In no event will [***] SanDisk [***] source NAND Flash Memory Products from a source other than Flash Partners if the effect of such sourcing is the diversion of resources or other (intended or collateral) effects which reduce the economic or other efficiency of the Y3 Facility (including not fully executing the Y3 Ramp-Up Plan).

(b) [***]

(c) Technology Transfer. If the Parties mutually agree to secure external manufacturing sources other than the Yokkaichi Facility through joint investment, Flash Alliance and Toshiba, as applicable, will jointly transfer the applicable manufacturing technology and know-how to such source. Flash Alliance and Flash Partners (with respect to 300 millimeter wafers) and FVC Japan (with respect

to 200 millimeter wafers) will conduct all negotiations with the external manufacturing source; *provided*, *however*, the terms and conditions of any agreement shall be subject to prior consultation with and the approval of Toshiba. In connection with any technology transfer to such external source, Toshiba will be reimbursed its mutually agreed transfer costs for assisting in the transfer of manufacturing technology and know-how. If the new capacity secured at such external manufacturing source is requested by only one of the Parties, such Party will pay the transfer costs and be entitled to purchase the full output of NAND Flash Memory Products purchased by FVC Japan, Flash Partners or Flash Alliance, as applicable, from such external manufacturing source. If both Parties request such new external capacity, then FVC Japan, Flash Partners or Flash Alliance, as applicable, will pay the transfer costs to Toshiba. Neither Party shall have the right to grant manufacturing licenses to such external manufacturing source or to disclose or transfer to any such external manufacturing source, manufacturing know-how related to the manufacture of NAND Flash Memory Products, except through FVC Japan, Flash Partners or Flash Alliance.

6.7 Capacity Sharing Arrangement.

(a) Equal right to capacity. Subject to Section 6.5(c), each of the Parties will have the right and obligation, through Flash Alliance, to utilize 50% of the wafers produced at the Y4 Facility based on a measure of equivalent lots out per week with the equivalency being weighed based on the process complexity factors (as calculated by a formula to be mutually determined by the Parties) of the Y4 NAND Flash Memory Products.

(b) Alternative use of allotted capacity.

(i) If a Party is unable to utilize its allotted manufacturing capacity for Y4 NAND Flash Memory Products (such Party, an "Excess Capacity" or "EC Party"), it may do any of the following:

(A) An EC Party may request the other Party to negotiate the terms of transfer of its capacity shortfall to the other Party, which may choose whether to accept such additional capacity and on what terms in its sole discretion.

(B) An EC Party may use its capacity for Embedded NAND Products, as defined in and subject to Section 6.7(c).

(C) An EC Party may use its capacity for Proprietary NAND Flash Memory Products and non-Proprietary NAND Flash Memory Products, in accordance with and subject to Sections 6.7(d) and (e).

If an EC Party is not able to utilize or transfer its allotted capacity pursuant to Section 6.7(b), it shall pay the incremental cost increase to the Party not experiencing a shortfall (or pay to Flash Alliance an under-utilization fee in accordance with a formula to be mutually determined by the Parties).

(ii) If both Parties are EC Parties because demand for both Parties' Y4 NAND Flash Memory Products are significantly below expectations, the Parties will discuss in good faith whether to permit products which are not Y4 NAND Flash Memory Products to be produced at the Y4 Facility; provided that (A) the inability of the Parties so to agree shall not constitute a Deadlock (as defined in the FA Operating Agreement) and (B) the foregoing shall not limit either Party's rights in the remainder of this Section 6.7.

(c) Either Party shall have the right use a portion of its total allocated capacity with respect to the Y4 Facility to run a memory product which is not a Y4 NAND Flash Memory Product (solely because the NAND flash memory array area is equal to or less than [***] of the total die area ("Embedded NAND Product")) so long as such Embedded NAND Product [***]. If a Party exercises its option to run Embedded NAND Products, it must [***]. The conditions stated in Sections 6.7(d) and (e) do not apply to Embedded NAND Products.

(d) Each Party may use a portion of its total allocated capacity to cause to be manufactured NAND Flash Memory Products which are proprietary to that Party ("Proprietary NAND Flash Memory Products") and which need not be shared with the other Party. Proprietary NAND Flash Memory Products may be produced at the Y4 Facility so long as such products [***]. If a Party exercises such option, it must [***]. No such Proprietary NAND Flash Memory Products may be run if doing so [***]. Each Party shall give the other Party at least ninety (90) days' advance written notice of its intention to use a portion of its allocated capacity to manufacture Proprietary NAND Flash Memory Products and the Parties shall refer the matter to the Board of Directors for consultation and planning, with the intention to minimize the impact of such allocation. Such notifying Party will limit the output volume of such Proprietary NAND Flash Memory Products to [***] of such Party's total allocated output at the Y4 Facility unless it receives the consent of the other Party to an increase in such output volume above such limit.

(e) Each Party (the "Originating Party") shall inform the other (the "Non-Originating Party") of the development plans by the Originating Party to develop NAND Flash Memory Products, and the Originating Party and the Non-Originating Party shall each refer such matter to the Coordinating Committee (as defined in the Product Development Agreement). If the Coordinating Committee unanimously decides that such planned development shall be undertaken jointly, then the cost of such joint development shall be borne by each Party in accordance with the Product Development Agreement, and the NAND Flash Memory Products manufactured following such joint development shall be considered non-Proprietary NAND Flash Memory Products for purposes of Section 6.7(d); *provided, however*, the NAND Flash Memory Products set forth in Exhibit A to the Product Development Agreement shall be deemed to be non-Proprietary NAND Flash Memory Products without any action by the Coordinating Committee. Subject to the foregoing, if the Coordinating Committee does not unanimously decide that such planned development shall be undertaken jointly, then the Originating Party may, at its sole discretion, either (i) transfer to the Non-Originating Party the technology, including the items in Exhibit C to the Product Development Agreement relating to such technology, used to manufacture such NAND Flash Memory Products on a royalty-free basis, whereupon such NAND Flash Memory Products shall be considered non-Proprietary NAND Flash Memory Products, or (ii) treat such NAND Flash Memory Products as Proprietary NAND Flash Memory Products for purposes of Section 6.7(d). In the event the Originating Party elects to treat any NAND Flash Memory Products as Proprietary NAND Flash Memory Products in accordance with the preceding sentence, but thereafter the Coordinating Committee unanimously determines that such Proprietary NAND Flash Memory Products should be developed jointly, the Originating Party shall transfer to the other Party the technology used to manufacture such NAND Flash Memory Products on reasonable terms and conditions to be mutually agreed upon by the Parties, whereupon such Proprietary NAND Flash Memory Products shall be treated as non-Proprietary NAND Flash Memory Products.

6.8 Engineering Wafers and Development Expense. Each Party will have full access to all operational and engineering data and reports related to engineering wafers manufactured at Y4.

(a) Engineering wafers and development expenses are further and more completely defined in four categories: Common R&D Development Expenses, Y4 Direct R&D Development Products, Evaluation Wafers, Qualification Wafers (each as defined below).

(i) "Common R&D Development Expenses" means [***]. The Parties agree to set up pilot-line(s) [***]. The Parties confirm their intent that [***]. Notwithstanding the foregoing, the Parties shall meet from time to time [***]. The Parties shall meet at the end of each quarter to determine if any engineering activities performed during the quarter [***], whether agreed in advance or not, [***]. If any activities performed [***] are agreed by the parties to [***].

(ii) [***]

(iii) "Evaluation Wafers" are those wafers manufactured [***]. Both parties are entitled to receive evaluation wafers [***]. The cost of Evaluation Wafers is [***].

(iv) "Qualification Wafers" are those wafers [***]. The Parties will discuss and agree on the appropriate quantity of Qualification Wafers required for each Y4 NAND Flash Memory Product. [***].

(b) [***]

6.9 Creation of Management Committee. The management committee established by the Parties pursuant to the FVC Japan Master Agreement and the FP Master Agreement to facilitate management of the respective operations of FVC Japan and Flash Partners (the "Management Committee") shall do the same for Flash Alliance, as detailed in this Section 6.9.

(a) Authority. The Management Committee shall have the authority to (i) advise Flash Alliance with respect to policy and operating matters common to Toshiba and SanDisk as well as on such other matters as Flash Alliance may refer to the Management Committee from time to time, (ii) hear and seek to resolve any disputes regarding operational matters or alleged breaches of any Master Operative Documents (including dispute resolution), and (iii) take the actions specified to be taken by the Management Committee in this Agreement or any Master Operative Document, including in this Section 6.9 and in Section 6.3.

(b) Members of the Management Committee; Voting; etc.

(i) The Management Committee shall consist of six members (the "Committee Representatives"), three of whom shall be appointed by Toshiba, and three of whom shall be appointed by SanDisk (for such purpose, each of the Parties is referred to in this Section 6.9 as an "Appointing Party"). Each Appointing Party shall be entitled to appoint an alternate Committee Representative to serve in the place of any Committee Representative appointed by such Appointing Party should any such Committee Representative be unable to attend a meeting. Each Party shall be entitled to invite a reasonable numbers of observers to all Management Committee meetings.

(ii) Each Committee Representative or alternate Committee Representative shall serve at the pleasure of the designating Appointing Party and may be removed as such, with or without cause, and his successor designated, by the designating Appointing Party. Each Appointing Party shall have the right to designate a replacement Committee Representative in the event of any vacancy among such Appointing Party's appointees.

(iii) Each Appointing Party shall bear any cost and expense incurred by any Committee Representative or alternate Committee Representative designated by such Appointing Party to serve on the Management Committee, and no Committee Representative or alternate Committee Representative shall be entitled to compensation from Flash Alliance for serving in such capacity.

(iv) Each Appointing Party shall notify the other Appointing Party and Flash Alliance in writing of the name, business address and business telephone and facsimile numbers of each Committee Representative and each alternate Committee Representative that such Appointing Party has been appointed to the Management Committee. Each Appointing Party shall promptly notify the other Appointing Party and Flash Alliance of any change in such Appointing Party's appointments or of any change in any such address or number.

(v) For purposes of any approval or action taken by the Management Committee, each Committee Representative shall have one vote. All of the votes eligible to be cast at any meeting must be voted in favor of any action to be taken by the Management Committee at such meeting.

(vi) At any meeting of the Management Committee, a Committee Representative, in the absence of one or more other Committee Representatives appointed by the same Appointing Party or an alternate Committee Representative, may cast the vote such absent Committee Representatives would otherwise be entitled to cast.

(vii) The quorum necessary for any meeting of the Management Committee shall be those Committee Representatives entitled to cast all of the votes held by the members of the Management Committee. A quorum shall be deemed not to be present at any meeting for which notice was not properly given under Section 6.9(c), unless the Committee Representative or Committee Representatives as to whom such notice was not properly given attend(s) such meeting without protesting the lack of notice or duly execute(s) and deliver(s) a written waiver of notice or a written consent to the holding of such meeting.

(viii) Each appointment by an Appointing Party to the Management Committee shall remain in effect until the Appointing Party making such appointment notifies the other Appointing Party and Flash Alliance in writing of a change in such appointment. The resignation or removal of a Committee Representative shall not invalidate any act of such Committee Representative taken before the giving of such written notice of the removal or resignation of such Committee Representative (or alternate Committee Representative).

(c) Meetings, Notice, etc.

(i) Meetings of the Management Committee shall be held at such location or locations as may be selected by the Management Committee from time to time.

(ii) Regular meetings of the Management Committee shall be held on such dates and at such times as shall be determined by the Management Committee and shall be held as required or as requested by the Board of Directors.

(iii) Notice of any regular meeting or special meeting pursuant to Section 6.9(c)(iv) shall be given to each Committee Representative at least ten (10) Business Days prior to such meeting in the case of a meeting in person or at least five (5) Business Days prior to such

meeting in the case of a meeting by conference telephone or similar communications equipment pursuant to Section 6.9(c)(vi), which notice shall state the purpose or purposes for which such meeting is being called and include any supporting documentation relating to any action to be taken at such meeting.

(iv) Special meetings of the Management Committee may be called by any Committee Representative by notice given in accordance with the notice requirements set forth in this Section 6.9, which notice shall state in reasonable detail the purpose or purposes for which such meeting is being called; *provided*, that, the Committee Representatives appointed by the Appointing Party that is not represented by the Committee Representative calling such special meeting shall be entitled to in good faith select a convenient location for the meeting and to suggest an alternative time or times if the designated time is not convenient for them. Except as set forth in Section 6.9(c)(vi), no action may be taken and no business may be transacted at such special meeting which is not identified in such notice unless (A) such action or business is incidental to the action or business for which the special meeting is called or (B) such action or business does not materially adversely affect the Parties, any of their respective Affiliates which are parties to any of the Master Operative Documents or Flash Alliance. Minutes of each Management Committee meeting shall be sent by facsimile to all Committee Representatives within ten (10) Business Days after such meeting. Material to be presented at any Management Committee meeting shall be sent by facsimile, electronic mail or delivered in hard copy to all Committee Representatives together with the notice described in Section 6.9(c)(vi).

(v) The actions taken by the Management Committee at any meeting, however called and noticed, shall be as valid as though taken at a meeting duly held after regular call and notice if (but not until), either before, at or after the meeting, any Committee Representative as to whom such meeting was improperly held duly executes and delivers a written waiver of notice or a written consent to the holding of such meeting; *provided*, *however*, any Committee Representative who is present at a meeting and does not protest the failure of notice shall be deemed to have received adequate notice thereof. A vote of the Management Committee may be taken only either in a meeting of the members thereof duly called and held or by the execution by the Committee Representatives eligible to cast all the votes on the Management Committee without a meeting of a consent setting forth the action so taken, and identified as a consent of the Committee Representatives pursuant to this Section 6.9.

(vi) Upon the consent of all Committee Representatives, a meeting of the Management Committee may be held by conference telephone or similar communications equipment by means of which all Committee Representatives participating in the meeting can hear and be heard by all other participants, *provided*, that, such communications equipment continues to be operational throughout the meeting. Any Committee Representative may elect to participate in a meeting by conference telephone or similar communications equipment upon sufficient advance notice to permit arrangements therefor to be made. At any meeting, the Management Committee shall consider (A) any items added to the Management Committee agenda for discussion by the Parties and (B) such other matters as the Management Committee decides to review.

(vii) The Management Committee shall, from time to time, elect one of its members to preside at its meetings, which presiding member shall alternate annually if requested by either Party. The Management Committee may establish reasonable rules and regulations to (A) require officers to call meetings and perform other administrative duties, (B) limit the number and participation of observers, if any, and require them to observe confidentiality obligations and (C) otherwise provide for the keeping and distribution of minutes and other internal Management Committee governance matters not inconsistent with the terms of this Agreement.

6.10 [***]

(a) [***]

(i) [***]

(ii) [***]

(iii) [***]

(iv) [***]

(b) [***]

(i) [***]

(ii) [***]

(iii) [***]

(iv) [***]

(v) [***]

(vi) [***]

(vii) All members of the SanDisk Team will remain employees of SanDisk. Each Party will indemnify the other Party and Flash Alliance from any claim by any of such Party's employees, consultants or agents (such Party being the "Employer") (A) based on other than willful misconduct of such Employer, its employees, consultants or agents; or (B) that he or she has rights, or is owed obligations, as an employee of the Party that is not the Employer.

(c) [***]

6.11 Non-solicitation of Employees. So long as the business of Flash Alliance continues, each Party (and each of its respective Affiliates) shall not, without the prior written consent of the other Party, directly recruit or solicit any employee or director of Flash Alliance to leave his or her employment with Flash Alliance prior to the period ending twenty-four (24) months after the FA Termination Date; *provided*, *however*, that placement of employment advertisements or other general solicitation for employees not specifically targeted to the employees or directors of Flash Alliance shall not constitute direct recruitment. In the event of the dissolution and liquidation of Flash Alliance, either Party (or any Affiliate of either Party) may solicit any former employee of such dissolved and liquidated company, but neither Party (nor any of its Affiliates) shall be required to employ any such Person. If all of the FA Shares held by one Party are purchased by

the other Party or its designee, if requested by the acquiring Party the Parties shall reach agreement on a reasonable transition plan (without profit to the seller) in connection with the services provided to Flash Alliance, as applicable, by employees and contractors of the selling Party.

6.12 Financing.

(a) [***]

(b) The Parties currently intend, but are not obligated, to structure the financing for equipment purchases by Flash Alliance necessary to implement the Ramp-Up Plan as follows:

(i) Flash Alliance will enter into equipment lease or loan agreements and pledge the financed equipment as collateral;

(ii) Flash Alliance will secure external financing for approximately 50% of the initial purchase price of its tools and each Party will provide equity capital contributions and loans (on a subordinated basis) for the remaining cash requirements of Flash Alliance necessary to execute the Ramp-Up Plan;

(iii) each Party will severally and not jointly and through separate arrangements guarantee as close as possible to 50% of Flash Alliance's obligations under such lease or loan agreements (any financing separately guaranteed or provided by Toshiba for Flash Alliance or otherwise for investment in the Y4 Facility, "Toshiba Financing", any such financing separately guaranteed or provided by SanDisk for Flash Alliance or otherwise for investment in the Y4 Facility "SanDisk Financing" and the Toshiba Financing and SanDisk Financing, each a "Financing"); and

(iv) the Parties will attempt to obtain the foregoing financing from the same financial institution, but under separate agreements that expressly disclaim any joint and several liability of the Parties.

(c) With respect to any Toshiba Financing or SanDisk Financing, the following shall apply:

(i) [***]

(ii) Unless otherwise expressly agreed by both Parties in writing in each case, all Toshiba Financing and all SanDisk Financing shall create only several obligations of the Parties and no joint and several obligations or liability. Toshiba (with respect to Toshiba Financing) and SanDisk (with respect to SanDisk Financing) hereby indemnifies and holds harmless the other Party and its Indemnified Parties from any claims by any financial institution or other Person that the other Party has any liabilities or obligations with respect to, respectively, any Toshiba Financing or SanDisk Financing (unless joint liability has been agreed pursuant to the first sentence of this Section 6.12(c)(ii)).

(iii) Flash Alliance will use commercially reasonable efforts to comply with the requirements of any financing sources. Flash Alliance will make available to each Party one-half of its assets (with as near as practicable cost, collateral value and type) to secure such Party's Financing (whether external or loans from a Party or its Affiliates).

(d) If the lender under the Financing for either Party (as the "Defaulting Party") takes significant actions to enforce its right in the collateral, then the other Party (as the "Non-Defaulting Party") shall have the right, but not the obligation, to cure the default giving rise to the lender's enforcement action. If the Non-Defaulting Party exercises such cure right, then theNon-Defaulting Party's rights in any subject collateral shall be superior to the Defaulting Party's and the Non-Defaulting Party may exercise one of the following options:

(i) the Non-Defaulting Party (A) shall have a claim against the Defaulting Party for reimbursement of any payments made by theNon-Defaulting Party on the Defaulting Party's behalf (which will be subordinate to the lender's claims and bear interest at a rate 500 basis points in excess of the rate being charged by the lender to the Defaulting Party) and (B) shall have the right, until and unless the Defaulting Party pays in full the obligation to the Non-Defaulting Party under foregoing clause (A), to take over the increment of production of the Y4 Facility represented by the collateral with respect to which the lender took significant actions to enforce its rights; or

(ii) the Non-Defaulting Party shall have the right to terminate the Operating Agreement pursuant to Section 11.6 thereof (Foreclosure Default).

6.13 Other Activities. Except as expressed in Section 6 and in the Common R&D Agreement, neither Party nor any of their respective Affiliates shall: (i) fabricate NAND Flash Memory Integrated Circuits at any location other than the Yokkaichi Facility or any other fabrication facility agreed upon by the Parties in writing; (ii) have any third party fabricate NAND Flash Memory Integrated Circuits; or (iii) have any right to fabricate NAND Flash Memory Integrated Circuits beyond the capacity as limited pursuant to this Section 6, as such capacity limitations may be amended from time to time in accordance with this Section 6. For the avoidance of doubt, nothing contained in the foregoing shall restrict the Parties from engaging in any other activities, including, without limitation, (A) designing any NAND Flash Memory Product; (B) selling any NAND Flash Memory Product to any customer; (C) entering into any equipment purchase or material supply agreements; or (D) entering into any patent licensing arrangement; and nothing in the foregoing shall restrict Toshiba from installing any manufacturing line in the Toshiba Foundry Facility subject to the capacity limitations set forth in Section 6 of the FVC Japan Master Agreement and the FP Master Agreement and as provided herein, as such capacity limitations may be amended from time to time in accordance with this Section 6. For purposes of this Section 6.13, "NAND Flash Memory Integrated Circuits" means ICs included in the definition of NAND Flash Memory Products pursuant to Section 3.2.

6.14 Protection of Intellectual Property. Both Parties recognize that it is important for the success of the Y4 NAND Flash Memory Products business to promote the adoption of such Y4 NAND Flash Memory Products with a wide variety of customers and applications, whether for card use or non-card use, and with such recognition, each Party shall use reasonable efforts to protect and enhance the value of Y4 NAND Flash Memory Products. Further, where feasible, each Party shall share with Flash Alliance internally prepared analyses of competitive products prepared by either Party so as to allow Flash Alliance to respond to such information and remain competitive in the marketplace; *provided*, that neither Party warrants as to the accuracy or completeness of any such analysis so provided.

6.15 [***]

## 7. OTHER AGREEMENTS

To supplement their agreement as expressed in certain of the Master Operative Documents, the Parties agree as set forth in this Section 7. To the extent of any conflict between this Section 7

and any other Master Operative Document referenced in this Section 7, the other Master Operative Document shall prevail.

7.1 Flash Alliance Management.

(a) As contemplated by the FA Operating Agreement, the Y4 Operating Committee's purpose is to give both Parties the ability to influence the day to day operating decisions of Flash Alliance and the Y4 Facility. The Y4 Operating Committee is intended to be a collaborative body with real-time communications, respectful consultation and dispute resolution with the goal of making the Y4 Facility the most competitive (cost and technology) memory fabrication facility in the world.

(b) If the Y4 Operating Committee is unable to decide an issue (by agreement of its two members) such issue shall be referred to the Board of Directors. Special meetings of the Board of Directors may be noticed for issues requiring urgent resolution. The Parties contemplate that while a special meeting of the Board of Directors is being noticed, their respective management teams will discuss any issue that the Y4 Operating Committee could not resolve.

(c) If the Board of Directors is unable to decide an issue (by unanimous agreement), such issue shall be referred to the Management Committee for resolution, which shall be vested with final decision making authority. This Agreement separately provides for procedures if the Management Committee is unable to reach agreement on such issue.

7.2 Y4 Facility.

(a) Building Construction and Facilitization. Toshiba has designed and is constructing and facilitizing the Y4 Facility at its sole cost and expense, and SanDisk shall work with Toshiba to help minimize administrative approval delays. Toshiba will exercise all reasonable efforts to ensure that the construction of the Y4 Facility is completed by [***], *provided* that Toshiba shall have no liability to SanDisk, any SanDisk Affiliate or Flash Alliance if completion is not achieved by such time. The depreciation charges for Y4 will be passed on to Flash Alliance as further described in Section 7.3(d).

(b) With prior coordination with Toshiba and the construction contractors for the Y4 Facility, SanDisk will have reasonable access to the construction site for the Y4 Facility and to all information pertaining to the construction of the Y4 Facility, on condition that SanDisk will be solely responsible for all damage caused by such access.

(c) Land. Neither SanDisk nor Flash Alliance will be charged for the land Toshiba currently owns and makes available for the Y4 Facility. With respect to new land (purchased or leased by Toshiba) required or related to the establishment of the Y4 Facility and its operations, SanDisk will pay Toshiba on a quarterly basis during the term of this Agreement a fair, reasonable and mutually-agreed fee to be calculated based on the amount Toshiba actually pays or incurs for such new land and the number of parking spaces; provided, however, that Toshiba will determine whether there will be a multi-level parking structure, single level parking lot, or other method of providing parking for the Yokkaichi Facility, and, provided further, that during the term of this Agreement SanDisk's payments in respect of land and parking costs will in no event exceed [***] per year.

(d) Incentives. All government incentives (financial or otherwise) received with respect to Flash Alliance, the Y4 Facility or Y4 operations will be shared equally by the Parties.

7.3 FP Foundry Agreement. Flash Alliance and Toshiba shall enter into the FA Foundry Agreement at the Closing. The FA Foundry Agreement provides for ordering procedures, prices, delivery, cost reporting and other specific terms and conditions for the manufacture by Toshiba and supply to Flash Alliance of Y4 NAND Flash Memory Products, which shall be consistent with the following basic terms:

(a) Facilities, Equipment and Raw Materials. The manufacturing facilities will be located [***] or such other place as the Parties may agree upon. Flash Alliance and Toshiba will enter into an exclusive lease agreement with respect to the Y4 Facility and Flash Alliance's manufacturing equipment located in the Y4 Facility to be used in the manufacture of Y4 NAND Flash Memory Products by Toshiba. Toshiba shall be responsible for obtaining the raw materials and services to be used in the manufacture of Y4 NAND Flash Memory Products.

(b) Production. Toshiba will manufacture Y4 NAND Flash Memory Products at the Y4 Facility for Flash Alliance ordered by Toshiba and SanDisk under the terms and conditions of the FA Purchase and Supply Agreements. Flash Alliance and Toshiba (from the Yokkaichi Facility) will use their best efforts to achieve the Ramp-Up Plan manufacturing capacity (the "Y4 Facility Target Capacity"). Wafers will be sorted between the Parties such that aggregate yield losses will be shared on an equal basis.

(c) Operating Relationship. The Parties shall provide personnel necessary for the manufacturing of the Y4 NAND Flash Memory Products as described in Section 6.10.

(d) Consideration to be Paid to Toshiba. Toshiba will be compensated by Flash Alliance as provided in Section 4 of the FA Foundry Agreement, [***]

(e) No Duplication of Costs or Expenses. It is the intent of the Parties that any payments made by SanDisk under or pursuant to any Master Operative Documents, FVC Japan Operative Documents or FP Operative Documents shall not be duplicative and SanDisk shall in no event be required to pay or contribute more than once for any service, product or development work provided under such agreements, if such service, product or development work is provided under more than one agreement. In addition, if SanDisk makes a direct payment for any service, product or development work provided under any such agreement, the cost incurred by Toshiba (from the Yokkaichi Facility), FVC Japan, Flash Partners or Flash Alliance, as the case may be, in connection with the provision of such service, product or development work shall not be included in the applicable wafer price charged to SanDisk.

(f) Exclusivity. The Yokkaichi Facility shall be Flash Alliance's exclusive manufacturing source for output of Y4 NAND Flash Memory Products. Flash Alliance may seek external manufacturing sources for output in excess of the Yokkaichi Facility's capacity upon unanimous approval by the Management Committee.

7.4 FA Purchase and Supply Agreements. Flash Alliance and each of the Parties or their respective Affiliates will enter into substantially identical FA Purchase and Supply Agreements providing for specific terms and conditions for the purchase by the Parties of Y4 NAND Flash Memory Products from Flash Alliance, which shall be consistent with the following basic terms:

(a) Manufacturing. Flash Alliance shall manufacture or cause to be manufactured Y4 NAND Flash Memory Products as contemplated by Section 7.3.

(b) Purchase Commitment. Except as contemplated in Section 6.5(c)(ii), each Party shall (itself or through Affiliates) purchase one half (based on a measure of equivalent lots out per week with the

equivalency being weighed based on the process complexity factors (as calculated by a formula to be mutually determined by the Parties) of the Y4 NAND Flash Memory Products) of the total L/M of Y4 NAND Flash Memory Products. The foregoing purchase commitment of each Party shall not be subject to reduction unless agreed in writing by the other Party, which may grant or withhold such approval in its sole discretion.

(c) Sales Price for Y4 NAND Flash Memory Products Purchased by the Parties The sales price charged by Flash Alliance to the Parties for wafers manufactured at Y4 shall be the sum of:

(i) [***]

(ii) [***]

(d) Other Cost Items. Other items related to the manufacture of Y4 NAND Flash Memory Products will be charged on a monthly basis from Flash Alliance to the Parties and will include the following:

(i) [***]

(ii) [***]

(iii) [***]

(iv) [***]

(v) [***]

(vi) [***]

7.5 Other Matters.

(a) Forecasts/Production Planning. Each Party will submit forecasts, on a rollingsix-month basis, directly to Flash Alliance, as further provided in the Purchase and Supply Agreements. The Parties shall use the system at the Y3 Facility for such direct system, provided that the cost necessary for [***] will be borne by SanDisk. Flash Alliance production planning will hold a monthly production planning meeting with representatives of each Party, as further provided in the Purchase and Supply Agreements. At such meetings, the Parties will agree on a production plan for the [***] which plan will be final (and the related forecast will be deemed to be covered by a binding purchase order).

(b) Production Control. Flash Alliance will provide [***] on anon-discriminatory basis to SanDisk [***] with respect to [***], provided that the cost necessary for making such system available or [***] will be borne by SanDisk. Each Party (through the Y4 Management Committee) will have the right to discuss the production schedule, planned wafer starts and [***].

(c) Operating Reports. SanDisk will have full access to any management or operation reports related to Flash Alliance or Flash Alliance's business through the Y4 Operating Committee (as defined in the FA Operating Agreement). Management and operating reports related to Flash Alliance or Flash Alliance's business as mutually agreed from time to time will be simultaneously made available in Japanese and English to each Party. Upon request, Toshiba employees will explain such reports to SanDisk's employees and respond to questions from SanDisk's employees, but Toshiba will not be responsible for SanDisk's failure to understand such reports.

(d) Insurance. Toshiba shall maintain or arrange property insurance covering assets owned or leased by Flash Alliance and business interruption insurance in respect of the business of Flash Alliance, the scope and amounts of which shall be consistent with Toshiba's practices at the Yokkaichi Facility and as required by any lender. This coverage shall provide basically full replacement value of all Flash Alliance owned and leased equipment, subject to valuation as part of Toshiba's annual insurance policy renewal, and shall name Flash Alliance as a beneficiary in respect of assets owned or leased by it and Flash Alliance's employee expenses covered by business interruption insurance. On an annual basis, or when requested by either Party, the Y4 Operating Committee shall discuss and review the current insurance coverage and/or the need for any additional property or business interruption insurance in respect of Flash Alliance's assets or business. Further, SanDisk reserves the right to seek to arrange additional property or business interruption insurance for its own account in respect of Flash Alliance's assets or business. If SanDisk seeks such additional property or business interruption insurance, Toshiba shall cooperate in good faith to provide such information and access as is reasonably necessary for SanDisk to arrange such insurance. If Toshiba makes a recovery from a third party (other than an insurer per the above) in respect of both assets of Flash Alliance and other assets, then Toshiba shall allocate to Flash Alliance a share of the net amount of such recovery in proportion to the losses suffered by Flash Alliance and total losses suffered by Flash Alliance and Toshiba.

**8. TERMINATION**

8.1 Termination.

(a) Termination of any Master Operative Document by either Party shall be done only in good faith.

(b) This Agreement shall be terminated automatically upon the earlier of the Transfer of all of a Party's FA Shares to the other Party (or its Affiliate) or upon completion of the dissolution and liquidation of Flash Alliance pursuant to Section 11 (Dissolution) of the FA Operating Agreement (the date of such Transfer or dissolution and liquidation, the "FA Termination Date").

(c) Upon termination of this Agreement resulting from an event of dissolution of Flash Alliance due to the expiration of Flash Alliance pursuant to Section 11.1(a) (Expiration) of the FA Operating Agreement:

(i) the Parties shall further amend the Cross License Agreement, as then in effect, to specify that each Party's patents issued or issuing on patent applications entitled to an effective filing date prior to the FA Termination Date are licensed on a royalty-free basis for the duration of such patents. The scope of the licenses as amended pursuant to this Section 8.1(c)(i) shall not be greater than the scope of those granted under the Cross License Agreement, as in effect as of the FA Termination Date.

(ii) Toshiba shall grant to SanDisk, effective upon the FA Termination Date, anon-exclusive, non-transferable (except to Affiliates of SanDisk), non-sub-licensable, fully paid up, royalty-free license to make, have made, use, sell and have sold NAND Flash Memory Products anywhere in the world utilizing the NAND technology transferred to and/or utilized at the Yokkaichi Facility, and SanDisk shall have full access to all such know-how at the Yokkaichi Facility which has been transferred to the Yokkaichi Facility prior to the FA Termination Date.

(d) Upon a termination of this Agreement resulting from (i) an event of dissolution of Flash Alliance or (ii) one Party's acquisition of all of the other Party's FA Shares (the acquirer thereof referred to

hereinafter as the "Acquiring Party" and the seller thereof referred to hereinafter as the "Selling Party") pursuant to Section 11.5 (Dissolution Upon Notice) of the FA Operating Agreement:

(i) Toshiba or the Acquiring Party, as the case may be, will, upon the request, prior to the FA Termination Date, of (A) SanDisk (such request to be made at the time of its notice pursuant to Section 11.5 of the FA Operating Agreement) in the case of the dissolution of Flash Alliance or (B) the Selling Party (each, a "Requesting Party"), as the case may be, continue to manufacture NAND Flash Memory Products for the Requesting Party (not to exceed the Requesting Party's capacity allocation available from Flash Alliance under this Agreement as of the FA Termination Date (the "Termination Capacity")) for a period of eighteen (18) months following the Termination Date in the following ramp-down manner:

(A) During the first six months following the FA Termination Date: 100% of the Termination Capacity

(B) During the 7th through the 12th month following the FA Termination Date: 75% of the Termination Capacity

(C) During the 13th through the 18th month following the FA Termination Date: 50% of the Termination Capacity.

(ii) Toshiba and SanDisk and their respective Affiliates shall have a perpetual, fully paid-up, royalty-free right to use technology previously transferred to one another during the term of this Agreement.

(iii) The Parties shall further amend the Cross License Agreement to specify that each Party's patents issued or issuing on patent applications entitled to an effective filing date prior to the FA Termination Date are licensed on a royalty free basis for the duration of such patents. The scope of the licenses as amended pursuant to this Section 8.1(d)(iii) shall not be greater than the scope of those granted under the Cross License Agreement, as in effect as of FA Termination Date.

(iv) Upon termination of this Agreement resulting from an event of dissolution of Flash Alliance caused by Toshiba's election to withdraw from Flash Alliance pursuant to the FA Operating Agreement, Toshiba hereby grants to SanDisk, effective upon the FA Termination Date, a non-exclusive, non-transferable (except to Affiliates of SanDisk), non-sub-licensable, fully paid-up, royalty-free license to make, have made, use, sell and have sold NAND Flash Memory Products anywhere in the world utilizing the NAND technology transferred to and/or utilized at the Yokkaichi Facility, and SanDisk shall have full access to all such know-how at the Yokkaichi Facility which has been transferred to the Yokkaichi Facility prior to the FA Termination Date.

(e) Upon termination of this Agreement resulting from an event of dissolution of Flash Alliance or Toshiba's acquisition of SanDisk's FA Shares pursuant to Section 11.4 (Dissolution By Unilateral Option) of the FA Operating Agreement:

(i) From the Yokkaichi Facility, Toshiba will, upon request of SanDisk given within sixty (60) days of the notice given by SanDisk pursuant to Section 11.4 of the FA Operating Agreement, continue to manufacture products for SanDisk for a period of eighteen (18) months following the FA Termination Date in accordance with the following ramp-down manner; *provided*, *however*, such capacity allocation for SanDisk shall not exceed its

capacity allocation available from Flash Alliance under this Agreement as of the FA Termination Date (the "SanDisk Termination Capacity"):

(A) During the first six months following the FA Termination Date: 100% of the SanDisk Termination Capacity

(B) During the 7th through the 12th month following the FA Termination Date: 75% of the SanDisk Termination Capacity

(C) During the 13th through the 18th month following the FA Termination Date: 50% of the SanDisk Termination Capacity.

(ii) The Parties and their respective Affiliates shall have a perpetual, fully paid-up, royalty-free right to use technology previously transferred to one another during the term of this Agreement.

(iii) The Parties shall further amend the Cross License Agreement to specify that, with respect only to Y4 NAND Flash Memory Products and any other Licensed Products defined in the Cross License Agreement and manufactured with 300mm wafers at any facility, each Party's patents issued or issuing on patent applications entitled to an effective filing date prior to the FA Termination Date are licensed at the royalty rates specified in Schedule 8.1(e) until March 31, 2015; *provided*, that after such five (5) year period, such license shall be on a royalty free basis and *provided*, *further*, that at any time during such five year period, both Parties shall negotiate in good faith for up to one hundred and eighty (180) days as requested by either Party to mutually agree on royalty rates for patents filed by each Party after the FA Termination Date. The scope of the licenses as amended pursuant to this Section 8.1(e)(iii) shall not be greater than the scope of those granted under the Cross License Agreement, as in effect as of the FA Termination Date.

(f) Upon termination of this Agreement resulting from an event of dissolution of Flash Alliance or one Party's acquisition of the other Party's FA Shares following a Deadlock (as defined in the FA Operating Agreement) pursuant to Section 10.3 (Dispute Resolution; Deadlock) of the FA Operating Agreement:

(i) In the case of one Party's acquisition of the other Party's FA Shares pursuant to Section 10.4(e) of the FA Operating Agreement, the Acquiring Party shall continue to manufacture products for the other Party (not to exceed the other Party's Termination Capacity) for a period of eighteen (18) months following the FA Termination Date in accordance with the following ramp down manner:

(A) During the first six months following the FA Termination Date: 100% of the Termination Capacity

(B) During the 7th through the 12th month following the FA Termination Date: 75% of the Termination Capacity

(C) During the 13th through the 18th month following the FA Termination Date: 50% of the Termination Capacity.

(ii) The Parties and their respective Affiliates shall have a perpetual, fully paid-up, royalty-free right to use technology previously transferred to one another during the term of this Agreement.

(iii) The Parties shall further amend the Cross License Agreement to specify that, with respect only to Y4 NAND Flash Memory Products and any other Licensed Products defined in the Cross License Agreement and manufactured with 300mm wafers at any facility, each Party's patents issued or issuing on patent applications entitled to an effective filing date prior to the FA Termination Date are licensed: (x) at the royalty rates specified in Schedule 8.1(f) until March 31, 2014; (y) at the royalty rates specified in Schedule 8.1(e) from April 1, 2014 through December 31, 2016; and (z) thereafter, on a royalty-free basis. Both Parties shall negotiate in good faith for up to one hundred and eighty (180) days upon request of either Party at any time during the five-year period after the FA Termination Date to agree on royalty rates for patents filed by each Party after the FA Termination Date. The scope of the licenses as amended pursuant to this Section shall not be greater than the scope of those granted under the Cross License Agreement, as in effect as of the FA Termination Date.

(g) Upon termination of this Agreement resulting from an event of dissolution of Flash Alliance or a Party's acquisition of the other Party's FA Shares described in Section 11.3 (Dissolution Upon Event of Default) of the FA Operating Agreement:

(i) The Parties shall further amend the Cross License Agreement to specify that, with respect only to Y4 NAND Flash Memory Products and any other Licensed Products defined in the Cross License Agreement and manufactured with 300mm wafers at any facility, each Party's patents issued or issuing on patent applications entitled to an effective filing date prior to the FA Termination Date are licensed at the royalty rates specified in Schedule 8.1(g) for seven (7) years after the FA Termination Date or until the end of calendar 2021, whichever comes first, and thereafter such licenses shall be on a royalty-free basis.

(ii) In the event that Toshiba or an Affiliate of Toshiba is the Defaulting Party, Toshiba shall grant to SanDisk, effective upon such date of termination, a non-exclusive, non-transferable (except to Affiliates of SanDisk), non-sub-licensable, fully paid-up, royalty-free license to make, have made, use, sell and have sold NAND Flash Memory Products anywhere in the world utilizing the NAND technology transferred to and/or utilized at the Yokkaichi Facility, and SanDisk shall have full access to all such know-how at the Yokkaichi Facility which has been transferred to the Yokkaichi Facility prior to the FA Termination Date.

(h) Upon termination of this Agreement resulting from an event of dissolution described in Section 11.1(f) (Bankruptcy Event) of the FA Operating Agreement:

(i) If such termination is caused by a Bankruptcy Event in respect of Toshiba, (x) the license granted to SanDisk under Toshiba Licensed Patents pursuant to the Cross License Agreement shall continue on a royalty-free basis, and (y) Toshiba shall grant to SanDisk, effective upon such date of termination, a non-exclusive, non-transferable (except to Affiliates of SanDisk), non-sub-licensable, fully paid-up, royalty-free license to make, have made, use, sell and have sold NAND Flash Memory Products anywhere in the world utilizing the NAND technology transferred to and/or utilized at the Yokkaichi Facility, and SanDisk shall have full access to all such know-how at the Yokkaichi Facility which has been transferred to the Yokkaichi Facility prior to the Termination Date.

(ii) If such termination is caused by a Bankruptcy Event in respect of SanDisk, the license granted to Toshiba under SanDisk Licensed Patents (as defined in the Cross License

Agreement) pursuant to the Cross License Amendment shall continue on a royalty-free basis.

(i) Upon a termination of this Agreement resulting from a purchase and sale transaction described in Section 11.6 (Financing Default) of the FA Operating Agreement, there shall be no capacity ramp-down rights or obligations and:

(i) If such termination is caused by a financing default in respect of Toshiba, (x) the Parties shall further amend the Cross License Agreement to specify that, with respect only to Y4 NAND Flash Memory Products and any other Licensed Products defined in the Cross License Agreement and manufactured with 300mm wafers at any facility, Toshiba's patents issued or issuing on patent applications entitled to an effective filing date prior to the FA Termination Date are licensed to SanDisk on a royalty-free basis, and (y) Toshiba shall grant to SanDisk, effective upon such date of termination, a non-exclusive, non-transferable (except to Affiliates of SanDisk), non-sub-licensable, fully paid-up, royalty-free license to make, have made, use, sell and have sold NAND Flash Memory Products anywhere in the world utilizing the NAND technology transferred to and/or utilized at the Yokkaichi Facility, and SanDisk shall have full access to all such know-how at the Yokkaichi Facility which has been transferred to the Yokkaichi Facility prior to the Termination Date.

(ii) If such termination is caused by a financing default in respect of SanDisk, the Parties shall further amend the Cross License Agreement to specify that, with respect only to Y4 NAND Flash Memory Products and any other Licensed Products defined in the Cross License Agreement and manufactured with 300mm wafers at any facility, SanDisk's patents issued or issuing on patent applications entitled to an effective filing date prior to the FA Termination Date are licensed to Toshiba on a royalty-free basis.

(j) Restructuring Costs.

(i) In the event this Agreement is terminated, the Parties will exercise best efforts to plan such termination in advance with the goal of minimizing related costs. With respect to Toshiba employees and SanDisk employees working at the Y4 Facility, (i) in the case of those that are Toshiba employees, Toshiba will use its best efforts to retrain or relocate such individuals to other Toshiba facilities, and (ii) in the case of those that are SanDisk employees, SanDisk will use its best efforts to retrain or relocate such individuals to other SanDisk facilities, each to the maximum extent possible.

(ii) The Parties agree that in the event of such a SanDisk exit from Flash Alliance, [***]

(A) [***]

(B) [***]

(iii) Upon any termination of this Agreement, the Parties shall meet and discuss in good faith an estimate of the Restructuring Costs anticipated to be incurred by Toshiba. [***]

(k) Termination of this Agreement shall not affect any surviving rights or obligations of either Party set forth in the Product Development Agreement and the Common R&D Agreement.

**9. MISCELLANEOUS**

9.1 Survival. Sections 1.3, 6.10(b)(vii), 6.11, 6.12(d), 8 and 9 and Appendix A shall survive the termination or expiration of this Agreement.

9.2 Entire Agreement. This Agreement, together with the exhibits, schedules, appendices and attachments thereto, constitutes the agreement of the Parties to this Agreement with respect to the subject matter hereof and supersedes all prior written and oral agreements and understandings with respect to such subject matter.

9.3 Governing Law. This Agreement shall in all respects be governed by and construed in accordance with the internal laws of the State of California applicable to agreements made and to be performed entirely within such state without regard to the conflict of laws principles of such state. Each Master Operative Document shall be governed in accordance with its governing law provision and, in the absence of any such provision, by the first sentence of this Section 9.3.

9.4 Assignment. Neither Party may transfer this Agreement or any of its rights hereunder (except for any transfer to an Affiliate or in connection with a merger, consolidation or sale of all or substantially all the assets or the outstanding securities of such party, which transfer shall not require any consent of the other party) without the prior written consent of the other Party (which consent may be withheld in such other Party's sole discretion), and any such purported transfer without such consent shall be void.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, this Agreement has been executed and delivered by the Parties as of the date first above written.

TOSHIBA CORPORATION

By: /s/ Masashi Muromachi
Name: Masashi Muromachi
Title: President and CEO
Semiconductor Company
Corporate Executive Vice President

SANDISK CORPORATION

By: /s/ Eli Harari
Name: Eli Harari
Title: Chief Executive Officer

SANDISK (IRELAND) LIMITED

By: /s/ Sanjay Mehrotra
Name: Sanjay Mehrotra
Title: Director

**Schedule 4.5**
**Litigation, Decrees**

[***]

**Schedule 4.7**

**Patents and Proprietary Rights**

[***]

**Schedule 4.9**

**Cross License Payment Obligations**

[***]

**Schedule 6.3**

**Technology Transfer Costs**

[***]

**Schedule 6.5(b)**

**Ramp-Up Plan**

[***]

**Schedule 8.1(e)**

**Royalty in case of SanDisk Unilateral Termination**

[***]

**Schedule 8.1(f)**

**Royalty in case of Deadlock Termination**

[***]

**Schedule 8.1(g)**

**Royalty in case of Event of Default Termination**

[***]

APPENDIX A

**DEFINITIONS, RULES OF CONSTRUCTION AND**

**DOCUMENTARY CONVENTIONS**

The following shall apply unless otherwise required by the main body of the agreement into which this Appendix A is being incorporated (as used herein, "this Agreement"):

Definitions

The following terms shall have the specified meanings:

"Accountants" means such firm of internationally recognized independent certified public accountants for Flash Alliance as is appointed pursuant to the FA Operating Agreement from time to time. Initially, the Accountants shall be Shin Nihon & Company, an affiliate of Ernst & Young LLP.

"Affiliate" of any Person means any other Person which directly or indirectly controls, is controlled by or is under common control with, such Person; *provided, however,* that the term Affiliate, (a) when used in relation to Flash Alliance or any Subsidiary of Flash Alliance, shall not include SanDisk Corporation or Toshiba or any Affiliate of either of them, and (b) when used in relation to SanDisk Corporation or Toshiba or any Affiliate of either of them, shall not include Flash Alliance or any Subsidiary of Flash Alliance.

"Articles" means the Articles of Incorporation of Flash Alliance.

"Bankruptcy Event" means, with respect to any Person, the occurrence or existence of any of the following events or conditions: such Person (1) is dissolved; (2) becomes insolvent or fails or is unable or admits in writing its inability generally to pay its debts as they become due; (3) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (4) institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding up or liquidation and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition (A) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding up or liquidation or (B) is not dismissed, discharged, stayed or restrained in each case within 60 days of the institution or presentation thereof; (5) has a resolution passed by its governing body for its winding-up or liquidation; (6) seeks or becomes subject to the appointment of an administrator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets (regardless of how brief such appointment may be, or whether any obligations- are promptly assumed by another entity or whether any other event described in this clause (6) has occurred and is continuing); (7) experiences any event which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (1) through (6) above; or (8) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

"Board of Directors" means the board of directors of Flash Alliance.

"Burdensome Condition" means, with respect to any proposed transaction, any action taken, or credibly threatened, by any Governmental Authority or (except if such action or threat is frivolous) other

Person to challenge the legality of such proposed transaction, including (i) the pendency of a governmental investigation (formal or informal) in contemplation of the possible actions described in clauses (ii)(A), (ii)(B) or (ii)(C) below, (ii) the institution of a suit or the written threat thereof (A) seeking to restrain, enjoin or prohibit the consummation of such transaction or material part thereof, to place any material condition or limitation upon such consummation or to invalidate, suspend or require modification of any material provision of any Operative Document, (B) challenging the acquisition by either Toshiba or SanDisk Ireland of its Shares or (C) seeking to impose limitations on the ability of either Toshiba or SanDisk Ireland effectively to exercise full rights as Shareholder of Flash Alliance, including the right to act on all matters properly presented to the parties pursuant to the FA Operating Agreement, or (iii) an order by a court of competent jurisdiction having any of the consequences described in (ii)(A), (ii)(B) or (ii)(C) above, or placing any conditions or limitations upon such consummation that are unreasonably burdensome in the reasonable judgment of the applicable Person.

"Business Day" means any day (other than a day which is a Saturday, Sunday or legal holiday in the State of California or Japan) on which commercial banks are open for business in the State of California or Tokyo, Japan.

"Business Plan" means the Initial Business Plan and each subsequent business plan, including budgets and projections for Flash Alliance for each relevant period, approved in accordance with Section 3.4(c) of the FA Operating Agreement and complying with Section 3.4(b) of the FA Operating Agreement.

"Capital Contribution" means the capital contribution made by or allocated to a Party by virtue of its ownership of Shares, as indicated on Schedule 6.1 to the FA Operating Agreement.

"Change of Control" with respect to a Person means a transaction or series of related transactions as a result of which (i) more than 50% of the beneficial ownership of the outstanding common stock or other ownership interests of such Person (representing the right to vote for the board of directors or similar organization of such Person) is acquired by another Person or affiliated group of Persons, whether by reason of stock acquisition, merger, consolidation, reorganization or otherwise or (ii) the sale or disposition of all or substantially all of a Person's assets to another Person or affiliated group of Persons.

"Closing" means the closing of the transactions described in Sections 2.1 of the Master Agreement.

"Closing Date" means the date of the Closing.

"Code" means the Internal Revenue Code of 1986, as amended from time to time, or any successor statute. Any reference to a particular provision of the Code or a treasury regulation promulgated pursuant to the Code means, where appropriate, the corresponding provision of any successor statute or regulation.

"Common R&D Agreement" means the Amended and Restated Common R&D and Participation Agreement, dated as of the Effective Date, between Toshiba and SanDisk Corporation.

"Companies Act" means the Companies Act *(Kaisha-ho),* Law No. 86 of July 26, 2005, as may be amended hereafter and in effect as at any time.

"Control" (including its correlative meanings "controlled by" and "under common control with") means possession, directly or indirectly, of power to direct or cause the direction of management or policies (whether through ownership of securities or partnership or other ownership interests, by contract or otherwise).

"Cross License Agreement" has the meaning given in the Master Agreement.

"Effective Date" means July 7, 2006.

"Environmental Indemnification Agreement" means the Amended and Restated Mutual Contribution and Environmental Indemnification Agreement, dated as of the Effective Date, between Toshiba and SanDisk Corporation.

"Event of Default" means, with respect to a Party, the occurrence or existence of any of the following events or conditions which remains uncured for sixty (60) days following receipt by such Party of written notice thereof:

(a) a Bankruptcy Event in respect of such Party or any Person of which such Party is a Subsidiary; or

(b) the breach by such Party of its covenant in Section 9.1 of the FA Operating Agreement or the breach by such Party of its covenant in Section 5.1(b) of the. Master Agreement, *provided* that a Change of Control of a Party shall not be deemed an Event of Default.

"FA Foundry Agreement" means the Foundry Agreement, dated as of the Effective Date, between Flash Alliance and Yokkaichi.

"FA Operating Agreement" means the Operating Agreement, dated as of the Effective Date, between Toshiba and SanDisk Ireland.

"FA Operative Documents" has the meaning given in the Master Agreement.

"Fiscal Quarter" means, unless changed by the Board of Directors, a calendar quarter

"Fiscal Year" means the one year period commencing on April 1 of each year.

"Flash Alliance" means Flash Alliance, Ltd., a Japanese special limited liability company *(tokurei yugen kaisha)*.

"Flash Partners" means Flash Partners, Ltd., a Japanese special limited liability company *(tokurei yugen kaisha)*.

"FP Master Agreement" means the Master Agreement between Toshiba and SanDisk dated as of September 10, 2004.

"FP Operative Documents" means the Flash Partners Master Agreement dated as September 10, 2004, the Share Purchase Agreement between Toshiba and SanDisk Manufacturing, dated as of September 10, 2004, the Operating Agreement between Toshiba and SanDisk International, dated as of September 10, 2004, the Foundry Agreement between Flash Partners and Toshiba, dated as of September 10, 2004, the Purchase and Supply Agreement between Flash Partners and SanDisk International, dated as of September 10, 2004, the Purchase and Supply Agreement between Flash Partners and Toshiba, dated as of September 10, 2004, the Patent Indemnification Agreement between SanDisk Corporation and Toshiba, dated as of September 10, 2004, the Mutual Contribution and Environmental Indemnification Agreement between SanDisk Corporation and Toshiba, dated as of September 10, 2004, and the Lease Agreement between Flash Partners and Toshiba, as owner of the Yokkaichi Facility, dated as of September 10, 2004. ·

"FVC Japan" means FlashVision Ltd., a Japanese special limited liability company *(tokurei yugen kaisha)*.

"FVC Japan Equipment" means any equipment which is or will, from time to time, be owned or leased by FVC Japan.

"FVC Japan Master Agreement" means the Master Agreement between Toshiba and SanDisk dated as of April 10, 2002, as amended and restated as of the Effective Date.

"FVC Japan Operative Documents" means the FVC Japan Master Agreement as amended to date, the New Operating Agreement between the Parties, dated as of April 10, 2002, as amended to date, the Foundry Agreement between FVC Japan and Toshiba, dated as of April 10, 2002, the SanDisk Foundry Agreement between the Parties, dated as of April 10, 2002, the Purchase and Supply Agreement between FVC Japan and SanDisk, dated as of April 10, 2002, the Purchase and Supply Agreement between FVC Japan and Toshiba, dated as of April 10, 2002, and the Services Agreement between FVC Japan and Toshiba dated as of April 1, 2002.

"FVC Japan NAND Flash Memory Products" has the meaning given in Section 3.3 of the Master Agreement.

"Governmental Action" means any authorization, consent, approval, order, waiver, exception, variance, franchise, permission, permit or license of, or any registration, filing or declaration with, by or in respect of, any Governmental Authority.

"Governmental Authority" means any United States or Japanese federal, state, local or other political subdivision or foreign governmental Person, authority, agency, court, regulatory commission or other governmental body, including the Internal Revenue Service and the Secretary of State of any State.

"Governmental Rule" means any statute, law, treaty, rule, code, ordinance, regulation, license, permit, certificate or order of any Governmental Authority or any judgment, decree, injunction, writ, order or like action of any court or other judicial or arbitration tribunal.

"Indebtedness" of any Person means, without duplication:

(a) all obligations (whether present or future, contingent or otherwise, as principal or surety or otherwise) of such Person in. respect of borrowed money or in respect of deposits or advances of any kind;

(b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments;

(c) all obligations of such Person upon which interest charges are customarily paid, except for trade payables;

(d) all obligations of such Person under conditional sale or other title retention agreements relating to property or assets purchased by such Person;

(e) all obligations of such Person issued or assumed as the deferred purchase price of property or services (other than with respect to the purchase of personal property under standard commercial terms);

(f) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such Person, whether or not the obligations secured thereby have been assumed;

(g) all guarantees by such Person of Indebtedness of others;

(h) all obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property (or a combination thereof), which obligations would be required to be classified and accounted for as capital leases on a balance sheet of such Person prepared in accordance with Japanese GAAP or US GAAP, as applicable;

(i) all obligations of such Person (whether absolute or contingent) in respect of interest rate swap or protection agreements, foreign currency exchange agreements or other interest or exchange rate hedging arrangements; and

(j) all obligations of such Person as an account party in respect of letters of credit and bankers' acceptances.

The Indebtedness of any Person shall include the Indebtedness of any partnership in which such Person is a general partner.

"Indemnified Parties" means the Party being indemnified's officers, directors, employees, agents, contractors, subcontractors, and transferees permitted pursuant to the FA Operating Agreement and the Master Agreement.

"Japanese GAAP" means generally accepted accounting principles in Japan as in effect from time to time, consistently applied.

"Japanese GAAS" means generally accepted auditing standards in Japan as in effect from time to time.

"License Agreement" means the Patent Cross License Agreement dated July 30, 1997 by and between Toshiba and SanDisk, [***]

"Lien" means, with respect to any asset, (a) any mortgage, deed of trust, lien, pledge, encumbrance, charge or security interest in or on such asset, (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement relating to such asset and (c) in the case of securities, any purchase option, call or similar right with respect to such securities.

"L/M" means lots per month.

"Management Committee" has the meaning given in the Master Agreement.

"Master Agreement" means the Flash Alliance Master Agreement, dated as of the Effective Date, by and among Toshiba, SanDisk and SanDisk Ireland.

"Material" means, with respect to any Person, an event, change or effect which is or, insofar as reasonably can be foreseen, will be material to the condition (financial or otherwise), properties, assets, liabilities, capitalization, licenses, businesses, operations or prospects of such Person and, in the case of Flash Alliance, the ability of Flash Alliance to carry out its then-current Business Plan.

"NAND Flash Memory Products" has the meaning given in Section 3.2 of the Master Agreement.

"Net Book Value" means, with respect to any Person, the total assets of such Person less the total liabilities of such Person, in each case as determined in accordance with Japanese GAAP or US GAAP, as applicable.

"Patent Indemnification Agreement" means the Patent Indemnification Agreement dated as of the Effective Date between Toshiba and SanDisk Corporation.

"Percentage" means, with respect to any Shareholder (as defined in the FA Operating Agreement), the percentage of such Shareholders' ownership interest in Flash Alliance. For the avoidance of doubt, as of the date hereof, Percentage means with respect to Toshiba or its Affiliate, 50.1%, and with respect to SanDisk Ireland or its Affiliate, 49.9%; *provided, however,* if either Shareholder transfers all of its Shares to any Affiliate in accordance with the FA Operating Agreement, its Percentage shall be 0% and such Affiliate transferee shall receive the entire Percentage of the transferring Shareholder.

"Permitted Liens" means (a) the rights and interests of Flash Alliance, either Party or any Affiliate of any such Person as provided in the FA Operative Documents, and (b) Liens for Taxes which are not due and payable or which may after contest be paid without penalty or which are being contested in good faith and by appropriate proceedings and so long as such proceedings shall not involve any substantial risk of the sale, forfeiture or loss of any part of any relevant asset or title thereto or any interest therein.

"Person" means any individual, firm, company, corporation, limited liability company, unincorporated association, partnership, trust, joint venture, Governmental Authority or other entity, and shall include any successor (by merger or otherwise) of such entity.

"Product Development Agreement" means the Amended and Restated Product Development Agreement, dated as of the Effective Date, between Toshiba and SanDisk Corporation.

"SanDisk Corporation" means SanDisk Corporation, a Delaware corporation.

"SanDisk Ireland" means SanDisk (Ireland) Limited, a company organized under the laws of the Republic of Ireland.

"SanDisk International" means SanDisk (Cayman) Limited, a company organized under the laws of the Cayman Islands.

"SanDisk Manufacturing" means SanDisk Manufacturing Limited, a company organized under the laws of the Republic of Ireland.

"SanDisk Purchase and Supply Agreement" means the Purchase and Supply Agreement, dated as of the Effective Date, between SanDisk Ireland and Flash Alliance.

"Shareholder" means the holder of any Shares.

"Shares" means the issued and outstanding shares *(kabushiki)* in Flash Alliance.

"Subsidiary" of any Person means any other Person:

(i) more than 50% of whose outstanding shares or securities (representing the right to vote for the election of directors or other managing authority) are, or

(ii) which does not have outstanding shares or securities (as may be the case in a partnership, joint venture or unincorporated association), but more than 50% of whose ownership interest representing the right to make decisions (equivalent to those generally reserved for the board of directors of a corporation) for such other Person is, now or hereafter owned or controlled, directly or indirectly, by such Person, but such other Person shall be deemed to be a Subsidiary only so long as such ownership or control exists; *provided, however,* that the term Subsidiary as used in any FA Operative Document, when used in relation to a Party or any of its Affiliates, shall not include Flash Alliance or any of its Subsidiaries.

"Tax" or "Taxes" means all United States or Japanese Federal, state, local or other political subdivision and foreign taxes, assessments and other governmental charges, including: (a) taxes based upon or measured by gross receipts, income, profits, sales, use or occupation and (b) value added, ad valorem, transfer, franchise, withholding, payroll, employment, excise or property taxes, together with (c) all interest, penalties and additions imposed with respect to such amounts and (d) any obligations under any agreements or arrangements with any other Person with respect to such amounts.

"Toshiba" means Toshiba Corporation, a Japanese corporation.

"Toshiba Foundry Facility" means the Yokkaichi Facility, excluding the Y3 and Y4 Facility and the FVC Japan Equipment but including Toshiba's Asahi facility and Toshiba's Oita facility.

"Toshiba Foundry NAND Flash Memory Products" means NAND Flash Memory Products manufactured at a Toshiba Foundry Facility.

"Toshiba-SanDisk Ireland Services Agreement" means the Services Agreement, dated as of the Effective Date, between SanDisk Ireland and Toshiba.

"Toshiba Purchase and Supply Agreement" means the Purchase and Supply Agreement, dated as of the Effective Date, between Toshiba and Flash Alliance.

"Transfer" means any transfer, sale, assignment, conveyance; creation of any Lien (other than a Permitted Lien), or other disposal or delivery, including by dividend or distribution, whether made directly or indirectly, voluntarily or involuntarily, absolutely or conditionally, or by operation of law or otherwise.

"Unique Activities" means production activities of Flash Alliance at the request of either Shareholder to (i) implement changes in the manufacturing processes to be employed for Products to be manufactured for such Shareholder (or its Affiliates) that are not agreed to by the other Shareholder, (ii) commence manufacturing other Products for the requesting Shareholder (or its Affiliates) that the other Shareholder does not desire to have manufactured for it and which require a change in manufacturing processes or in the utilization of the Facility or production resources, or (iii) implement any other change in its operations in order to manufacture Products specifically for the requesting Shareholder (or its Affiliates).

"US GAAP" means generally accepted accounting principles in the United States as in effect from time to time, consistently applied.

"US GAAS" means generally accepted auditing standards in the United States as in effect from time to time.

"Y3 Facility" means the facility at which Y3 NAND Flash Memory Products are manufactured for Flash Partners.

"Y4 Facility" has the meaning given in the Master Agreement.

"Y4 NAND Flash Memory Products" has the meaning given in Section 3.3 of the Master Agreement.

"Yokkaichi Facility" means Toshiba's facilities in Yokkaichi Japan, including the FVC Japan Equipment, the Y3 Facility, the Y4 Facility and Toshiba's Asahi facility.

Rules of Construction and Documentary Conventions

2.1Amendment and Waiver. No amendment to or waiver of this Agreement shall be effective unless it shall be in writing, identify with specificity the provisions of this Agreement that are thereby amended or waived and be signed by each party hereto. Any failure of a party to comply with any obligation, covenant, agreement or condition contained in this Agreement may be waived by the party entitled to the benefits thereof only by a written instrument duly executed and delivered by the party granting such waiver, but such waiver or failure to insist upon strict compliance with such obligation, covenant, agreement or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure of compliance.

2.2 Severability. If any provision of t is Agreement or the application of any such provision is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement (except as may be expressly provided in this Agreement) or invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law, the parties hereto waive any provision of law that renders any provision of this Agreement invalid, illegal or unenforceable in any respect. The parties hereto shall, to the extent lawful and practicable, use their reasonable efforts to enter into arrangements to reinstate the intended benefits, net of the intended burdens, of any such provision held invalid, illegal or unenforceable. If the intent of the Parties for entering into the FA Operative Documents, considered as a single transaction, cannot be preserved, the FA Operative Documents shall either be renegotiated or terminated by mutual agreement of the Parties.

2.3 Assignment. Except as may otherwise be specifically provided in this Agreement, no party hereto shall Transfer this Agreement or any of its rights hereunder (except for any Transfer to an Affiliate or in connection with a merger, consolidation or sale of all or substantially all the assets or the outstanding securities of such party, which Transfer shall not require any consent of the other parties) without the prior written consent of each other party hereto (which consent may be withheld in each such other party's sole discretion), and any such purported Transfer without such consent shall be void.

2.4 Remedies.

(a) Except as may otherwise be specifically provided in this Agreement, the rights and remedies of the parties under this Agreement are cumulative and are not exclusive of any rights or remedies which the parties hereto would otherwise have.

(b) Equitable relief, including the remedies of specific performance and injunction, shall be available with respect to any actual or attempted breach of this *Agreement; provided, however,* in the absence of exigent circumstances, the parties shall refrain from commencing any lawsuit or seeking judicial relief in connection with such actual or attempted breach that is contemplated to be addressed by the dispute resolution process set forth in the Master Agreement and in Section 2.5 of this Appendix A until the parties have attempted to resolve the subject dispute by following said dispute resolution process to its conclusion.

(c) If the due date for any amount required to be paid under this Agreement is not a Business Day, such amount shall be payable on the next succeeding Business *Day; provided that* if payment cannot be made due to the existence of a banking crisis or international payment embargo, such amount may be paid within the following 30 days. If due to the occurrence of an act of God, any party is prevented from providing training, technical assistance or other similar support required to be provided to Flash Alliance pursuant to this Agreement, such party shall have an additional 30 day period to make alternative arrangements to provide such support.

2.5 Arbitration. Any dispute concerning this Agreement shall be referred to the Management Committee and handled by it in accordance with the Master Agreement. If the Management Committee cannot resolve such dispute in accordance with the terms of the Master Agreement, then such dispute will be settled by binding arbitration in San Francisco, California. The dispute shall be heard by a panel of three arbitrators pursuant to the rules of the International Chamber of Commerce. The awards of such arbitration shall be final and binding upon the parties thereto. Each party will bear its own fees and expenses associated with the arbitration. Filing fees and arbitrator fees charged by the ICC shall be borne equally by the Parties.

2.6 Damages Limited. IN THE ABSENCE OF ACTUAL FRAUD, IN NO EVENT SHALL ANY PARTY BE LIABLE TO OR BE REQUIRED TO INDEMNIFY ANY OTHER PARTY OR ANY OF

THEIR RESPECTIVE AFFILIATES FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL OR INDIRECT DAMAGE OF ANY KIND, (INCLUDING WITHOUT LIMITATION LOSS OF PROFIT OR DATA), WHETHER OR NOT ADVISED OF THE POSSIBILITY OF SUCH LOSS.

2.7 Parties in Interest; Limitation on Rights of Others. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their permitted successors and assigns. Nothing in this Agreement, whether express or implied, shall give or be construed to give any Person (other than the parties hereto and their permitted successors and assigns) any legal or equitable right, remedy or claim under or in respect of this Agreement, unless such Person is expressly stated in such agreement or instrument to be entitled to any such right, remedy or claim.

2.8 Table of Contents; Headings. The Table of Contents and Article and Section headings of this Agreement are for convenience of reference only and shall not affect the construction of or be taken into consideration in interpreting any such agreement or instrument.

2.9 Counterparts; Effectiveness. This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all of which counterparts shall together constitute but one and the same contract. This Agreement shall not become effective until one or more counterparts have been executed by each party hereto and delivered to the other parties hereto.

2.10 Entire Agreement. This Agreement, together with each other FA Operative Documents and the Exhibits, Schedules, Appendices and Attachments hereto and thereto, when completed, constitute the agreement of the parties to the FA Operative Documents with respect to the subject matter thereof and supersede all prior written and oral agreements and understandings with respect to such subject matter.

2.11 Construction. References in this Agreement to any gender include references to all genders, and references in this Agreement to the singular include references to the plural and vice versa. Unless the context otherwise requires, the term “party” when used in this Agreement means a party to this Agreement. References in this Agreement to a party or other Person include their respective permitted successors and assigns. The words “include”, “includes” and “including”, when used in this Agreement, shall be deemed to be followed by the phrase “without limitation”. Unless the context otherwise requires, references used in this Agreement to Articles, Sections, Exhibits, Schedules, Appendices and Attachments shall be deemed references to Articles and Sections of, and Exhibits, Schedules, Appendices and Attachments to, this Agreement. Unless the context otherwise requires, the words “hereof”, “hereby” and “herein” and words of similar meaning when used in this Agreement refer to this Agreement in its entirety and not to any particular Article, Section or provision of this Agreement. Any reference to a FA Operative Document shall include such FA Operative Document as amended or supplemented from time to time in accordance with the provisions thereof.

2.12 Official Language. The official language of this Agreement is the English language only, which language shall be controlling in all respects, and all versions of this Agreement in any other language shall not be binding on the parties hereto or nor shall such other versions be admissible in any legal proceeding, including arbitration, brought under this Agreement. All communications and notices to be made or given pursuant to this Agreement shall be in the English language.

2.13 Notices. All notices and other communications to be given to any party under this Agreement shall be in writing and any notice shall be deemed received when delivered by hand, courier or overnight delivery service, or by facsimile (if confirmed within two Business Days by delivery of a copy by hand, courier or overnight delivery service), or five days after being mailed by certified or registered mail, return receipt requested, with appropriate postage prepaid and shall be directed to the address of such party specified below (or at such other address as such party shall designate by like notice):

(a) If to SanDisk or SanDisk Ireland:

SanDisk Corporation
601 McCarthy Boulevard
Milpitas, CA 95035 USA
Telephone: (408) 542-0555
Facsimile: (408) 542-0600
Attention: President and CEO

With a copy to: I

SanDisk Corporation
601 McCarthy Boulevard
Milpitas, CA 95035 USA
Telephone: (408) 548-0208
Facsimile: (408) $48-0385
Attention: Vice President and General Counsel

(b) If to Toshiba:

Toshiba Corporation
Semiconductor Company
1-1 Shibaura 1-Chome
Minato-Ku, Tokyo 105:-8001 Japan
Telephone: 011 81 3 3457 3362
Facsimile: 011 81 3 5444 9339
Attention: Vice President

With a copy to:

Toshiba Corporation
Semiconductor Company
Legal Affairs Division
1-1 Shibaura 1-Chome
Minato-Ku, Tokyo 105-8001 Japan
Telephone: 011-81-3-3457-3452
Facsimile: 011-81-3-5444-9342
Attention: General Manager

(c) If to Flash Alliance:

Flash Alliance, Ltd.
.800 Yamanoisshikicho,
Yokkaichi, Mie, Japan
Attention: President

With a copy to:

SanDisk Corporation

1601 M Carthy Boulevard
Milpitas, CA 95035 USA
Telephone: (408) 542-0510
Facsimile: (408) 542-0640
Attention: Chief Operating Officer

And

Toshiba Corporation
Semiconductor Company
Legal Affairs Division
1-1 Shibaura 1-Chome
Minato-Ku, Tokyo 105-8001 Japan
Telephone: 0ll-81-3-3457-3452
Facsimile: 011-81-3-5444-9342
Attention: General Manager

2.14 Non Disclosure Obligations. Each party hereto agrees as follows:

(a) In this Agreement, "Confidential Information" means information disclosed in written, recorded, graphical or other tangible from which is marked as "Confidential", "Proprietary" or in some other manner to indicate its confidential nature, and/or orally or in other intangible form, identified as confidential at the time of disclosure and confirmed as confidential information in writing within thirty (30) days of its initial disclosure.

(b) For a period of [***] from the date of receipt of the Confidential Information disclosed by one Party (the "Disclosing Party") hereunder, the receiving Party (the "Receiving Party") agrees to safeguard the Confidential Information and to keep it in confidence and to use reasonable efforts, consistent with those used in the protection of its own confidential information, to prevent its disclosure to third parties, except that the Receiving Party shall not be obligated hereunder in any respect to information which:

(i) is already known to the Receiving Party at the time of its receipt from the Disclosing Party as reasonably evidenced by its written records; or

(ii) is or becomes publicly available without breach of this Agreement by the Receiving Party; or

(iii) is made available to a third party by the Disclosing Party without restriction on disclosure; or

(iv) is rightfully received by the Receiving Party from a third party without restriction and without breach of this Agreement; or

(v) is independently developed by the Receiving Party as reasonably evidenced by its written records contemporaneous with such development; or

(vi) is disclosed with the prior written consent of the Disclosing Party, provided that each recipient from the Receiving Party shall execute a confidentiality agreement prohibiting further disclosure of the Confidential

(vii) Information, under terms no less restrictive that those provided in this Agreement; or

(viii) is required to be disclosed by the order of a governmental agency or legislative body of a court of competent jurisdiction, provided that the Receiving Party shall give the Disclosing Party prompt notice of such request so that the Disclosing Party has an opportunity to defend, limit or protect such disclosure; or

(ix) is required to be disclosed by applicable securities of other laws or regulations, provided that SanDisk shall, prior to any such disclosure required by the U.S. Securities and Exchange Commission, provide Toshiba with notice which includes a copy of the proposed disclosure. Further, SanDisk shall consider i Toshiba's timely input with respect to the disclosure.

(c) Receiving Party shall use its reasonable best efforts to limit dissemination of the Disclosing Party's Confidential Information to such of its employees who have a need to know such information for the purpose for which such information was disclosed to it. Receiving Party understands that disclosure or dissemination of the Disclosing Party's Confidential Information not expressly authorized hereunder would cause irreparable injury to the Receiving Party, for which monetary damages would not be an adequate remedy and the Disclosing Party shall be entitled to equitable relief in addition to any remedies the Disclosing Party may have hereunder or at law. ·

(d) Nothing contained in this Agreement shall be construed as granting or conferring any rights, licenses or relationships by the transmission of the Confidential Information.

(e) All Confidential Information disclosed hereunder shall remain the property of the Disclosing Party. Upon request by the Disclosing Party, the Receiving Party shall return all Confidential Information, including any and all copies thereof, or certify in writing that all such Confidential Information had been destroyed.

2.15 Definitions. The definitions set forth in Article I of thisAppendix A shall apply to this Article II.

**Exhibit 10.8**

CERTAIN CONFIDENTIAL PORTIONS HAVE BEEN REDACTED FROM THIS EXHIBIT BECAUSE THEY ARE BOTH (i) NOT MATERIAL AND (ii) A TYPE THAT THE REGISTRANT TREATS AS PRIVATE OR CONFIDENTIAL. INFORMATION THAT HAS BEEN OMITTED HAS BEEN IDENTIFIED IN THIS DOCUMENT WITH A PLACEHOLDER IDENTIFIED BY THE MARK "[***]".

EXECUTION VERSION

---

**OPERATING AGREEMENT OF FLASH ALLIANCE, LTD.**

Dated as of July 7, 2006 between
TOSHIBA CORPORATION

and

SANDISK (IRELAND) LIMITED

---

**TABLE OF CONTENTS**

**TABLE OF CONTENTS**
**(continued)**

OPERATING AGREEMENT of FLASH ALLIANCE, LTD., a Japanese limited liability company *(tokurei yugen kaisha),* dated as of July 7, 2006, between TOSHIBA CORPORATION, a Japanese corporation. ("Toshiba"), and SANDISK (IRELAND) LIMITED, a company organized under the laws of the Republic of Ireland ("SanDisk").

WHEREAS, Flash Alliance, Ltd. (the "Company") is a Japanese limited liability company *(tokurei yugen kaisha);*

WHEREAS, pursuant to that certain Share Purchase Agreement, dated as of the date hereof, by and between SanDisk and Toshiba, concurrently with the execution hereof, SanDisk has acquired from Toshiba 1,497 shares in the Company ("Shares''), representing 49.9% of all issued and outstanding Shares;

WHEREAS, Toshiba holds the remaining 1,503 Shares, representing 50.1% of all issued and outstanding Shares; and

WHEREAS, SanDisk and Toshiba (each a "Shareholder") desire to enter into this Operating Agreement in order to provide, subject to the Companies Act and the Articles of Incorporation of the Company (as amended from time to time, the "Articles") for (i) the business of the Company, (ii) the conduct of the Company's affairs and (iii) the rights, powers, preferences, limitations and responsibilities of the Company's Shareholders, employees and Directors.

Accordingly, Toshiba and SanDisk agree as follows:

## 1. DEFINITIONS, RULES OF CONSTRUCTION AND DOCUMENTARY CONVENTIONS

1.1 Certain Definitions.

(a) Capitalized terms used but not defined in the main body of this Agreement shall have the respective meanings assigned to them in that certain Flash Alliance Master Agreement, dated as of the date hereof, among SanDisk, SanDisk Corporation and Toshiba (the "Master Agreement") or in Appendix A to the Master Agreement.

(b) As used herein, the term "Agreement" means this Operating Agreement together with any Exhibits, Schedules, Appendices and Attachments hereto.

1.2 Additional Definitions. The following capitalized terms used in this Agreement shall have the respective meanings assigned in the sections indicated below:

| Term | Defined in |
|---|---|
| "Appendix A" | Recitals |
| "Articles" | Recitals |
| "Bankruptcy Event" | Section 11.1(f) |
| "Claim" | Section 12.4(a) |
| "Company" | Recitals |
| "Deadlock" | Section 10.3(c) |
| "Deadlock Dissolution Notice" | Section 10.3(e) |
| "Defaulting Shareholder'' | Section 10.4 |
| "Designated Individuals'' | Section 10.3(b) |
| "Director(s)" | Section 3.5(a) |
| "Executive Vice President" | Section 5.2(a) |
| "General Meeting of Shareholders'' | Section 4.l(b) |
| "Indemnified Party" | Section 12.4(a) |
| "Indemnifying Party" | Section 12.4(a) |
| "Initiating Shareholder" | Section 10.3(e) |
| "Losses" | Section 12.l(a) |
| "Master Agreement" | Section l.l(a) |
| "Nondefaulting Shareholder" | Section 10.4 |
| "Notified Patty" | Section 11.5 |
| "Notifying Party" | Section 11.5 |
| "Permissible Assignee" | Section 9. l(c) |
| ·"Permissible Assignment Agreement" | Section 9.l(c) |
| "President" | Section 5.2(a) |
| "Responding Shareholder'' | Section 10.3(e) |
| "SanDisk Representative" | Section 5.3(a) |
| "Shares" | Recitals |
| "Shareholder" | Recitals |
| "Termination Date" | Section 11.4 |
| "Toshiba Representative" | Section 5.3(a) |
| "Y4 Operating Committee" | Section 5.3(a) |

1.3 Rules of Construction and Documentary Conventions. The rules of construction, documentary conventions and general terms and conditions set forth in Appendix A shall apply to, and are hereby incorporated in, this Agreement.

## 2. GENERAL PROVISIONS

2.1 Ownership of Shares; Capital Increase.

(a) The rights and obligations of the Shareholders shall be as set forth herein, subject to the Articles and mandatory provisions of the Companies Act.

(b) The Shareholders shall effect the capital increases in the amounts and at the times stipulated in Schedule 2.1(b).

2.2 Name. The name of the Company is "Flash Alliance Yugen Kaisha," which translates to "Flash! Alliance, Ltd." in English, and all Company business shall be conducted in that name or such other name as the Shareholders shall mutually agree.

2.3 Principal Office. The principal office of the Company shall be located in Yokkaichi, Mie, or such other place as the Shareholders shall mutually agree.

2.4 Term: Extension. The Company shall be terminated on December 31, 2021, unless extended by mutual written agreement of all of the Shareholders or earlier terminated in accordance with Section 11 (Dissolution). Any such extension shall be effective only upon the written agreement of all of the Shareholders and shall be on such terms and for such period as set forth in such agreement. The Shareholders agree to meet, no later than December 31, 2020, to discuss the possible extension of the term of the Company.

2.5 Scope of Activity. The scope of activity of the Company shall be as set forth in Section 3.1 (Purpose) and 6.7 (Capacity Sharing Arrangement) of the Master Agreement.

2.6 Powers. The Company shall have all the powers now or hereafter conferred by applicable law on limited liability companies formed under the Companies Act and may do any and all acts and things necessary, incidental or convenient to the purpose specified in Section 2.5 (Scope of Activity).

2.7 Articles of Incorporation. On the date hereof and immediately following the execution of this Agreement, the Shareholders shall hold a general meeting of the Shareholders and, among other matters agreed between them, vote their Shares to amend the Articles so that they will be in the form of Exhibit A. In the event of any conflict between this Agreement and the Articles, the Shareholders confirm their intent that the terms of this Agreement shall prevail, and on the request of either Shareholder, the Shareholders shall amend the Articles to conform with this Agreement to the extent legally possible; provided that the inability to implement such amendment shall not relieve any Shareholder from liability for any breach of its obligations hereunder.

2.8 Company Actions. The Shareholders hereby authorize the Company, and ratify (including for purposes of Section 4.1 (Matters Requiring the Approval of the Shareholders)) all action having been taken by or on behalf of the Company (including by its Shareholders and Directors) prior to the date hereof, to execute and deliver the FA Operative Documents to which it is a party, including all certificates, agreements and other documents required in connection therewith.

## 3. BUSINESS OPERATIONS

3.1 Business Dealings with the Company. Subject to Sections 4.1(a) (Matters Requiring the Approval of the Shareholders) and 5.1(d) (Matters Requiring the Approval of the Board of Directors), the Company may enter into contracts or agreements, or otherwise enter into transactions or dealings, with any Shareholder or any of their respective Affiliates, and derive and retain profits therefrom. The validity of any such contract, agreement, transaction or dealing or any payment or profit related thereto or derived therefrom shall not be affected by any relationship between the Company and any Shareholder or any of their respective Affiliates, subject to the Companies Act. The Shareholders agree that where practicable and contractually allowable (based on competitive price, availability and other material terms), the Board of Directors will consider whether to utilize any Shareholder or any of their respective Affiliates as the preferred providers of products and services that may be required in the manufacturing operations of the Company, subject to the ability of such Shareholder or Affiliate to meet the Company's manufacturing requirements on competitive terms. Unless otherwise approved by the Shareholders or otherwise expressly provided in the FA Operative Documents, all business dealings of the Company with any Shareholder or any of their respective Affiliates shall be on the most beneficial standard

commercial terms and conditions, including volume, price and credit terms, currently offered or made available to unaffiliated customers by such Shareholder or Affiliate, as the case may be, with respect to the products and services to be offered and provided to the Company.

3.2 Other Activities. The provisions- of Section 6.13 (Other Activities) of the Master Agreement are hereby incorporated herein by reference.

3.3 Personnel. The provisions of Section 6.10 (FA Management Structure and Headcount) of the Master Agreement are hereby incorporated herein by reference.

3.4 Business Plans and Related Matters.

(a) Initial and Subsequent Business Plans. The initial Business Plan of the Company, setting forth the Company's products, pricing, operating budget, capital expenditures, expense budgets, financing plans and other business activities of the Company through the [***], will be agreed upon and certified by the Board of Directors as soon as practicable after the Closing.

(i) The initial Business Plan and each successive Business Plan will, at the time such Business Plan is in effect, represent the Company's then-current forecast of the proposed operations of the Company.

(ii) An updated Business Plan complying with Section 3.4(b) (Form and Scope) in respect of each successive Fiscal Year after the [***] shall be prepared under the direction of the Chief Executive Officer of the Company and submitted to the Board of Directors for review and approval not later than the [***] preceding the commencement of such Fiscal Year.

(iii) When the proposed Business Plan in respect of a Fiscal Year is approved by the Board of Directors, it shall constitute the Business Plan of the Company for such Fiscal Year and the Company and its directors and employees shall implement such Business Plan, which shall be the basis of the Company's operations for such Fiscal Year. Upon approval, the approved Business Plan shall constitute the approved operational, financing and capital expenditure budget. The Board of Directors shall have the authority pursuant to Section 5.l(d) (Matters Requiring the Approval of the Board of Directors) to amend the most recently approved Business Plan, including the operating budget contained therein, and any Shareholder may request that the Board of Directors review the Company's operating results and prospects, as well as market conditions, and consider a proposal for amendment or review of the most recently approved Business Plan at any regularly scheduled or special meeting of the Board of Directors and upon such request, the Board of Directors shall in good faith make such review and/or consider such proposal.

(b) Form and Scope. Each Business Plan shall contain a statement of long-range strategy and short-range tactics detailing quantitative and qualitative goals for the Company and relating the attainment of those goals to the Company's manufacturing objectives, and shall include such items as planned capital expenditures, planned product development, planned product output and projected product cost, sales forecasts, total headcount, total spending and revenue and profit projections, financing plans and tax planning. No Business Plan shall be deemed to be an amendment of this Agreement. Any capital commitments made in any Business Plan for a period after the Fiscal Year to which the Business Plan applies shall be considered non-binding for purposes of any FA Operative Document.

(c) Approval. Other than the initial Business Plan (which shall be approved in accordance with Section 3.4(a)), the Board of Directors shall vote upon the proposed Business Plan, with such modifications as it may deem necessary, before [***] preceding the commencement of each Fiscal Year. Subject to Sections 10.3(c), (e) and (f) (Dispute Resolution; Deadlock), pending approval by the Board of Directors of any proposed Business Plan, the most recently approved Business Plan shall continue in effect; *provided, however,* the Board of Directors may, by unanimous vote, adopt an amended interim business plan for the Company's operations until it is able to reach agreement on the proposed Business Plan for the forthcoming year.

3.5 Standard of Care.

(a) Each Shareholder, and each director of the Company, as defined in the Companies Act (each, a "Director"), shall be entitled to rely (unless such Person has knowledge or information concerning the matter in question that makes reliance unwarranted) on information, opinions, reports or statements, including financial statements and other financial data, if prepared or presented by:

(i) one or more managers or employees of the Company who such Shareholder or Director believes in good faith to be reliable and competent in the matters presented; or

(ii) legal counsel, public accountants or other Persons as to matters that such Shareholder or Director believes to be within such Person's professional or expert competence,

(b) Each Shareholder shall also be entitled to rely upon information, opinions, reports or statements, including financial statements and other financial data, prepared or presented by the Board of Directors pursuant to the responsibilities delegated to the Board of Directors pursuant to this Agreement.

3.6 Use of Names. Except as may be expressly provided in the FA Operative Documents, nothing in this Agreement shall be construed as conferring on the Company or any Shareholder the right to use in advertising, publicity or other promotional activities any name, trade name, trademark or other designation of any other Shareholder or any of its Affiliates, including any contraction, abbreviation or simulation of any of the foregoing.

## 4. ACTIONS BY THE SHAREHOLDERS

4.1 Matters Requiring the Approval of the Shareholders.

(a) Notwithstanding any provision of the Articles to the contrary, no action shall be taken by or on behalf of the Company in connection with any of the following matters. without the prior unanimous written approval of the Shareholders:

(i) any amendment, restatement or revocation of the Articles;

(ii) any amendment to or renewal of any FA Operative Document between the Company and any Shareholder or any of their respective Affiliates;

(iii) any change in the scope of activity or strategic direction of the Company's business;

(iv) any merger, consolidation or other business combination to which the Company or any of its Subsidiaries is a party, or any other transaction to which the Company is a party resulting in a Change of Control of the Company;

(v) any sale, lease, pledge, assignment or other disposition of assets of the Company in an amount (in terms of consideration to be received by the Company) in excess of ¥5,000,000 in one transaction or a series of related transactions, other than as expressly provided for in the FA Operative Documents or as set forth in the most recently approved Business Plan;

(vi) the approval of any transaction or agreement between the Company and any Shareholder or any of their respective Affiliates (other than transactions or agreements expressly provided for or authorized by an FA Operative Document or the most recently approve Business Plan) or any amendment thereto (including the waiver of any material term thereof), other than any such transaction, agreement or amendment that contains generally available, arm's length commercial terms and is in an amount (in terms of payments to be made or the value of services or products to be provided or delivered) less than ¥5,000,000 for any single transaction or agreement or for substantially identical transactions within a 24 month period (or a waiver that does not materially adversely affect the rights and benefits of the Company), other than as set forth in the most recently approved Business Plan;

(vii) incurring Indebtedness in an amount in excess of ¥1,000,000 or an increase in aggregate Indebtedness in excess of ¥1,000,000 in any calendar quarter, other than as authorized by Section 5.1(d) (Matters Requiring the Approval of the Board of Directors);

(viii) with respect to the Company or any of its Subsidiaries, (A) the voluntary commencement of any proceeding or the voluntary filing of any petition seeking relief under Japanese or foreign bankruptcy, insolvency, receivership or similar law, (B) the consent to the institution of, or the failure to contest in a timely and appropriate manner, any involuntary proceeding or any involuntary filing of any petition of the type described in clause (A) above, (C) the application for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for the Company, or for a substantial part of its property or assets, (D) the filing of an answer admitting the material allegations of a petition filed against the Company in any such proceeding described above, (E) the consent to any order for relief issued with respect to any such proceeding described above, (F) the making of a general assignment for the benefit of creditors, (G) the admission in writing of the Company's inability, or the failure of the Company generally, to pay its debts as they become due or (H) the taking of any action for the purpose of effecting any of the foregoing;

(ix) subject to Section 9.1(a) and Appendix A, the granting of consent to the transfer of any Shares;

(x) the winding up, dissolution or liquidation of the Company or any of its Subsidiaries (other than the dissolution of the Company pursuant to and as contemplated by Section 11 (Dissolution));

(xi) the acquisition of any business, entry into any joint venture or partnership, or creation of any direct or indirect Subsidiary of the Company;

(xii) the commitment of the Company to any development project;

(xiii) the sale, license, assignment or other Transfer of any of the Company's intellectual property owned or in its possession (including any technology or

know-how, whether or not patented, any trademark, trade name or service mark, any copyright or any software or other method or process);

(xiv) any increase or decrease in the capital amount of the Company, whether by increasing the number of the Shares or otherwise;

(xv) any other matter material to the operation, staffing, business or financial condition of the Company; and

(xvi) any matter required by the Companies Act to be decided, in the case of a limited liability company *(tokurei yugen kaisha)* by its shareholders.

(b) Each Shareholder may exercise its vote by proxy; provided, that such proxy shall submit to the Company, prior to the relevant General Meeting of Shareholders, as defined in the Companies Act (the "General Meeting of Shareholders"), a power of attorney duly signed by the Shareholder and/or other document establishing its power of representation; and provided, further, that the conferment of the power of proxy for one General Meeting of Shareholders shall not be deemed to be a conferment of the power of proxy for any subsequent General Meeting of Shareholders.

(c) Notwithstanding the requirements of Section 4.1(a) (Matters Requiring the Approval of the Shareholders) relating to agreements between the Company and any Shareholder or any of their respective Affiliates, any question regarding a material default or alleged material default (including any question regarding a breach of representation or alleged breach of representation) under any FA Operative Document between the Company and any Shareholder or any of their respective Affiliates shall be subject to the dispute resolution process set forth in Sections 10.3(a) and (b) (Dispute Resolution; Deadlock).

4.2 General Meetings of Shareholders.

(a) An annual General Meeting of Shareholders shall be held within three (3) months from the date immediately following the last day of each fiscal Year of the Company. A special General Meeting of Shareholders may be held at any time and may be called by a resolution of the Board of Directors or in any other manner permitted by the Companies Act or the Articles. All General Meetings of Shareholders shall be called and held in accordance with the Articles and the Companies Act. The General Meetings of Shareholders may be held at the Company's principal office or at any other location, or, if all the Shareholders agree, and to the extent then permitted by the Companies Act, by telecommunications conferences by means of which all persons participating in the meeting can hear and be heard by each other, provided that such communications equipment continues to be operational throughout the meeting. To the extent then permitted by the Companies Act, the Shareholders may by unanimous written consent effect any resolution that could otherwise be resolved at a meeting of the Shareholders.

(b) Except as otherwise provided in this Agreement, each Shareholder shall be entitled to one vote for each Share owned by such Shareholder.

(c) The minutes of every General Meeting of Shareholders shall be kept with the· Company's records referred to in Section 5.5 (Records).

(d) The quorum necessary for any General Meeting of Shareholders shall be those Persons entitled to cast all of the votes held by the Shareholders. A quorum shall be deemed not to be present at any meeting for which notice was not properly given under the Articles or the Companies Act, unless the Shareholder as to whom such notice was not properly

given attends such meeting without protesting the lack of notice or duly executes and delivers a written waiver of notice or a written consent to the holding of such meeting.

4.3 Restrictions on Shareholders. No Shareholder may, without the prior written consent of the other Shareholder:

(a) confess any judgment against the Company;

(b) enter into any agreement on behalf of or otherwise purport to bind the other Shareholder or the Company;

(c) do any act in contravention of this Agreement;

(d) except as contemplated by Section 11 (Dissolution), dispose of the goodwill or the business of the Company; or

(e) assign the property of the Company in trust for creditors or on the assignee's promise to pay any Indebtedness of the Company.

**5. MANAGEMENT AND OPERATIONS OF COMPANY**

5.1 Meetings of the Board of Directors.

(a) General. The Shareholders agree to form a steering committee consisting of Directors nominated by each of the Shareholders. The Shareholders acknowledge and agree that while. under the Companies Act a limited liability company *(tokurei yugen kaisha)* does not have a board of directors, for convenience they will in this Agreement (and elsewhere in the FA Operative Documents) refer to such committee as the "Board of Directors'' *("yakuin kai").* Except as otherwise provided herein, as between the parties the Board of Directors is vested with complete and exclusive power to direct and control the Company and to manage the Company as provided by the Articles and this Agreement, as it may be amended from time to time. The Board of Directors shall have the power to delegate such responsibilities as it' may deem appropriate from time-to-time (including certain day-to-day responsibilities set forth in Section 5.2 (Officers; Employees) and Section 5.3 (Y4 Operating Committee)). The Shareholders shall cooperate in taking any necessary corporate steps under the Companies Act to attain the purposes of this Section 5, including without limitation, approval by the Directors and general meeting of shareholders with respect to decisions made by the Board of Directors.

(b) Members of the Board of Directors; Voting; etc.

(i) The Board of Directors of the Company shall consist of six (6) Directors, three (3) of which shall be nominated by Toshiba, and the other three (3) of which shall be nominated by SanDisk; provided that the total number of Directors of the Company may be changed by mutual agreement of the Shareholders. Each Shareholder shall vote its Shares to elect as Directors those persons nominated by the other Shareholder.

(ii) Directors shall be elected to serve until complete adjournment of the annual meeting of Shareholders for the fiscal year last to end within one (1) year after his or her assumption of the directorship, and shall be eligible for re-election.

(iii) Subject to the fiduciary duty of Directors under the Companies Act, each Director shall serve at the pleasure of the designating Shareholder and may be removed as such, with or without cause, and his successor designated, by the designating Shareholder. Each Shareholder shall have the right to designate a replacement

Director in the event of any vacancy among such Shareholder's appointees. Each Shareholder shall vote its Shares in favor of any such removal and in favor of any such replacement Director.

(iv) Each Shareholder shall bear any cost incurred by any Director nominated by it to serve on the Board of Directors, and no Director shall be entitled to compensation from the Company for serving in such capacity.

(v) Each Shareholder shall notify the other Shareholder and the Company of the name, business address and business telephone, e-mail address and facsimile numbers of each Director that such Shareholder h s nominated. Each Shareholder shall promptly notify the other Shareholder and the Company of any change in such Shareholder's nominated or of any change in any such address or number.

(vi) For purposes of any approval or action taken by the Board of Directors, each Director shall have one vote. Unless otherwise required under Japanese law, unanimous agreement of all Directors is required for valid action to be taken by the Board of Directors.

(vii) At any meeting of the Board of Directors, each Director may exercise his vote by proxy; provided, that such proxy shall submit to the Company, prior to the relevant meeting, a power of attorney duly signed by the Director and/or other document establishing its power of representation; and provided, further, that the conferment of the power of proxy for one meeting of the Board of Directors shall not be deemed to be a conferment of the power of proxy for any subsequent meeting of the Board of Directors.

(viii) The quorum necessary for any meeting of the Board i of Directors shall be those Directors entitled to cast all of the votes held by the members of the Board of Directors. A quorum shall be deemed not' to be present at any meeting for which notice was not properly given under Section 5.l(c) (Meetings, Notices, etc.), unless the Director or Directors as to whom such notice was not properly given attend such meeting without protesting the lack of notice or duly execute and deliver a written waiver of notice or a written consent to the holding of such meeting.

(c) Meetings, Notice, etc. Meetings of the Board of Directors shall be held at such location or locations as may be selected by the Board of Directors from time to time.

(i) Regular meetings of the Board of Directors shall be held on such dates and at such times as shall be determined by the Board of Directors and shall be held at least on a quarterly basis, unless otherwise agreed by the Directors.

(ii) Notice of any regular meeting or special meeting pursuant to Section 5.l(c)(iii) shall be given to each Director at least ten (10) Business Days prior to such meeting in the case of a meeting in person or at least five (5) Business Days prior to such meeting in the case of a meeting by conference telephone or similar communications equipment pursuant to Section 5.l(c)(vii), which notice shall state the purpose or purposes for which such meeting is being called and include any supporting documentation relating to any action to be taken at such meeting.

(iii) Special meetings of the Board of Directors may be called by any Director by notice given in accordance with the notice requirements set forth in Section 5.l(c)(ii); provided that the Directors appointed by the Shareholder that is not

represented by the Director calling such special meeting shall be entitled to select a convenient location for the meeting and to suggest an alternative time or times if the designated time is not convenient for them. No action may be taken and no business may be transacted at such special meeting which is not identified in such notice unless (A) such action or business is incidental to the action or business for which the special meeting is called or (B) such action or business does not materially adversely affect any Shareholder or the Company.

(iv) Each Shareholder may invite a reasonable number of observers to all meetings of the Board of Directors.

(v) The minutes of each meeting of the Board of Directors shall be delivered to all Directors within twenty (20) calendar days after such meeting. Material to be presented at a Board of Directors meeting shall be delivered to all Directors ten (10) Business Days prior to such meeting if feasible in light of the circumstances giving rise to the need for such meeting, or in any event a minimum of five (5) Business Days prior to such meeting.

(vi) The actions taken by the Board of Directors at any meeting, however called and noticed, shall be as valid as though taken at a meeting duly held after regular call and notice if (but not until), either before, at or after the meeting, each Director as to whom such meeting was improperly held duly executes and delivers a written waiver of notice or a written consent to the holding of such meeting; provided, however, any Director who is present at a meeting and does not protest the failure of notice shall be deemed to have received adequate notice thereof. A vote of the Board of Directors may be taken only (A) at a meeting of the members thereof duly called and held or (B) without a meeting by the execution by the Directors eligible to cast all the votes on the Board of Directors of a consent setting forth the action so taken, and identified as a unanimous written consent of the Directors.

(vii) Upon the consent of both Representative Directors, meetings of the Board of Directors may be held by conference telephone or similar communications equipment by means of which all Directors participating in the meeting can be heard by all other participants; provided that such communications equipment continues to be operational throughout the meeting. Any Director may elect to participate in a meeting by conference telephone or similar communications equipment upon sufficient advance notice to permit arrangements therefor to be made.

(viii) At each meeting, the Board of Directors shall consider (A) any of the items set forth in Section 5.l(d) (Matters Requiring the Approval of the Board of Directors) that may require the Board of Directors' attention, (B) any items added to the Board of Directors' agenda for discussion by any Shareholder and (C) such other matters as the Board of Directors decides to review; *provided, however,* that the Directors shall not be required to vote or take other action (other than carrying on discussions) on matters that were not placed on the meeting agenda at least five (5) Business Days in advance of the time set for the meeting unless such action or business is incidental to the action or business which was otherwise properly on the agenda and considered at such meeting.

(ix) The Board of Directors shall, from time to time, elect one of its members to preside at its meetings. The Board of Directors may establish reasonable rules and

regulations to (A) require officers to call meetings and perform other administrative duties, (B) limit the number and participation of observers, if any, and require them to observe confidentiality obligations and (C) otherwise provide for the keeping and distribution of minutes and other internal Board of Directors governance matters not inconsistent with the terms of this Agreement.

(x) Subject to the Companies Act, the Board of Directors shall have the authority to establish subcommittees and to delegate to any such subcommittee any of the Board of Directors' responsibilities; provided, however, the power of the Board of Directors to approve the matters set forth in Section 5.1(d) (Matters Requiring the Approval of the Board of Directors) may not be delegated to a subcommittee.

(d) Matters Requiring the Approval of the Board of Directors. Notwithstanding any provision of the Articles to the contrary, no action may be taken by or on behalf of the Company in connection with any of the following matters without the unanimous written approval of the Board of Directors:

(i) any sale, lease, pledge, assignment or other disposition of assets of the Company in an amount (in terms of consideration to be received by the Company) in excess of ¥1,000,000 in one transaction or a series of related transactions, other than as set forth in the most recently approved Business Plan;

(ii) the approval of any transaction or agreement between the Company and any Shareholder or any of their respective Affiliates (other than transactions or agreements expressly provided for or authorized by an FA Operative Document or the most recently approved Business Plan) or any amendment thereto (including the waiver of any material term thereof), other than any such transaction, agreement or amendment that contains generally available, arm's length commercial terms and is in an amount (in terms of payments to be made or the value of services or products to be provided or delivered) less than ¥1,000,000 for any single transaction or agreement or for substantially identical transactions within a 24 month period (or a waiver that does not materially adversely affect the rights and benefits of the Company), other than as set forth in the most recently approved Business Plan;

(iii) the purchase, lease, license or other acquisition of (A) personal property or services or (B) any list of capital equipment approved by the Shareholders, in each case in an amount (in terms of payments to be made or the value of services of products to be provided or delivered) exceeding ¥1,000,000 in any one transaction or a series of related transactions, other than as provided for in the most recently approved Business Plan;

(iv) the selection of attorneys, accountants, auditors and financial advisors;

(v) the adoption of accounting and tax policies, procedures and principles;

(vi) incurring any Indebtedness;

(vii) the hiring or termination of any employees referenced in Section 5.2(a) (Officers; Employees) who are not members of the SanDisk Team, if any;

(viii) the adoption of or changes to the forms of confidentiality, assignment or disclosure of intellectual property or employment agreements to be entered into between the Company and its employees;

(ix) the adoption of or changes to any employee benefit plan, including any incentive compensation plan;

(x) the amount and timing of any distributions;

(xi) the commencement or settlement of litigation by or against the Company;

(xii) the purchase, sale or lease (as lessor or lessee) of any real property;

(xiii) any acquisition of securities or any other ownership interest in any entity;

(xiv) the making of any public announcements by or on behalf of the Company; provided, that in any case any such public announcements must otherwise comply with the requirements of Section 5.2 (Public Announcements) of the Master Agreement, if applicable;

(xv) the entry into or amendment of any collective bargaining arrangements or the waiver of any material provision or requirement thereof;

(xvi) the approval of a proposed Business Plan, or the amendment to the most recently approved Business Plan, in each case including the operating budget contained therein;

(xvii) the incurrence of capital expenditures in excess of those provided for in the most recently approved Business Plan or the commitment of the Company to any development projects other than as provided for in the most recently approved Business Plan;

(xviii) subject to Section 5.1(c)(x), the establishment of any subcommittees or delegation of authority of the Board of Directors;

(xix) the authorization and approval of any filing with, public comments to, or negotiation/discussion with, any Governmental Authority (excluding regular operating filings and other routine administrative matters);

(xx) the approval of Unique Activities to be performed by the Company at the request of any Shareholder, in connection with which the Board of Directors shall be satisfied that such Shareholder has reached agreement with the Company as to the payment by such Shareholder of all costs incurred in connection with such Unique Activities and that adequate provision has been made by such Shareholder for the funding of any additional required capital expenditures required in conjunction with such Unique Activities;

(xxi) the decision of the Company to negotiate external sources of additional wafer fabrication capacity for NAND Flash Memory Products;

(xxii) any dispute referred to the Board of Directors by the Y4 Operating Committee pursuant to Section 5.3(b); and

(xxiii) such other matters as the Board of Directors decides, in its sole discretion, to review.

5.2 Officers; Employees.

(a) Unless otherwise mutually agreed by the Shareholders, the Directors of the Company with specific titles shall be designated as the Representative Director/President/Chief Executive Officer ("President") and the Representative Director/Executive Vice President

("Executive Vice President"). The President and Executive Vice President shall be elected by the Board of Directors and serve three successive one-year terms, with the first such set of terms ending at complete adjournment of the annual meeting of Shareholders for the fiscal year last to end within one (1) year after his or her assumption of the officership. Toshiba shall have the right to nominate the first President and SanDisk shall have the right to nominate the first Executive Vice President, and then the Shareholders will then alternate such nominating rights for each three year term for such positions. Each nominee for the President and for the Executive Vice President shall be subject to the consent of the non-nominating Shareholder, which consent shall not unreasonably be withheld. In addition to the President and Executive Vice President, the Board of Directors may appoint such other officers from time to time as it deems necessary or advisable in the conduct of the business and affairs of the Company. Any individual may hold more than one office,

(b) The President shall have the authority to retain other senior management of the Company, subject to the prior approval of the Board of Directors.

(c) The Company shall have agreements with and policies applicable to each of its officers, employees and consultants who are not members of the SanDisk Team, in forms acceptable to each Shareholder, and shall also have appropriate arrangements with its members of the SanDisk Team, in each case with respect to (i) protection of confidential information, (ii) patent and copyright assignment, (iii) invention disclosure (including improvements and advances) and assignments thereof and (iv) in respect of certain employees who are not members of the SanDisk Team, non competition.

5.3 Y4 Representatives: Y4 Operating Committee.

(a) The Company shall have an Operating Committee for Y4 Facility operations (the "Y4 Operating Committee") consisting of a senior executive designated by each of SanDisk and Toshiba (each such individual the "SanDisk Representative'' and the "Toshiba Representative," respectively) each of whom shall represent the designating Party on a day-to-day basis at the Y4 Facility. Each Shareholder shall notify the other Shareholder in advance of any replacement of its representative. If a Shareholder requests in good faith that the other Shareholder's representative be replaced with another person from the other Shareholder's organization, the other Shareholder shall consider and discuss in good faith with the requesting Shareholder such request, provided that such replacement, if any, shall be determined solely by such other Shareholder. [***]

(b) The Y4 Operating Committee shall work together and endeavor to make the Y4 Facility the most advanced and competitive memory fabrication facility in the world. The Y4 Operating Committee shall have the authority to determine all matters concerning the day-to-day operations of the Company and the Y4 Facility [***] subject to those matters reserved herein to the Board of Directors or the Shareholders as well as to the requirements of this Agreement, the Articles and the Companies Act The Y4 Operating Committee shall communicate on a day-to-day basis with respect to the status of Y4 Facility operations and any other issues that may arise, and shall meet in person no less than two (2) times per week, or such other times and frequency as may be agreed upon by all members of such committee. If the members of the Y4 Operating Committee are unable to agree on any issue after thirty (30) days, they shall submit such matter together with their respective recommendations to the Board of Directors, which shall endeavor to immediately resolve the issue. If the Board of Directors is unable to agree on any such issue after ten (10) days, such issue shall be submitted to the Management Committee for final resolution.

(c) The Y4 Operating Committee shall hold a monthly review meeting in English at the Yokkaichi Facility on [***] of each calendar month, unless otherwise agreed by the Shareholders or the Y4 Operating Committee. The Y4 Operating Committee shall prepare and distribute to each Shareholder (at least three Business Days in advance of the monthly review meetings) monthly reports in English with respect to the engineering activities, operations and financial affairs of the Company and the Y4 Facility.

(d) Upon the request of either Shareholder, the Y4 Operating Committee shall provide the Shareholders with (i) any management or operation reports of the Company related to the Y4 Facility (which neither Shareholder shall have an obligation to translate) and (ii) simultaneously in Japanese and English, those management and operating reports identified on Schedule 5.3 as mutually agreed upon from time to time by the Parties. Upon reasonable request from SanDisk, Toshiba employees shall explain such reports to SanDisk's employees and respond to questions from SanDisk's employees; provided, however that SanDisk acknowledges and agrees that Toshiba shall not be responsible for SanDisk's failure to understand any such reports.

5.4 Insurance. The Company shall maintain insurance against such liabilities and other risks associated with the conduct by the Company of its business and in such amounts and against such risks as agreed by the Shareholders, and in any event as is generally maintained by companies engaged in a business similar to that of the Company.

5.5 Records. The Company shall maintain the following records at its principal office:

(a) a current list of the full name set forth in alphabetical order and last known business address of each Shareholder and Director;

(b) a copy of the Articles, and all articles of amendment thereto;

(c) a copy of this Agreement and all amendments hereto;

(d) a copy of all financial statements of the Company for the three most recent Fiscal Years;

(e) a copy of the Company's income tax or information returns and reports, if any, for the three most recent years;

(f) a copy of all indentures, loan agreements, lease agreements, guarantees, security , agreements, promissory notes, licensing or other intellectual property agreements, agreements that relate to the payment or receipt by the Company of amounts in excess of ¥5,000,000 or that are not terminable by the Company upon ninety (90) days' notice, documents, if any, evidencing employee compensation arrangements, employee pension or other benefit arrangements, and similar documents and instruments executed and delivered by the Company;

(g) a list of all contributions made to the Company by the Shareholders; and a record of all distributions by the Company to each Shareholder.

The Shareholders and/or the Directors and/or their respective designees (which shall be limited to its employees or professional advisers subject to appropriate confidentiality obligations) shall have reasonable access to the records during normal business hours upon reasonable request. Copies of records shall be made available and delivered to the Shareholders and/or the Directors promptly after reasonable request for same, *provided* the requesting party pays for copy and delivery charges.

## 6. CAPITAL CONTRIBUTIONS; DISTRIBUTIONS

6.1 Capital Contributions.

(a) The Shareholders shall be deemed to have made Capital Contributions to the Company in the amounts set forth opposite their respective names on Schedule 6.1.

(b) Except as provided in Section 2.1(b), no Shareholder shall be obligated to make any additional Capital Contributions to the Company, unless otherwise mutually agreed upon by the Shareholders in writing, in which case such additional Capital Contributions shall be made in proportion to the Shareholders' respective Percentages as of the date of such additional Capital Contribution.

6.2 Distributions.

(a) General. Notwithstanding any provision of the Articles to the contrary, and subject to Section 11.8 (Liquidation Proceeds), unless otherwise agreed by the Shareholders, no distributions of cash (or in the case of Section 11.8, other property) shall be made by the Company to the Shareholders for a period of three (3) years from the date of this Agreement, and thereafter all distributions of cash (or, in the case of Section 11.8, other property) by the Company to the Shareholders shall be made in Japanese Yen at the times and in the amounts determined by the Board of Directors. Except as provided in Section 11.8, each distribution to the Shareholders shall be made on a pro rata basis based upon the respective Percentages of the Shareholders as of the date of such distribution.

(b) Distribution for Taxes. Notwithstanding Section 6.2(a), subject to the Companies Act and other applicable law, the Company shall make, in respect of each Fiscal Year in which SanDisk must recognize taxable income of the Company in SanDisk's US federal, state and local income and franchise tax returns, a distribution to SanDisk to the extent necessary to meet SanDisk's aggregate US tax liability with respect to such taxable income, with such liability calculated at the highest US, state and local corporate tax rates as may be then applicable to SanDisk. SanDisk will make a request upon the Company for such distribution as soon as is practicable after the filing of SanDisk Corporation's applicable US tax returns. Following receipt of such request, the Company shall make the requested distribution on the next date on which the Company is permitted to make distributions pursuant to the Companies Act. Simultaneously therewith, the Company shall also make a distribution to Toshiba in an amount equal to the amount of the per Share distribution made to SanDisk pursuant to this Section 6.2(b). Any such prior distributions shall be taken into account upon any purchase and sale of Shares under Section 10 (Certain Agreements of the Shareholders) or dissolution of the Company under Section 11 (Dissolution) hereof. If necessary, the Board of Directors shall consider capital reductions to the extent that any such capital reduction will not adversely affect the Y4 Facility's operations.

6.3 No Interest. No interest shall be payable to the Shareholders on their Capital Contributions or otherwise in respect of the capital of the Company.

6.4 Return of Capital Contributions. Except as expressly provided herein, no Shareholder shall be entitled to the return of any part of such Shareholder's Capital Contributions.

## 7. ADDITIONAL CONTRIBUTIONS

No Shareholder shall be obligated under this Agreement or the Articles to contribute any additional amounts to the Company or otherwise to be liable for the debts and obligations of the Company.

## 8. ACCOUNTING AND TAXATION

8.1 Financial Accounting Conventions.

(a) The Company shall adopt and follow Japanese GAAP.

(b) Notwithstanding anything to the contrary in Appendix A, the first Fiscal Year shall begin on the date of formation of the Company and end on March 31, 2007.

(c) The Company shall in principle (but subject to applicable Law) utilize a five-year straight line depreciation method for manufacturing equipment.

8.2 Maintenance of Books of Account. The Company shall keep or cause to be kept at its principal office, or such other location as the Board of Directors shall designate, full and complete books of account. The books of account shall be maintained in a manner that provides sufficient assurance that transactions of the Company are recorded so as to comply with all applicable laws and to permit (a) the preparation of the Company's consolidated financial statements in accordance with Japanese GAAP and (b) the Shareholders to account for their interest in the Company in accordance with Japanese GAAP.

8.3 Financial Statements.

(a) Annual Statements. As soon as practicable following the end of each Fiscal Year (and in any event not later thanfifty-two (52) days after the end of such Fiscal Year), the Company shall prepare and deliver to each Shareholder and each Director, audited consolidated and consolidating balance sheets of the Company as of the end of such Fiscal Year and the related audited consolidated and consolidating statements of operations, the Shareholders' capital accounts and cash flows of the Company for such Fiscal Year (or similar statements if such statements change as the result of changes in Japanese GAAP), together with appropriate notes to such consolidated financial statements, and in each case setting forth in comparative form the corresponding figures for the preceding Fiscal Year and for the budget for the Fiscal Year just completed. Such financial statements shall be accompanied by (i) the report of the Accountants to the effect that such financial statements (except for the comparison to the budget) have been prepared in conformity with Japanese GAAP (except as otherwise specified in such report) and that the audit of such financial statements has been performed in accordance with Japanese GAAP and (ii) a report as to all transactions (including the nature, type and amount) between the Company and each Shareholder and their respective Affiliates. The Company shall conduct its business such that the report of the Accountants shall not contain any qualifications as to the scope of the audit or with respect to the Company's compliance with Japanese GAAP, except for changes in methods of accounting in which such Accountants concur and except that the foregoing shall not be deemed to obligate any Shareholder to contribute any capital to the Company. The Company shall also provide SanDisk with an English version of such report, which shall contain sufficient data to enable SanDisk to prepare a reconciliation of the Company's financial reports from Japanese GAAP to United States GAAP. The Company shall deliver to SanDisk, at SanDisk's request and expense, any other financial information related to the Company that is reasonably requested by SanDisk for US Federal, state, and local income or franchise tax purposes.

(b) Quarterly Statements.

(i) As soon as practicable following the end of each Fiscal Quarter (and in any event not later than ten (10) days after the end of such Fiscal Quarter), the Company shall prepare and deliver to each Shareholder and each Director unaudited consolidated and consolidating balance sheets of the Company as of the. end of

such Fiscal Quarter and the related unaudited consolidated and consolidating statements of operations, the Shareholders' capital accounts and cash flows of the Company for such Fiscal Quarter and for the Fiscal Year to date (or similar statements if such statements change as the result of changes in Japanese GAAP), in each case setting forth in comparative form the corresponding figures for the preceding Fiscal Quarter, for the corresponding Fiscal Quarter of the preceding Fiscal Year and for the budget for the Fiscal Quarter just completed and for the Fiscal Year to date.

(ii) The financial statements for such Fiscal Quarter shall be accompanied by a certificate of the principal accounting or financial officer of the Company to the effect that such financial statements have been prepared under such officer's supervision and that, although such financial statements do not contain the footnotes and other disclosures required to be presented in interim financial statements by Japanese GAAP, such financial statements, in such officer's judgment, fairly present the financial condition and results of operations of the Company as of the date and for the periods indicated, subject to normal recurring year-end audit adjustments. The Company shall deliver to SanDisk, at SanDisk's request and expense, any other financial information related to the Company that is reasonably requested by SanDisk for US financial reporting or Federal, state, and local income or franchise tax purposes.

(c) The Company shall obtain a professional tax audit from a qualified accountant complying with Japanese GAAP by May 22 of each year (including an English translation thereof). As part of its engagement of its auditors, the Company shall cause its auditors to provide such English language financial statements, audit reports, US GAAP reconciliations and consents as are required (or reasonably requested by SanDisk) in connection with SanDisk Corporation's filings with the United States Securities and Exchange Commission; *provided* that SanDisk shall pay for all the costs relating to such auditors' work. SanDisk may also request that the Company provide SanDisk with "comfort letters'' in the manner customary for Japanese auditors in connection with public offerings in the United States, at SanDisk's own expense.

(d) Monthly Reports. Each month, the Company shall prepare and deliver to each Shareholder and each Director the reports and other information set forth on Schedule 8.3. Such reports and other information will become available at the respective times set forth on Schedule 8.3.

(e) Business Plan. Subject to Sections 10.3(c), (e) and (f), and provided that the most recently approved Business Plan does not provide for the next Fiscal Year, the Company shall, not later than [***] prior to the commencement of each Fiscal Year, deliver to each Shareholder a copy of the Business Plan, including the Company's monthly budgets, for the upcoming Fiscal Year, as approved by the Board of Directors.

(f) Legal Proceedings. The Company shall promptly inform each Shareholder and each Director with regard to litigation, governmental investigations, material government notices and threatened legal proceedings.

8.4 Other Reports and Inspection. The Company shall furnish promptly to each Shareholder such other reports, financial data and information relating to the Company as such Shareholder may reasonably request and shall require the Accountants to provide to each Shareholder copies of any document related to the Company in the possession of the Accountants as such Shareholder may reasonably request. The Company shall, upon reasonable prior notice and during normal business

hours, make available to each Shareholder and their respective professional advisors, from time to time as requested by such Shareholder, all properties, assets, books of account, corporate records, contracts and documentation, if any, relating to employee benefits of the Company, and any other material requested by such Shareholder for inspection and, in the case of books of account, corporate records, contracts and documentation, if any, relating to employee benefits, copying, and shall use reasonable efforts to make available to such Shareholder the Accountants and the key employees of the Company for interviews to verify any information furnished or to enable such Shareholder otherwise to review the Company and its operations. The Company may condition such availability upon the entering into of reasonable and appropriate confidentiality agreements. Notwithstanding the foregoing, the Company will not make available to any Shareholder information provided to the Company on a confidential basis by any other Shareholder without the consent of such other Shareholder.

8.5 Deposit of Funds. All funds of the Company and its Subsidiaries not otherwise employed shall be deposited from time to time to its credit in such banks, trust companies or other depositories, or invested in such other investments held as cash equivalents, as the Board of Directors shall authorize. The funds of the Company and its Subsidiaries shall not be commingled with the funds of any Shareholder or any of their respective Affiliates.

## 9. SHARES OF CONTRIBUTION; DISPOSITION OF SHARES

9.1 Restrictions on Transfer of Shares.

(a) No Shareholder (nor any permitted transferees of any Shareholder) may Transfer any interest in the Company, including any of such Shareholder's Shares, to any Person, except by a Change of Control; provided, that any Shareholder may Transfer all of its interest in the Company, including all of its Shares, subject to the Companies Act, to any one (1) of their respective Affiliates, with the prior written consent of every other Shareholder, which consent shall not be unreasonably withheld; and provided, further, that (i) the transferee agrees in writing to become a party hereto and assumes all the obligations of the transferring Shareholder hereunder and under each other FA Operative Document to which the transferring Shareholder is a party (except to the extent the express terms of the Patent Indemnification Agreement condition its transferability on the consent of the non-transferring Shareholder and such Shareholder has not consented to Transfer thereof), and (ii) immediately after giving effect to such Transfer, no Event of Default or an event or condition that with the giving of notice or lapse of time or both would constitute an Event of Default with respect to the transferee Shareholder shall exist. Following the effectiveness of any such Transfer, the transferring Shareholder shall no longer have the transferred right, title or interest in the Company or any rights under this Agreement and the transferee shall be substituted as a Shareholder for all purposes of this Agreement. The transferring Shareholder shall, however, remain responsible for all obligations under this Agreement and the other FA Operative Documents for any transferee which is an Affiliate of the transferring Shareholder and shall not be released or discharged from any existing liability or obligation to any Person. Any subsequent Transfer of an ownership interest in such Affiliate by the transferring Shareholder shall be deemed to constitute a Transfer of Shares requiring compliance with this Section 9.1.

(b) If a Shareholder Transfers its entire interest in the Company pursuant to Section 9.1(a), the transferee shall succeed to all the rights and obligations of such Shareholder under this Agreement.

(c) Any Shareholder may agree to pay amounts equal to distributions received by such Shareholder from the Company to a third party in its sole discretion pursuant to a

Permissible Assignment Agreement. "Permissible Assignment Agreement" means an agreement between a Shareholder and another Person (the "Permissible Assignee") which:

(i) provides for the grant by such Shareholder to the Permissible Assignee of the right to receive amounts equal to distributions received by such Shareholder from the Company pursuant to Section 6 or 11 of this Agreement, but does not give the Permissible Assignee any Shares or any other rights whatsoever with respect to the Company;

(ii) provides that under no circumstances (including any Bankruptcy Event in respect of such Shareholder) may any claim be made by the Permissible Assignee against the Company or any such Shareholder or any Affiliate of any such Shareholder or any of their respective assets, under or in connection with such agreement, even if such Shareholder defaults in performance thereunder;

(iii) provides that the rights of the Permissible Assignee under such agreement may not be transferred without the prior written consent of each Shareholder and that any such Transfer without such consents shall be null and void;

(iv) may not be amended, nor any provision thereof waived, in a manner that would cause it not to be a Permissible Assignment Agreement, without the prior written consent of the non-assigning Shareholder;

(v) provides that the assigning Shareholder is authorized to Transfer its entire interest in the Company pursuant to Section 9.1(a) free and clear of any interest of the Permissible Assignee and without any liability on the part of the transferee thereunder to the Permissible Assignee; and

(vi) contains an express acknowledgment by the Permissible Assignee, for the benefit of thenon-assigning Shareholder and the Company, to the effect of clauses (i)-(v) above.

(d) The assigning Shareholder shall ensure that any payment due to a Permissible Assignee pursuant to or in connection with a Permissible Assignment Agreement shall be made in full to such Permissible Assignee when due.

9.2 Admission of New Shareholders. No Person shall have the right to become a Shareholder unless and until all the following conditions are satisfied:

(a) except in the case of a Transfer of all of a Shareholder's Shares to an Affiliate of such Shareholder in accordance with Section 9.l(a) (Restrictions on Transfer of Shares), such Person, the terms and conditions of such Person's admission as a Shareholder and the rights appurtenant to the Shares to be issued or Transferred, as applicable, to such Person are approved by all existing Shareholders and, if applicable, the creation of any new class or group of Shares in the Company having different rights, powers and duties is reflected in amendments to the Articles and to this Agreement;

(b) such Person executes a counterpart of this Agreement and such other instrument or instruments as the Company and a non-transferring Shareholder may reasonably deem appropriate to affirm that the representations and warranties contained in the Master Agreement are true and correct with respect to such Person and that such Person agrees to be bound as a Shareholder by this Agreement and all of the covenants and agreements herein; and

(c) if requested by the Company, an opinion of counsel, a purchaser representation letter or other appropriate documentation is furnished to the Company establishing that the issuance or Transfer, as applicable, of Shares to the new Shareholder will comply with the Companies Act.

Except to the extent required by law, the Company shall have no obligation to recognize or to furnish information or make distributions to any new Shareholder or any transferee of a Shareholder who does not become a Shareholder in accordance with Section *9*.1 (Restrictions on Transfer of Shares) or this Section *9*.2.

9.3 Withdrawal Prohibited. Except as otherwise expressly permitted by this Agreement, (i) no Shareholder may withdraw from the Company and (ii) no Shareholder may effect or cause a termination or dissolution of the Company without the prior written consent of all other Shareholders (which consent may be withheld in such other Shareholder's sole discretion).

9.4 Purchase of Additional Interest. At any time during the term of this Agreement and so long as SanDisk is a Shareholder, SanDisk shall have the right to purchase from Toshiba that number of Shares which is equal to 0.1% of the total number of Shares then issued and outstanding in the event that (i) Toshiba's patent umbrella does not adequately protect the Company or (ii) dissolution of the Company is commenced pursuant to Section 11 hereof. The purchase price of such Shares shall equal [***] as of the date of such transaction.

## 10. CERTAIN AGREEMENTS OF THE SHAREHOLDERS

10.1 Truces and Charges; Governmental Rules. Each Shareholder shall (a) promptly pay all applicable Taxes and other governmental charges imposed against such Shareholder except to the extent any such Taxes or other charges are being contested in good faith by appropriate proceedings and (b) comply with all applicable Governmental Rules, in each case except to the extent that nonpayment or noncompliance will not have a material adverse effect on the Company.

10.2 Further Assurances. Following the Closing, each Shareholder shall, and shall cause its Affiliates and the Company to take all reasonable actions necessary or appropriate to, effectuate the transactions contemplated by this Agreement, and to obtain (and cooperate with the other Shareholder in obtaining) any Governmental Action or third party consent required to be obtained or made by it in connection with the transactions contemplated by this Agreement; provided, that no Burdensome Condition shall be made to exist with respect to such Shareholder or any of its Affiliates in connection therewith.

10.3 Dispute Resolution; Deadlock.

(a) The Shareholders shall endeavor to settle, through their respective designees to the Board of Directors, any disputes· which may arise between them, including without limitation, failure by the Board of Directors to reach agreement (or failure to take a vote) on any matter requiring Directors approval pursuant to Section 5.1(d) (Matters Requiring the Approval of the Board of Directors). The Shareholders shall attempt to resolve the issue or proposed action in question, to the extent practicable, in a manner consistent with the Company's most recently approved Business Plan, unless the issue in dispute is the adoption of a new Business Plan, in which case the provisions of Sections 10.3(c), (e) and (f) shall apply.

(b) If (i) the Shareholders are unable to agree on any matter requiring the approval of the Shareholders pursuant to Section 4.l(a) (Matters Requiring the Approval of the Shareholders), (ii) the Board of Directors is unable to agree on any matter requiring the approval of the Board of Directors pursuant to Section *5*.1 (d) (Matters Requiring the

Approval of the Board of Directors) (other than the approval of any Business Plan, with respect to which the failure to agree shall be governed by Sections 10.3(c), (e) and (f)) or (iii) the Shareholders or the Board of Directors are otherwise unable to resolve a dispute on any other item (other than the approval of any Business Plan, with respect to which the failure to agree shall be governed by Sections 10.3(c), (e) and (f)), then any Shareholder may bring the matter to the attention of the General Manager Memory Division, Semiconductor Company of Toshiba, and the Chief Operating Officer of SanDisk (the "Designated Individuals"), who will attempt to find a resolution. If the matter has not been resolved within thirty (30) days of referral to the Designated Individuals, the matter will be referred to the Management Committee for a final decision, which decision will be final and binding on the Company and the Shareholders with respect to any matter specified in Sections 10.3(b)(i) and (ii) above. If an agreement is reached by the Management Committee, the mutually agreed resolution shall be implemented by the Company. Should no solution be agreed upon within thirty (30) days after submission of the matter to the Management Committee with respect to the matters specified in (iii) above, such matter shall be submitted to arbitration in accordance with Section 2.5 of the Appendix A·. Should no solution be agreed upon within sixty (60) days after submission of the matter to the Management Committee with respect to the matters specified in Sections 10.3(b)(i) and (ii) above, then the action for which approval was requested will not occur, unless it is already included in the most recently approved Business Plan.

(c) Except as provided below, if by [***] of any calendar year during the term of this Agreement, commencing [***], the Board of Directors and the Shareholders have not approved and agreed upon a Business Plan for the upcoming Fiscal Year, then any Shareholder may refer the dispute to the Management Committee for a decision, which decision shall be final and binding on the Company and the Shareholders. If a decision is reached by agreement of the Management Committee, such decision shall be implemented by the Company. Should no decision be reached within ninety (90) days after submission of the matter to the Management Committee, and unless the Shareholders have agreed to continue operations under the most recently approved Business Plan until a new Business Plan is approved, then within ten (10) Business Days thereafter any Shareholder may elect by written notice to all other Shareholders to declare a deadlock ("Deadlock"), except with respect to any issue where the Master Agreement expressly prohibits declaration of a Deadlock.

(d) If demand for both Shareholder's NAND Flash Memory Products is significantly below expectations, they shall address the matter as contemplated in Section 6.7(b)(ii) of the Master Agreement.

(e) Within thirty (30) days after a Shareholder has notified :the other Shareholder of a Deadlock, either Shareholder (the"Initiating Shareholder") may submit to the other Shareholder (the "Responding Shareholder") a written irrevocable notice (the "Deadlock Dissolution Notice") to the effect that the Initiating Shareholder offers to sell to the Responding Shareholder or its designee the Initiating Shareholder's Shares for a cash payment, by wire transfer of immediately available Japanese Yen, in an amount equal to the [***] as of the date of such transaction multiplied by the Initiating Shareholder's Percentage as of such date.

(f) The Responding Shareholder may accept such offer by written response to the Initiating Shareholder within forty"-five (45) days of receipt of the Deadlock Dissolution Notice indicating that the Responding Shareholder elects to purchase the Shares of the Initiating Shareholder. If the Responding Shareholder declines to exercise its right to purchase the Shares of the Initiating Shareholder pursuant to this Section 10.3 or fails to respond to

such Deadlock Dissolution Notice (or if both Shareholders submit Deadlock Dissolution Notices), the Company shall be dissolved pursuant to Section 11.1(d) (Events of Dissolution), at the end of a one-year period for the wind-down of operations commencing with the receipt of the Deadlock Dissolution Notice by the Responding Shareholder. During such one-year period, the Company's business shall be conducted in accordance with the most recently approved Business Plan except that additional capital expenditures will not be made except as required for line maintenance.

10.4 Upon Event of Default: Termination on Breach. If there has occurred and is continuing an Event of Default with respect to a Shareholder (upon: such occurrence, such Shareholder is referred to herein as the "Defaulting Shareholder''), in addition to all other remedies available to the Company or the other Shareholder (the "Nondefaulting Shareholder''), whether under any of the FA Operative Documents or other agreements or by law, the Nondefaulting Shareholder shall have the option to take one or more of the following actions:

(a) give written notice to the Defaulting Shareholder of its intention to acquire all of the Shares of the Defaulting Shareholder for a cash payment, by wire transfer of immediately available Japanese Yen, in an amount equal to the [***] as of the date of such transaction multiplied by the Defaulting Shareholder's Percentage as of such date; and/or

(b) elect to dissolve the Company pursuant to Section 11.3 (Dissolution Upon Event of Default), in which case the affairs of the Company shall be wound up and the Company shall be dissolved in accordance with Section 11 (Dissolution).

10.5 Mechanics of Sale.

(a) The closing of any purchase and sale of Shares pursuant to Section 10.3 (Dispute Resolution; Deadlock), 10.4 (Remedies Upon Event of Default; Termination on Breach), 11.4 (Dissolution by Unilateral Option) or 11.5 (Dissolution Upon Notice) shall take place not later than the [***] Business Day after notice of the purchase is given, as the case may be, except that such period shall be extended as necessary in order to comply with any Governmental Rule. The purchasing Shareholder shall pay for the Shares being acquired by wire transfer of immediately available funds in Japanese Yen to an account specified by the selling Shareholder. The selling Shareholder shall execute all documents necessary to effect the conveyance of its Shares, free and clear of all Liens, to the purchasing Shareholder. In addition, the Shareholders shall enter into an indemnity and release agreement, in a form reasonably satisfactory to each Shareholder, indemnifying and holding harmless the selling Shareholder and its Affiliates for liabilities or claims made after the date of the purchase and sale under any guarantees or other agreements supporting the obligations of the Company which may have been extended by the selling Shareholder or any of its Affiliates. The Shareholders shall also reach agreement on a reasonable transition plan of up to six months in connection with services provided to the Company by members of the SanDisk Team assigned to the Company by the Selling Shareholder.

(b) If a Shareholder elects to acquire all of the Shares of the other Shareholder pursuant to Section 10.3 (Dispute Resolution; Deadlock), 10.4 (Remedies Upon Event of Default; Termination on Breach), 11.4 (Dissolution by Unilateral Option) or 11.5 (Dissolution Upon Notice), such Shareholder shall be obligated to take all actions required of it to consummate the applicable purchase and sale on the date determined pursuant to this Section 10.5 (Mechanics of Sale). If any Shareholder has the right to purchase the Shares of any other Shareholder, such Shareholder shall have the right to assign such right to purchase to any other Person.

**11. DISSOLUTION**

11.1 Event of Dissolution. The Company shall be dissolved and shall commence winding up its affairs upon the first to occur of the following. The Shareholders shall cooperate in taking any necessary corporate steps under the Companies Act to attain the purpose of this Section 11:

(a) the expiration of the term of the Company pursuant to Section 2.4 (Term; Extension);

(b) the agreement of the Shareholders to dissolve the Company pursuant to Section 11.2 (Dissolution by Agreement);

(c) the election of the Nondefaulting Shareholder pursuant to Section 11.3 (Dissolution Upon Event of Default);

(d) the first anniversary of the receipt by either Shareholder of a Deadlock Dissolution Notice submitted with respect to a failure of the Shareholders to approve and agree upon a Business Plan pursuant to Section 10.3 (Dispute Resolution; Deadlock) if either (i) the Responding Shareholder declines to exercise its right to purchase the Shares of the Initiating Shareholder or fails to respond to such Deadlock Dissolution Notice, or (ii) both Shareholders submit Deadlock Dissolution Notices with respect to such failure to agree;

(e) the election by Toshiba to dissolve the Company pursuant to Section 11.4 (Dissolution by Unilateral Option);

(f) the bankruptcy, death, dissolution, expulsion or incapacity of a Shareholder or the occurrence of any other event which terminates the membership of a Shareholder in the Company ("Bankruptcy Event"); or

(g) the election of the Notifying Party to dissolve the Company pursuant to Section 11.5 (Dissolution Upon Notice) unless the Notified Party elects to purchase the Shares of the Notifying Party pursuant to Section 11.5 (Dissolution Upon Notice).

11.2 Dissolution by Agreement. The Company may be dissolved at any time by the unanimous written consent of the Shareholders.

11.3 Dissolution Upon Event of Default. During the occurrence and continuation of an Event of Default (other than a Bankruptcy Event) with respect to a Shareholder, the Nondefaulting Shareholder may elect, by written notice to the Defaulting Shareholder, to dissolve the Company, in which event the Company shall be dissolved and the Shareholders shall take all actions necessary to wind up the affairs of the Company in accordance with Section 11.7 (Winding Up). This Section 11.3 shall not be construed to limit the rights of the Nondefaulting Shareholder under Section 10.4 (Remedies Upon Event of Default) or to seek damages from the Defaulting Shareholder or any other Person for the breach of its obligations under any of the FA Operative Documents.

11.4 Dissolution by Unilateral Option. At any time between April 1, 2009 and March 31, 2010, SanDisk may, by giving written notice to Toshiba, elect to withdraw from the Company, in which case Toshiba must, directly or through any of its Affiliates, either (i) purchase from SanDisk all of SanDisk's Shares within one (1) year following SanDisk's notice to withdraw for a cash payment, by wire transfer of immediately available Japanese Yen, in an amount equal to the [***] as of the FA Termination Date multiplied by SanDisk's Percentage as of the Termination Date (the estimated [***] as of the Termination Date to be agreed by the Shareholders in good faith and any necessary true up payments promptly after the actual [***] as of the Termination Date is determined), or (ii) cooperate with SanDisk to dissolve the Company within one (1) year of the notice of withdrawal and to wind-up its affairs in accordance with Section 11.7 (Winding Up) (the

date as of which any Shareholder, itself or together with its Affiliates, holds all Shares of the Company or the date the Company is dissolved in accordance with applicable Law, the "Termination Date," but in no event shall the Termination Date occur later than one (1) year following SanDisk's notice to withdraw).

11.5 Dissolution upon Notice. At any time between April 1, 2013 and March 31, 2014, any Shareholder (the "Notifying Party") may elect, by giving notice to all other Shareholders (the ''Notified Party"), to dissolve the Company, in which event the Company will be dissolved and, within the one (1) year period following the giving of such notice, the Shareholders shall mutually agree upon a plan for winding up the affairs of the Company in accordance with Section 11.7 (Winding Up),·unless the Notified Party, directly or through any of its Affiliates, elects in writing within three (3) months of receiving such notice, to purchase from the Notifying Party all of its Shares for a cash payment, by wire transfer of immediately available Japanese Yen, in an amount equal to the [***] as of the date of such transaction multiplied by the Notifying Patty's Percentage as of such date.

11.6 Financing Defaults.

(a) If pursuant to Section 6.5(c)(i) of the Master Agreement either Party, as the Investing Party, exercises its election to terminate this Agreement, the Shareholders shall cooperate in good faith to effect the purchase by Toshiba (or its designated Affiliate) and sale by SanDisk of all of SanDisk's Shares, at a price equal to SanDisk's percentage share of the issued and outstanding Shares in the Company multiplied by the [***] as of the date such transaction is closed (with estimated [***] as agreed by the Shareholders in good faith paid on the closing of such transaction and any true-up payment made by the appropriate Party promptly after determination of the actual [***] as of the closing of such purchase and sale transaction).

(b) [***]

(c) If pursuant to Section 6.12(d)(ii) of the Master Agreement either Party, as the Non Defaulting Party, exercises its election to terminate this Agreement, the Non Defaulting Party shall have the same rights as provided in Section 1l.6(a) and the Shareholders shall cooperate in good faith to effect the purchase by the Non Defaulting Party (or its designated Affiliate) and sale by the Defaulting Patty of all of the Defaulting Party's Shares.

11.7 Winding Up.

(a) Upon the dissolution of the Company, the Shareholders shall proceed as promptly as practicable to (i) wind up the affairs of the Company and satisfy the Company's liabilities, (ii) dispose of the Company's assets as quickly as possible consistent with obtaining the :full fair market value of the Company, preferably, to the extent it is commercially practicable to do so, by selling the Company as a going concern (provided, however, no Shareholder shall be under any obligation to extend the terms of any FA Operative Document or to offer to enter into any other agreement with a prospective purchaser of the Company for the purchase or sale of goods or services or the use of facilities or any other business arrangement), and (iii) distribute any net proceeds to the Shareholders in accordance with Section 11.8 hereof and applicable Law. In connection with a sale of the Company's assets under clause (ii), each Shareholder or any of their respective Affiliates shall have a right of first offer to acquire the Company's tangible personal property in the liquidation process and may also acquire such property through participation at auction except in the event of a dissolution pursuant to Section 11.3 (Dissolution Upon Event of Default), in which event the Defaulting Shareholder and its Affiliates shall not have such

right of first offer to acquire the Company's tangible personal property. Each of the Shareholders shall be furnished with a statement setting forth the assets and liabilities of the Company as of the· date of the complete liquidation of the Company. The Accountants shall review the final accounting and shall render their opinion with respect thereto.

(b) During the period of winding-up, the Company shall continue to operate and all the provisions of this Agreement shall remain in effect, except as otherwise expressly provided· herein. The Company shall notify all known creditors and claimants of the dissolution of the Company in accordance with applicable law.

11.8 Liquidation Proceeds.

(a) In the case of the dissolution and liquidation of the Company, the Company may make a distribution in kind. Any cash and all distributions in kind that are to be distributed shall be distributed to the Shareholders, on a pro rata basis based upon the respective Percentages of the Shareholders as of the date of such distribution.

(b) Unless otherwise agreed by the Shareholders, and to the extent permitted under any agreements with third parties, all assets to be distributed upon the dissolution and liquidation of the Company shall be distributed as follows:

(i) first, to creditors, including Shareholders who are creditors, to the extent permitted by law, in satisfaction of liabilities of the Company, other than for distributions to Shareholders pursuant to Section 6.2 (Distributions); and

(ii) second, to the Shareholders on a pro rata basis based upon the respective Percentages of the Shareholders as of the date of such distribution.

For purposes of this Section 11.8, instruments of transfer and other documents reasonably requested by the distributee shall be executed by the Company or the other Shareholder, or both.

(c) Any distribution made pursuant to this Section 11.8 shall be made as soon as practicable under and in accordance with applicable Japanese law.

## 12. INDEMNIFICATION AND INSURANCE

12.1 Indemnification.

(a) Subject to Section 12.1(c), the Company shall indemnify each Person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (including an action by or in the right of a Shareholder or the Company), by reason of the fact that such Person is or was a Shareholder or is or was or has agreed to become a Director or is or was serving or has agreed to serve at the request of the Company as a director, officer, employee or agent of the Company or of another partnership, corporation, joint venture, trust or other enterprise, arising from any action alleged to have been taken in any such capacity or by reason of any liability or obligation of the Company, against any and all losses, damages, liabilities, costs, charges, expenses (including interest, penalties and reasonable attorneys' fees and expenses), judgments, fines and amounts paid in settlement (collectively, "Losses") actually and reasonably incurred by him or on his behalf in connection with such action, suit or proceeding and any appeal therefrom. Without limiting the generality of the foregoing, any of such Losses shall be deemed to arise out of a Company liability or obligation if it arises out of or is based upon the conduct of the

business of the Company (or any of its Subsidiaries) or the ownership of the property of the Company (or any of its Subsidiaries).

(b) The indemnification provided under this Section 12.1 shall inure to the benefit of the successors, heirs and personal representatives of any Person entitled to the benefit of such indemnification. Such indemnification shall be a contract right and shall include the right to be paid advances of reasonable expenses incurred by any such Person in connection with such action, suit or proceeding.

(c) The indemnification provided under this Section 12.1 shall not inure to the benefit of any Person in respect of Losses to the extent that such Losses (i) arise out of or are based upon the gross negligence or willful misconduct of such Person or (ii) constitute a tax, levy or similar governmental charge not imposed upon the Company (or any of its Subsidiaries) or on their respective properties. The indemnification provided under this Section 12.1 shall also not be available to any Person in respect of any Losses if a judgment or other final adjudication adverse to such Person establishes (x) that such Person's acts were committed in bad faith or were the result of active and deliberate dishonesty and were material to the cause of action so adjudicated or (y) that such Person gained in fact a financial profit or other advantage to which such Person was not legally entitled. It is understood and agreed that, for the purposes of this Section 12.1, Losses shall be deemed not to arise out of or be based upon the gross negligence or willful misconduct of a Person solely because it arises out of or is based upon the gross negligence, willful misconduct, bad faith or active and deliberate dishonesty of a director, officer or employee of such Person if at the time of such gross negligence, willful misconduct, bad faith or active and deliberate dishonesty, such director, officer or employee was also a member of the SanDisk Team or a Director acting in his capacity as such.

(d) The termination of any action, suit or proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the indemnified Person did not meet the standard set forth in Section 12.l(c) (Indemnification).

12.2 Insurance. The Com any may, to the fullest extent permitted by law, purchased and maintain insurance against any liability that may be asserted against any Person entitled to indemnity pursuant to Section 12.1.

12.3 Indemnification by the Shareholders.

(a) Each Shareholder agrees to, and does hereby, indemnify and hold harmless the Company and the other Shareholder from and against any and all Losses arising out of, or based upon, the gross negligence or willful misconduct of such Shareholder under this Agreement or such Shareholder exceeding its authority under this Agreement.

(b) The provisions of this Section 12.3 shall survive each of the termination of this Agreement, the dissolution of the Company and the withdrawal of any Shareholder.

12.4 Assertion of Claims.

(a) In the event that a Person (the"Indemnified Party") desires to assert its right to indemnification from a Person (an"Indemnifying Party") required to indemnify such Indemnified Party under this Section 12, the Indemnified Party will give the Indemnifying Party prompt notice of the claim giving rise thereto (a "Claim"), and the Indemnifying Party shall undertake the defense thereof (unless the Claim is asserted against or related to or results from any action or failure to take action by such Indemnifying Party). The

failure to promptly notify the Indemnifying Party hereunder shall not relieve the Indemnifying Party of its obligations hereunder, except to the extent that the Indemnifying Party is actually prejudiced by the failure to so notify promptly.

(b) The Indemnified Party shall not settle or compromise any Claim without the written consent of the Indemnifying Patty unless the Indemnified Patty agrees in writing to· forego any and all claims for indemnification from the Indemnifying Party with respect to such Claim. However, if the Indemnifying Party, within a reasonable time after notice of any such Claim, fails to defend such Claim, the Indemnified Party shall have the right to undertake the defense, compromise or settlement of such Claim on behalf of and for the account and risk of the Indemnifying Party, subject to the right of the Indemnifying Party to assume the defense of such Claim at any time prior to settlement, compromise or final determination thereof

**13. IF THE INDEMNIFYING PARTY HAS UNDERTAKEN THE DEFENSE OF A CLAIM AND (I) IF THERE IS A REASONABLE EXPECTATION THAT (X) A CLAIM MAY MATERIALLY AND ADVERSELY AFFECT THE INDEMNIFIED PARTY OTHER THAN AS A RESULT OF MONEY DAMAGES OR OTHER MONEY PAYMENTS OR (Y) THE INDEMNIFIED PARTY OR SHAREHOLDERS MAY HAVE LEGAL DEFENSES AVAILABLE TO IT OR THEM THAT ARE DIFFERENT FROM OR ADDITIONAL TO THE DEFENSES AVAILABLE TO THE INDEMNIFYING PARTY, OR (II) IF THE INDEMNIFYING PARTY SHALL NOT HAVE EMPLOYED COUNSEL REASONABLY SATISFACTORY TO THE INDEMNIFIED PARTY, THE INDEMNIFIED PARTY SHALL NEVERTHELESS HAVE THE RIGHT, AT THE INDEMNIFYING PARTY'S COST AND EXPENSE, TO DEFEND SUCH CLAIM. MISCELLANEOUS.**

13.1 Governing Law. Notwithstanding anything to the contrary inAppendix A, this Agreement shall in all respects be governed by and construed in accordance with the laws of Japan, without regard to the conflict of laws principles.

13.2 Effectiveness. This Agreement shall be effective as of the date first written above and shall remain in effect until the Termination Date. Sections 7, 11.7, 11.8 and 13 shall survive the Termination Date.

[REST OF PAGE INTENTIONALLY LEFT BLANK]

EXHIBIT A

ARTICLES OF INCORPORATION OF THE COMPANY

[***]

Unofficial English Translation

# ARTICLES OF INCORPORATION

# OF

# FLASH ALLIANCE, LTD.

[***]

Unofficial English Translation

Schedule 2.1(b)

[***]

Schedule 5.3

Management and Operating Reports

[***]

Schedule 6.1

Capital Contributions

[***]

Schedule 8.3

[***]

**Exhibit 10.9**

CERTAIN CONFIDENTIAL PORTIONS OF THIS EXHIBIT HAVE BEEN REDACTED BECAUSE THEY ARE BOTH (i) NOT MATERIAL AND (ii) THE TYPE OF INFORMATION THAT THE REGISTRANT TREATS AS PRIVATE OR CONFIDENTIAL. INFORMATION THAT HAS BEEN OMITTED HAS BEEN IDENTIFIED IN THIS DOCUMENT WITH A PLACEHOLDER IDENTIFIED BY THE MARK "[***]".

**Execution Version**

---

JOINT VENTURE RESTRUCTURE AGREEMENT

Dated as of January 29, 2009

by and among

TOSHIBA CORPORATION,

SANDISK (IRELAND) LIMITED,

SANDISK (CAYMAN) LIMITED,

SANDISK CORPORATION,

FLASH PARTNERS LIMITED,

and

FLASH ALLIANCE LIMITED

---

**TABLE OF CONTENTS**

This **JOINT VENTURE RESTRUCTURE AGREEMENT** (this "Agreement"), dated as of January 29, 2009, is entered into by and among, on one side, TOSHIBA CORPORATION, a Japanese corporation ("Toshiba"), and, on the other side, SANDISK CORPORATION, a Delaware corporation ("SanDisk Corporation"), SANDISK (CAYMAN) LIMITED, a company organized under the laws of the Cayman Islands ("SanDisk Cayman") and SANDISK (IRELAND) LIMITED, a company organized under the laws of the Republic of Ireland ("SanDisk Ireland," and collectively with SanDisk Corporation and SanDisk Cayman, "SanDisk"), FLASH PARTNERS LIMITED, a *tokurei yugen kaisha* organized under the laws of Japan ("FP"), and FLASH ALLIANCE LIMITED, a *tokurei yugen kaisha* organized under the laws of Japan ("FA" and, together with FP, the "JVs" or "Joint Ventures" and the Joint Ventures together with SanDisk and Toshiba, the "Parties").

WHEREAS, pursuant to that certain Flash Partners Master Agreement (the "FP Master Agreement") by and among Toshiba, SanDisk Corporation and SanDisk Cayman, dated as of September 10, 2004 and the agreements referenced therein (the "FP Agreements"), the Parties have had a collaboration for development and manufacture of Y3 NAND Flash Memory Products (as defined in the FP Agreements);

WHEREAS, pursuant to that certain Flash Alliance Master Agreement (the "FA Master Agreement") by and among Toshiba, SanDisk Corporation and SanDisk Ireland, dated as of July 7, 2006 and the agreements referenced therein (the "FA Agreements"), the Parties have had a collaboration for development and manufacture of Y4 NAND Flash Memory Products (as defined in the FA Agreements);

[***];

WHEREAS, pursuant to that certain 3D Collaboration Agreement by and between Toshiba and SanDisk Corporation, dated as of June 13, 2008 (the "3D Collaboration Agreement"), the Parties have expanded the collaboration to include 3D Memory Products as that term is defined in the 3D Collaboration Agreement ("3D Memory Products"), and the Patent Cross License Agreement between Toshiba and SanDisk Corporation, dated as of July 30, 1997, as amended (the "Cross License Agreement") (collectively, the FP Agreements, the FA Agreements, [***], the 3D Collaboration Agreement and the Cross License Agreement, are from time to time referred to herein as the "Joint Venture Agreements");

WHEREAS, the Parties have entered into a non-binding memorandum of understanding dated as of October 20, 2008 to restructure and amend the Joint Venture Agreements in part and to provide for the acquisition by Toshiba of certain capacity and equipment in connection with the production of NAND Flash Memory Products at the Joint Ventures; and

WHEREAS, in order to realize these goals, the Parties desire to consummate or cause to be consummated the Transactions described in this Agreement and an Equipment Purchase Agreement substantially in the form of the attached Exhibit A (the "Equipment Purchase Agreement"), a SanDisk Foundry Agreement substantially in the form of the attached Exhibit B (the "Foundry Agreement") and any other transactions which the Parties may from time to

time consider necessary or appropriate to carry out the intent of the Parties as expressed herein and therein.

NOW, THEREFORE, in consideration of the mutual promises, covenants and conditions set forth herein, the Parties hereby agree as follows:

**1. Definitions.**

1.1 The following capitalized terms used in this Agreement shall have the respective meanings assigned in this Agreement:

| Term | Defined In |
|---|---|
| 3D Collaboration Agreement | Recitals |
| 3D Memory Products | Recitals |
| [***] | Section 5.4(b) |
| [***] | Section 7.3 |
| Agreement | Heading |
| [***] | Section 4.1(d)(iii) |
| [***] | Section 6.1(a)(iii) |
| [***] | Section 4.1(d)(ii) |
| Cross License Agreement | Recitals |
| Equipment | Section 2.1(a)(i) |
| Equipment Purchase Agreement | Recitals |
| FA | Heading |
| FA Agreements | Recitals |
| FA Master Agreement | Recitals |
| [***] | Section 5.4(a)(i) |
| Foundry Agreement | Recitals |
| FP | Heading |
| FP Agreements | Recitals |
| FP Master Agreement | Recitals |
| Governmental Authority | Section 8.3 |
| [***] | Schedule 4.1(a) |
| [***] | Section 4.1(a) |
| [***] | Schedule 4.1(a) |
| [***] | Recitals |
| Joint Venture Agreements | Recitals |
| Joint Ventures | Heading |
| JV | Heading |
| [***] (JV Adjusted Capacity Ratio) | Schedule 4.1(b)(ii) |
| [***] (JV Capacity Ratio) | Schedule 4.1(b)(i) |

| | |
|---|---|
| [***] (JV Equivalent Lot Capacity) | Schedule 4.1(b)(i) |
| [***] | Schedule 4.1(b)(ii) |
| Lien | Section 8.3 |
| [***] | Section 4.1(d)(iv) |
| Parties | Heading |
| Person | Section 8.3 |
| SanDisk | Heading |
| SanDisk Cayman | Heading |
| SanDisk Corporation | Heading |
| SanDisk Ireland | Heading |
| [***] (SanDisk Option) | Section 7.2(a) |
| [***] (SanDisk Option Exercise Notice) | Section 7.2(b) |
| [***] | Section 5.6(a) |
| Toshiba | Heading |
| [***] | Schedule 4.1(b)(ii) |
| [***] | Section 5.2(a) |
| [***] | Schedule 4.1(b)(i) |
| [***] | Schedule 4.1(b)(i) |
| [***] | Schedule 4.1(b)(ii) |
| [***] | Schedule 4.1(b)(i) |
| [***] | Section 4.1(d)(i) |
| Transaction Agreements | Section 2.1(a) |
| Transactions | Section 2.1(a) |
| [***] | Section 5.4(a)(ii) |
| [***] | Section 4.1(d)(i) |

1.2 Interpretation. Whenever the words "include," "includes" or "including" are used in this Agreement, they shall be deemed, as the context indicates, to be followed by the words "but (is/are) not limited to." Wherever in this Agreement words indicating the plural number appear, such words will be considered as words indicating the singular number and vice versa where the context indicates the propriety of such use.

1.3 The term "Rules of Construction and Documentary Convention" as used in this Agreement means those certain Rules of Construction and Documentary Convention attached to the FP Master Agreement and the FA Master Agreement, as applicable, commencing from Section 2.1 therein.

1.4 The term "R/W" as used in this Agreement refers to certain 3D Memory Products and has the meaning set forth in the 3D Collaboration Agreement.

1.5 The term "NAND" as used in this Agreement means NAND Flash Memory Products.

1.6 The term [***] as used in this Agreement means (i) the requirements of [***] of the FP Master Agreement, (ii) the requirements of [***] of the FA Master Agreement and (iii) the [***].

1.7 The term "Y3 Facility" as used in this Agreement means that facility located at Yokkaichi, Mie, Japan which, following the consummation of the Transactions, shall consist of FP equipment and production and Toshiba equipment and production.

1.8 The term "Y4 Facility" as used in this Agreement means that facility located at Yokkaichi, Mie, Japan which, following the consummation of the Transactions, shall consist of FA equipment and production and Toshiba equipment and production.

1.9 Capitalized terms not otherwise set forth in this Section 1 shall have the meanings assigned to them in the Equipment Purchase Agreement, the FP Agreements, the FA Agreements and/or the 3D Collaboration Agreement as the context requires.

**2. Transactions.**

2.1 Transactions and Deliveries.

(a) Basic Transactions. Subject to and on the terms and conditions set forth in this Agreement, the Equipment Purchase Agreement, the Foundry Agreement, any amendments to the Joint Venture Agreements including any Joint Venture equipment lease agreements and other agreements signed of even date herewith (collectively, the "Transaction Agreements") the Parties agree to effect the transactions set forth in this Section 2.1 (the "Transactions"), all of which shall be considered binding as of, and to occur on, the date hereof unless the date for actual performance is otherwise stipulated:

(i) Committed Capacity Transfer. Toshiba shall acquire approximately [***] of the current production capacity of each of FP and FA for NAND Memory Products as set forth in Article 4 below; and

(ii) Toshiba Equipment Purchase. Upon the terms and conditions set forth in the Equipment Purchase Agreement, Toshiba shall acquire owned equipment representing approximately [***] of the capacity of each of FP and FA and leased equipment representing approximately [***] of the capacity of each of FP and FA (the "Equipment").

(iii) Foundry Option. Toshiba and SanDisk shall enter into the Foundry Agreement pursuant to which, until [***], SanDisk will have the right

to purchase NAND Memory Products on the terms and conditions set forth therein.

(iv) SanDisk Conversion Option. Subject to Toshiba's consent, to be granted or withheld at the time of exercise, SanDisk will have the option to cause FP and FA to reacquire a portion of the production capacity and Equipment being transferred to Toshiba pursuant to this Agreement and the Equipment Purchase Agreement, as set forth in Section 7.2 below.

(v) Amendment to Joint Venture Agreements. The Parties agree that the Joint Venture Agreements are hereby amended to the extent necessary to conform to the provisions set forth herein.

(vi) Transfer of Additional Capacity to Toshiba. The Parties may, if mutually agreed in [***], effect the transfer to Toshiba of additional capacity and owned equipment as provided in and subject to Section 7.3.

(vii) JV Ownership Interest Remains Unchanged. For the avoidance of doubt, nothing in this Agreement shall affect the Parties' equity interests in each of FP and FA (i.e. 50.1% for Toshiba and 49.9% for SanDisk).

(b) Deliveries. Each of the relevant Parties agrees to make the following deliveries to the other Parties at the time of the execution of this Agreement:

(i) Counterpart originals of this Agreement duly executed by each of the Parties as of the date hereof concurrently with the execution of this Agreement;

(ii) Counterpart originals of the Equipment Purchase Agreement duly executed as of the date hereof concurrently with the execution and delivery of this Agreement; and

(iii) Counterpart originals of the Foundry Agreement (as provided for inSection 7.1 below) duly executed by the Parties as of the date hereof concurrently with the execution and delivery of this Agreement.

**3. Capital Equipment Acquisition Transactions**

3.1 Capital Equipment Purchase by Toshiba. Upon the terms and subject to the conditions set forth in the Equipment Purchase Agreement, Toshiba shall acquire the Equipment.

3.2 Use of Proceeds by Joint Ventures. The Parties shall cause each of FP and FA upon receipt of proceeds to payoff or pay down (on an equal pro-rata basis) loans from its shareholders with the proceeds realized from the sale of the

Equipment. Subject to further mutual agreement of the Parties, any remaining funds will be retained in FP and FA for technology transitions and capacity expansions, or otherwise used to return equity investments made in FP and FA by the shareholders.

**4. Allocation of Capacity to Toshiba**

4.1 Allocation of Current Capacity to Toshiba; Allocation of Fab Lot Output

(a) Initial Toshiba Capacity. Pursuant to the implementation schedule set forth in Section 4.1(c) below, the Parties shall allocate to Toshiba, and Toshiba shall acquire, approximately [***] of the pre-restructuring production capacity (and related Equipment) from each of FP and FA, [***]. Such initial allocation in the percentages set forth on Schedule 4.1(a) shall be referred to herein as the [***].

(b) Output Allocation.

(i) Except as described in Section 4.1(b)(ii), the actual monthly lot output from each of the Y3 Facility and the Y4 Facility shall be allocated between Toshiba and FP or FA, as applicable, based on [***] and the applicable [***], as set forth in Schedule 4.1(b)(i).

(ii) During any month during which the planned production of any of FP, FA or the Toshiba Capacity, as applicable, [***], as defined in Schedule 4.1(b)(i), the Parties (as between the Joint Ventures and Toshiba) shall be [***].

(c) Implementation Schedule. The capacity associated with each Equipment transfer contemplated by the Equipment Purchase Agreement shall transfer at the time of Toshiba's acquisition of the related Equipment, subject, however, to Section 3.6 of the Equipment Purchase Agreement. Subject to Sections 3.6 and 3.7(a) of the Equipment Purchase Agreement, depreciation and lease costs associated with the transferred equipment or capacity shall be borne by Toshiba immediately after the date of Toshiba's acquisition of the related Equipment.

(d) Work in Process Inventory. [***].

(i) [***].

(ii) [***].

(iii) [***].

(iv) [***].

**5. Modification of Joint Venture Agreements, Future Technology Transaction and Expansion of Capacity**

5.1 Operations.

(a) No Operational Effects from Toshiba Capacity.

(i) Except as otherwise provided in or necessary to implement the Transaction Agreements, the FA, FP and Toshiba Capacity equipment in the Y3 and Y4 Facilities will be [***]. There will be no change in the fabs' operating methods, engineering, production control processes, access, financial, investment or operational transparency, or otherwise as a result of the inclusion of the Toshiba Capacity in the Y3 Facility and the Y4 Facility.

(ii) For the Toshiba Capacity in the Y3 and Y4 Facility, Toshiba will provide to the applicable Joint Venture [***], including but not limited to [***]. Notwithstanding the foregoing, Toshiba shall have sole discretion over the use and disposition of the equipment representing the Toshiba Capacity, provided [***].

(b) Improvements Not Related to Expansion. To the extent practical and commercially feasible, each of the Parties shall use commercially reasonable efforts to enhance the [***] of the Y3 and Y4 Facilities.

(c) Incentives. All governmental incentives (financial or otherwise) received with respect to the Y4 Facility (including any Toshiba Capacity) shall be disclosed and the Parties will discuss such incentives and the sharing thereof based on the type of incentives.

5.2 Expansion and Transition of Capacity.

(a) General Rule; [***] Expansion. Except as provided in this Section, the terms of Section 6.3(c)(iv) of the FP Master Agreement and Section 6.5(c)(iv) of the FA Master Agreement will apply to [***] within FP, FA and other facilities. [***]

(b) Technology Transitions. The Joint Ventures shall be given priority for any technology transition. Should either FP or FA not accept any proposal for a NAND technology transition, the non-rejecting Party (as between SanDisk and Toshiba) shall be able to implement such technology transition on its capacity and [***]. Subject to the foregoing priority granted to the Joint Ventures, nothing in this Agreement shall in any way limit Toshiba's ability to implement NAND technology transitions within the Toshiba Capacity, which shall be made in Toshiba's sole discretion.

5.3 Effect on [***]; Priority; Proprietary Products

(a) [***].

(b) Priority.

(i) Section 6.4(a)(ii) of the FP Master Agreement and Section 6.6(a)(ii) of the FA Master Agreement are each hereby amended such that each of

Sub-section 6.4(a)(ii)(B) in the FP Master Agreement and Sub-section 6.6(a)(ii)(C) in the FA Master Agreement shall be replaced with "from other Toshiba wholly-owned wafer fabrication facilities, wafer fabrication facilities wholly-owned by Toshiba whollyowned Subsidiaries, or Toshiba Capacity (as defined in that certain Joint Venture Restructure Agreement dated as of January 29, 2009), and".

(ii) [***].

(c) Proprietary Products. [***].

5.4 Effect on Costs.

(a) [***] Manufacturing Costs. All costs of manufacturing shall be [***].

(i) [***].

(ii) [***].

(b) [***].

(c) The Joint Ventures shall not be responsible or invoiced for [***]. Any other [***] shall be subject to mutual good faith discussion and agreement regarding the terms by which [***] shall be borne by the applicable Joint Venture.

(d) Cost benefits associated with [***] will be discussed by the Parties [***] and mutually agreed by the Parties.

5.5 [***].

(a) For [***] for the Y3 or Y4 Facility that are owned by the applicable Joint Venture as of the date hereof, [***], within [***] of each Closing under the Equipment Purchase Agreement, [***].

(b) For [***] for the Y3 or Y4 Facility that will be [***], the Parties agree that:

(i) For such [***] related to [***]; and

(ii) Each Party (as between Toshiba and SanDisk) shall be solely responsible for the purchase of [***].

5.6 [***].

(a) On [***], Toshiba shall sell to the applicable Joint Venture, and such Joint Venture shall purchase from Toshiba, the portion of the then existing [***]. Payment for such [***] shall be made by SanDisk and Toshiba to the applicable

Joint Ventures, pursuant to invoices from the Joint Ventures, no later than [***], and the Joint Ventures [***].

(b) [***], shall sell to each of the Joint Ventures, and each of the Joint Ventures shall purchase [***] and [***] allocable to such Joint Venture [***]. Payment for such [***] shall be made by SanDisk and Toshiba to the applicable Joint Venture, pursuant to a payment mechanism and schedule to be agreed between the Parties, provided that payment shall occur [***].

**6. [***].**

**7. Foundry and Conversion Options; Additional Capacity Transfer**

7.1 Foundry Option. Toshiba and SanDisk shall enter into the Foundry Agreement which shall provide for a foundry arrangement between the Parties until [***].

7.2 Conversion Option.

(a) [***].

(b) [***].

(c) [***].

7.3 [***].

**8. Representations and Warranties of Each of the Parties**

Each Party, severally and not jointly, represents and warrants to each other Party that the following are true and correct as of the date hereof:

8.1 Organization and Standing. It is duly organized and validly existing and, where applicable, in good standing under the laws of the jurisdiction in which it is organized.

8.2 Authority; Enforceability. It has the requisite corporate or equivalent power and authority to enter into this Agreement, to execute any certificates or other instruments to be executed by it in connection with the Transactions, and otherwise carry out the Transactions. All corporate or equivalent proceedings required to be taken by it to authorize the execution, delivery and performance of this Agreement, and any such certificates and instruments, and the consummation of the Transactions, have been or will be as of the Closing properly taken. This Agreement has been duly and validly executed and delivered by it and constitutes a valid and binding obligation of it, enforceable against it in accordance with its terms.

8.3 No Conflict. The execution, delivery and performance of this Agreement by it do not and will not (a) breach, violate or conflict with any provision of its charter documents as amended to date, (b) conflict with or violate any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award applicable to it, or (c) result in the creation or imposition of any Lien (other than as may result from the actions contemplated by the Equipment Purchase Agreement) on any of the Purchased Assets. No consent, approval or authorization of, or filing with, any Governmental Authority, or any other Person, is required to be made or obtained by it in connection with the execution, delivery and performance by it of this Agreement and the consummation by it of the Transactions. The term "Lien" as used in this Agreement means any lien, pledge, hypothecation, security interest, claim, lease, charge, option, right of first refusal, transfer restriction, encumbrance or any other restriction or limitation whatsoever. The term "Person" as used in this Agreement means any individual, corporation, partnership, limited liability company, firm, joint venture, association, joint-stock company, trust, unincorporated organization, Governmental Authority or other entity. The term "Governmental Authority" as used in this Agreement means any court, tribunal, arbitrator or any government or political subdivision thereof, whether foreign, federal, state or county, or any agency, authority, official or instrumentality of such government or political subdivision.

8.4 Brokers' or Finders' Fees. It has not incurred and will not incur, directly or indirectly, any liability for brokerage or finders' fees or agents' commissions or any similar charges in connection with this Agreement or any certificates and instruments executed or contemplated to be executed by the Parties. It has not taken any action or entered into any agreement or understanding that will cause any other Party to incur any of the foregoing liabilities.

8.5 Litigation. There is no Action pending, or, to its knowledge, threatened, or directly relating to the Transactions and which, if successful, would materially impair such Party's ability to consummate the Transactions. There is no judgment, order, writ or decree that substantially restrains its ability to consummate the Transactions.

**9. Additional Matters**

9.1 [***].

9.2 Insurance. Toshiba shall continue to maintain insurance policies as contemplated under Section 7.5(d) of the FP Master Agreement and Section 7.5(d) of the FA Master Agreement covering the entire business of the Joint Ventures and the Toshiba Capacity, provided that [***].

9.3 Environmental Liabilities. The Environmental Indemnification Agreements with respect to FA and FP in effect shall continue in effect without amendment, except that, beginning on the earlier of [***] (i) Toshiba shall be responsible for

its share of liability for Environmental Costs (as defined in the Environmental Indemnification Agreements) [***]FA and/or FP, as applicable, at the time of the contamination or release, if determinable, and (ii) if the time of such contamination or release is not determinable, the liability for Environmental Costs shall be allocated [***] of NAND Flash production through the time of discovery of such contamination or release.

9.4 Further Assurances; Cooperation. Each of the Parties shall from time to time, at the reasonable request of the other Parties, and without further consideration (unless otherwise provided for under this Agreement), execute and deliver such instruments, cooperate and take such actions (as a member of the FP and FA joint ventures or otherwise) as may be reasonably necessary to effectuate the Transactions.

**10. Miscellaneous**

10.1 Entire Agreement. This Agreement, together with the exhibits, schedules, appendices and attachments hereto, the Joint Venture Agreements (as and if amended hereby) and the other Transaction Agreements constitute the entire agreement of the Parties to this Agreement with respect to the subject matter hereof and supersede all prior written and oral agreements and understandings with respect to such subject matter.

10.2 Precedence. The terms and provisions of this Agreement are binding on the Parties. To the extent that a provision in this Agreement or another Transaction Agreement expressly conflicts with a Joint Venture Agreement, then the provisions of this Agreement shall control; provided however, that unless otherwise provided herein, the provisions of the Joint Venture Agreements remain in effect.

10.3 Governing Law. This Agreement shall in all respects be governed by and construed in accordance with the internal laws of the State of California applicable to agreements made and to be performed entirely within such state without regard to the conflict of laws principles of such state.

10.4 Remedies; Rules of Construction and Documentary Convention. The Parties agree that the Rules of Construction and Documentary Convention set forth in each of the Joint Venture Agreements shall apply in the event that a dispute arises out of or relates to this Agreement or a particular Joint Venture Agreement.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, this Agreement is executed as of the date first written above.

"FP"
FLASH PARTNERS LIMITED

By /s/ Yasuo Naruke
Name Yasuo Naruke
Title Representative director

"FA"
FLASH ALLIANCE LIMITED

By /s/ Yasuo Naruke
Name Yasuo Naruke
Title Representative director

"TOSHIBA"
TOSHIBA CORPORATION

By /s/ Shozo Saito
Name Shozo Saito
Title Corporate Senior Vice President
President and CEO
Semiconductor Company

"SANDISK CORPORATION"
SANDISK CORPORATION

By /s/ Sanjay Mehrotra
Name Sanjay Mehrotra
Title President and Chief Operating Officer

"SANDISK CAYMAN"
SANDISK (CAYMAN) LIMITED

By /s/ Judy Bruner
Name Judy Bruner
Title Director

"SANDISK IRELAND"
SANDISK (IRELAND) LIMITED

By /s/ Sanjay Mehrotra
Name Sanjay Mehrotra
Title Director

**Schedule 4.1(a)**

[***]

**Schedule 4.1(b)(i)**

[***]

**Schedule 4.1(b)(ii)**

[***]

**Schedule 5.4(a)(i)**

[***]

**Schedule 5.4(a)(ii)**

[***]

**Schedule 5.4(b)-1**

[***]

**Schedule 5.4(b)-2**

[***]

**Exhibit 10.10**

CERTAIN CONFIDENTIAL PORTIONS HAVE BEEN REDACTED FROM THIS EXHIBIT BECAUSE THEY ARE BOTH (i) NOT MATERIAL AND (ii) A TYPE THAT THE REGISTRANT TREATS AS PRIVATE OR CONFIDENTIAL. INFORMATION THAT HAS BEEN OMITTED HAS BEEN IDENTIFIED IN THIS DOCUMENT WITH A PLACEHOLDER IDENTIFIED BY THE MARK "[***]".

**Execution Version**

# NEW Y2 FACILITY AGREEMENT

by and between

TOSHIBA CORPORATION

SANDISK CORPORATION

SANDISK (CAYMAN) LIMITED,

SANDISK (IRELAND) LIMITED,

SANDISK FLASH B.V.,

FLASH PARTNERS, LTD.,

FLASH ALLIANCE, LTD.

and

FLASH FORWARD, LTD.

dated as of

October 20, 2015

**TABLE OF CONTENTS**

**TABLE OF CONTENTS**

**TABLE OF CONTENTS**

**TABLE OF CONTENTS**

**NEW Y2 FACILITY AGREEMENT**

This NEW Y2 FACILITY AGREEMENT (this "Agreement") is made as of October 20, 2015, by and among Toshiba Corporation, a Japanese corporation ("Toshiba"), SanDisk Corporation, a Delaware corporation (together with Toshiba, the "Parent Parties"), SanDisk (Cayman) Limited, a company organized under the laws of the Cayman Islands ("SanDisk Cayman"), SanDisk (Ireland) Limited, a company organized under the laws of the Republic of Ireland ("SanDisk Ireland"), SanDisk Flash B.V., a company organized under the laws of The Netherlands ("SanDisk Flash," and collectively with SanDisk Corporation, SanDisk Cayman and SanDisk Ireland, "SanDisk"), Flash Partners, Ltd., a Japanese *tokurei yugen kaisha* ("FPL"), Flash Alliance, Ltd., a Japanese *tokurei yugen kaisha* ("FAL"), and Flash Forward, Ltd., a Japanese *godo kaisha* ("FFL," and collectively with Toshiba, SanDisk, FPL and FAL, the "Parties").

WHEREAS, Toshiba and SanDisk jointly own and manage FPL, FAL and FFL (collectively, with any other joint venture operations mutually agreed between Toshiba and SanDisk Corporation, the "JVs" and, each, a "JV"), each of which is engaged in the manufacture of NAND flash memory products;

WHEREAS, the Parties have entered into that certain BiCS License & Development Agreement dated as of March 1, 2011 (the "BiCS LDA") providing for a license of certain technology and certain joint development and technological collaboration matters;

WHEREAS, Toshiba plans to build and facilitize the New Y2 Facility (as defined below) primarily for use in converting existing production capacity into capacity for the production of BiCS Products (as defined below), and the Parties intend that the JVs acquire such BiCS Products and invest in tools for the manufacture of such BiCS Products; and

WHEREAS, the Parties desire to set forth the terms and conditions of their collaborative manufacture of BiCS Products and of the construction and use of the New Y2 Facility, and are entering into the FPL Commitment and Extension Agreement, the Amendment to the Patent Indemnification Agreement, the BiCS Patent Indemnification Agreement, the Information Security Agreement, the Amended JMDY Agreement, and the New Y2 MCEIA (together with this Agreement, the "New Agreements");

NOW, THEREFORE, the Parties hereby agree as follows:

1. BICS PRODUCTION FRAMEWORK

1.1 Manufacture by JVs. On the terms and subject to the conditions and limitations set forth in the New Agreements and the BiCS LDA:

(a)the purpose of each JV, as described in the relevant JV Agreements, is hereby expanded to include the manufacture (by subcontract to Toshiba) of BiCS Products and the sale of BiCS Products to the Parties;

(b)the rights of the Parties to invest and secure production capacity and cleanroom space for the production of NAND Flash Memory Products in the Yokkaichi Facility under the JV Agreements are hereby extended to BiCS Products; and

(c)the rights of each Parent Party set forth in Section 3.3(b) of the FPL Master Agreement, Section 3.3(b) of the FAL Master Agreement and Section 3.2(c) of the FFL Master Agreement to, directly or indirectly through its Affiliates, market and sell NAND Flash Memory Products to any third party in any form, including chips, packaged devices, wafers, die and cards are hereby extended to BiCS Products.

1.2 Technology Transfers. The obligations of the Parent Parties under the JV Agreements to make available to the JVs certain process technology are hereby extended to process technology developed under the Amended JMDY Agreement, the Product Development Agreement, or the Common R&D Agreement and applicable to the manufacturing and testing of BiCS Products ("BiCS Process Technology"). Transfers of BiCS Process Technology to the JVs will be made in the manner provided in the JV Agreements with respect to NAND process technology and on a schedule consistent with the applicable JV Business Plan providing for the first manufacture of BiCS Products in the Yokkaichi Facility. All process integration for manufacture of BiCS Products at the Yokkaichi Facility for new processes originating from the Yokkaichi Facility or Other Toshiba Facilities, including [***], shall be led by Toshiba and its employees, to the extent reasonably possible. [***]

1.3 Management and Operations. The manufacture of BiCS Products for the JVs, in the New Y2 Facility or otherwise, shall be managed by the Parent Parties' Management Representatives and the Operating Committees, in each case in accordance with the JV Agreements and past practice with respect to the manufacture of NAND Flash Memory Products.

1.4 Protection of Intellectual Property. The Parent Parties' obligations under the JV Agreements to use reasonable efforts to protect and enhance the value of NAND Flash Memory Products are hereby extended to BiCS Products.

1.5 Other Amendments to Certain Master Operative Documents. To update their agreement as expressed in certain of the Master Operative Documents to, among other things, provide for the development and production of BiCS Products, the Parties agree that the Master Operative Documents are hereby amended as set forth in this Article 1 and as necessary to give effect to the purpose and intent of thisArticle 1 whether or not expressly set forth herein.

(a) JV Master Agreements.

(i) Alternative Use of Allotted Capacity.

(A) BiCS Products. For the purposes of the JV Agreements, utilization of allotted manufacturing capacity in the Yokkaichi Facility for BiCS Products will not be treated as an alternative use of allotted capacity.

(B) Proprietary BiCS Products. Subject to the conditions and limitations set forth in the JV Agreements (which conditions and limitations shall apply to Proprietary BiCS Products (as defined below) in the same manner as for Proprietary NAND Flash Memory Products) and herein, (i) the rights of each Parent Party under the JV Agreements to use a portion of its total allocated capacity from the Y3 Facility, the Y4 Facility and the JV Space in the Y5 Facility to cause to be manufactured Proprietary NAND Flash Memory Products are hereby extended to BiCS Products that are proprietary to that Parent Party and (ii) each Parent Party may use a portion of its total allocated capacity from the JV Space in the New Y2 Facility to cause to be manufactured BiCS Products that are proprietary to that Parent Party ("Proprietary BiCS Products"). For the avoidance of doubt, (1) each Parent Party shall limit the aggregate output volume of Proprietary NAND Flash Memory Products and Proprietary BiCS Products within such Parent Party's allocated JV capacity to [***], (2) [***], and (3) each of the other limitations, conditions and Parent Party undertakings in respect of Proprietary NAND Flash Memory Products provided under the applicable JV Master Agreement shall apply, with the necessary changes made, to the manufacture of Proprietary BiCS Products.

(ii) Engineering Wafers.

(A) Evaluation Wafers. For the avoidance of doubt, the rights of the Parent Parties under the JV Master Agreements to receive Evaluation Wafers for NAND Flash Memory Products [***] are hereby extended to BiCS Products, and the cost of Evaluation Wafers will be included in the manufacturing cost and subsequently part of the wafer sales price for each BiCS Product in accordance with the JV Agreements with respect to the manufacture of NAND Flash Memory Products.

(B) Qualification Wafers. The rights of the Parent Parties under the JV Master Agreements to receive Qualification Wafers for NAND Flash Memory Products are hereby extended to BiCS Products, and Yokkaichi or the applicable JV shall charge the receiving party for such Qualification Wafers in the manner set forth in the applicable JV Master Agreement for Qualification Wafers for NAND Flash Memory Products.

(C) Other Development Expenses. If the transactions contemplated by this Agreement result in any development expenses other than in respect of Evaluation Wafers and Qualification Wafers and such expenses are not to be charged under the Amended JMDY Agreement, the relevant product development agreement or the applicable JV Master Agreement or not otherwise expressly allocated, such expenses shall be appropriately paid or borne between the Parent Parties.

(iii) Equal Participation Generally. The Parent Parties intend to meet demand for increased capacity by equally investing in, and jointly building, and sharing, on

equal or substantially equal terms, equal amounts of new capacity for BiCS Products, except as otherwise provided in the Master Operative Documents.

(iv) Ramp Down; Termination Capacity. The obligations of the Parent Parties under (A) Sections 8.1(d)(i), 8.1(e)(i), and 8.1(f)(i) of the FAL Master Agreement, (B) Sections 8.1(d)(i), 8.1(e)(i), and 8.1(f)(i) of the FPL Master Agreement and (C) Sections 9.1(d)(i) and 9.1(f)(i) of the FFL Master Agreement to continue to manufacture NAND Flash Memory Products in the event of a termination of such JV Master Agreement under the circumstances described therein are hereby extended to include obligations to continue to manufacture BiCS Products, in the amounts and for the durations set forth in such JV Master Agreement with respect to NAND Flash Memory Products. For the avoidance of doubt, (X) the Termination Capacity for BiCS Products shall be separate and distinct from the Termination Capacity for NAND Flash Memory Products but shall be calculated in the same manner as the Termination Capacity for NAND Flash Memory Products, taking into account the Requesting Party's (as defined in the applicable JV Master Agreement) BiCS Products capacity allocation available from the applicable JV in the Yokkaichi Facility and (Y) the amounts of BiCS Products to be manufactured for the Requesting Party during the [***] ramp down period at the Requesting Party's request shall be as follows:

(A)[***]

(B)[***]

(C)[***]

(v) Post-Termination. [***]

(b) JV Operating Agreements. All references to NAND Flash Memory Products in the JV Operating Agreements are hereby revised to refer instead to "NAND Flash Memory Products or BiCS Products".

(c) JV Lease Agreements. All references to Y3 NAND Flash Memory Products in the FPL Lease Agreement are hereby revised to include JV Y3 BiCS Products and JV New Y2 BiCS Products manufactured for FPL. All references to Y4 NAND Flash Memory Products in the FAL Lease Agreement are hereby revised to include JV Y4 BiCS Products and JV New Y2 BiCS Products manufactured for FAL.

(d) JV Foundry Agreements.

(i) All references to Y3 NAND Flash Memory Products in the FPL Foundry Agreement are hereby revised to include JV Y3 BiCS Products. All references to Y4 NAND Flash Memory Products in the FAL Foundry Agreement are hereby revised to include JV Y4 BiCS Products. All references to JV Y5 NAND Flash Memory Products in the FFL Foundry Agreement are hereby revised to include JV Y5 BiCS Products and, for Article 5 thereof, JV New Y2 BiCS Products manufactured for FFL. All references to NAND Flash masks in the

Foundry Agreements are hereby revised to refer instead to "NAND Flash masks or BiCS masks".

(ii) Purchases from Toshiba by:

(A) FPL of JV Y3 BiCS Products and JV New Y2 BiCS Products manufactured for FPL shall be made in accordance with the terms of the FPL Foundry Agreement for purchases of Products (as defined therein), provided, that the purchase prices and manufacturing costs for JV New Y2 BiCS Products manufactured for FPL shall be calculated and allocated in accordance with Article 8 hereof;

(B) FAL of JV Y4 BiCS Products and JV New Y2 BiCS Products manufactured for FAL shall be made in accordance with the terms of the FAL Foundry Agreement for purchases of Products (as defined therein), provided, that the purchase prices and manufacturing costs for JV New Y2 BiCS Products manufactured for FAL shall be calculated and allocated in accordance with Article 8 hereof; and

(C) FFL of JV Y5 BiCS Products and JV New Y2 BiCS Products manufactured for FFL shall be made in accordance with the terms of the FFL Foundry Agreement for purchases of Products (as defined therein), provided, that the purchase prices and manufacturing costs for JV New Y2 BiCS Products manufactured for FFL shall be calculated and allocated in accordance with Article 8 hereof.

(e) JV Purchase and Supply Agreements.

(i) The capitalized term "Products" in the FFL Purchase and Supply Agreements is hereby revised to include JV Y5 BiCS Products and JV New Y2 BiCS Products manufactured for FFL in accordance with the Purchase Specification as thereinafter defined.

(ii) Purchases by the Parties from:

(A) FPL of JV Y3 BiCS Products and JV New Y2 BiCS Products manufactured for FPL shall be made in accordance with the terms of the applicable Party's FPL Purchase and Supply Agreement for purchases of Products (as defined therein), provided, that with respect to such purchases of JV New Y2 BiCS Products manufactured for FPL, any price or charge that is calculated or determined under Article 4 ("Purchase Prices of Products; Title Transfer") of the FPL Purchase and Supply Agreement based on Article 4 of the FPL Foundry Agreement shall instead be based on Article 8 hereof;

(B) FAL of JV Y4 BiCS Products and JV New Y2 BiCS Products manufactured for FAL shall be made in accordance with the terms of the applicable Party's FAL Purchase and Supply Agreement for purchases of Products (as defined therein), provided, that with respect to such purchases of JV New Y2 BiCS Products manufactured for FAL, any price or charge that is calculated or determined under Article 4 ("Purchase Prices of

Products; Title Transfer") of the FAL Purchase and Supply Agreement based on Article 4 of the FAL Foundry Agreement shall instead be based on Article 8 hereof; and

(C) FFL of JV Y5 BiCS Products and JV New Y2 BiCS Products manufactured for FFL shall be made in accordance with the terms of the applicable Party's FFL Purchase and Supply Agreement for purchases of Products (as defined therein) provided, that with respect to such purchases of JV New Y2 BiCS Products manufactured for FFL, any price or charge that is calculated or determined under Article 4 ("Purchase Prices of Products; Title Transfer") of the FFL Purchase and Supply Agreement based on Article 4 of the FFL Foundry Agreement shall instead be based on Article 8 hereof.

1.6 Other Activities. Except as expressed in this Agreement or as may otherwise be agreed between the Parties, and except as set forth in the Amended JMDY Agreement or the BiCS LDA, neither Parent Party nor any of its respective Affiliates shall: (a) fabricate [***] at any location other than the Yokkaichi Facility or any other fabrication facility agreed upon by the Parent Parties in writing; (b) have any third party fabricate [***]; or (c) have any right to fabricate [***] beyond the capacity as limited pursuant by this Agreement. For the avoidance of doubt, nothing contained in the foregoing shall restrict the Parties from engaging in any other activities, including, without limitation, (i) designing any [***]; (ii) selling any [***] to any customer; (iii) entering into any equipment purchase or material supply agreements; or (iv) entering into any patent licensing arrangement.

2. NEW Y2 FACILITY AND CONSTRUCTION

2.1 Purpose of New Y2. The Parties acknowledge and agree that (a) the primary purpose of the New Y2 Facility is the installation of tools that, as operated by Toshiba in conjunction with other Yokkaichi Facility tools, enable the Parties to convert their then-existing production capacity for NAND Flash Memory Products (including NAND capacity in the JVs and Toshiba Capacity) into production capacity for BiCS Products ("BiCS Conversion") and (b) the New Y2 Facility may also be used by the Parties for (i) transitions of their then-existing production capacity for a given BiCS Product to production capacity for another technology node of such BiCS Product ("BiCS Technology Transitions"), and BiCS Expansions (as defined below), (ii) the manufacture of other products (including supporting capacity expansions and technology transitions of such other products) and (iii) the development of new technologies or products, in each case of (ii) and (iii), as mutually agreed between the Parent Parties from time to time.

2.2 First Wafer Out. The Parties target a First Wafer Out Date in [***]. The First Wafer Out Date shall not be prior to [***]. If the First Wafer Out Date does not occur prior to [***], then the Parties shall discuss in good faith and agree upon a new target First Wafer Out Date.

2.3 Rights and Responsibilities in Construction.

(a) Toshiba. Toshiba shall (i) direct the design, construction and facilitization of the New Y2 Facility and (ii) exercise commercially reasonable efforts to ensure that the New Y2 Facility is (A) insurable, (B) designed and constructed to mutually acceptable high levels of risk control standards and (C) completed on a schedule consistent with achieving the First Wafer Out Date provided for in Section 2.2. Toshiba shall maintain the New Y2 Facility at mutually acceptable high levels of risk control standards in accordance with current practice.

(b) SanDisk. In connection with the construction and facilitization of the New Y2 Facility, (i) SanDisk shall (and the Parent Parties shall cause the JVs to) assist Toshiba in minimizing the time required to obtain required administrative approvals, and (ii) SanDisk and its agents shall have (with prior coordination with Toshiba and the construction coordinators for the New Y2 Facility) reasonable access to the New Y2 Facility construction site and to all appropriate information pertaining to the construction of the New Y2 Facility and necessary for SanDisk to participate in the JV operations in the New Y2 Facility; provided, that SanDisk shall be solely responsible for all damage caused by such access.

2.4 Phases of Construction. The shell of the New Y2 Facility shall be built in one phase, and the New Y2 Facility cleanroom shall be built in three phases of substantially similar size. [***]

2.5 Construction Costs and Related Costs.

(a) Infrastructure Costs and Demolition Costs. [***]

(b) Soil Remediation Costs. [***]

(c) Building Depreciation Prepayment. Each of the Parent Parties agrees to prepay 5,000,000,000 Japanese Yen to FFL as a prepayment for the New Y2 building depreciation (such prepayment amount, the "Building Depreciation Prepayment") [***]. The Building Depreciation Prepayment shall be made by [***] on October 28, 2015; [***].

(d) Start-Up Costs. The Parties acknowledge that one or more of the Parties have incurred or will incur actual costs in connection with constructing the New Y2 Facility and preparing the New Y2 Facility for production during the period prior to the start of volume production at the New Y2 Facility (the "Start-Up Period"), including personnel costs, materials costs and other operating expenses, for which each Parent Party has the obligation ultimately to bear 50% ("Start-Up Costs"). The Parent Parties shall discuss in good faith and agree upon theStart-Up Costs borne by the Parties and the means and timing by which each Party, as applicable, shall be reimbursed or credited for having incurred more than 50% of the Start-Up Costs or shall make payments due for having incurred less than 50% of the Start-Up Costs; provided, that the determination and allocation ofStart-Up Costs and the means and timing of reimbursement shall be in a manner substantially similar to that utilized in connection with the start-up costs of the Y5 Facility. Start-Up Costs will be excluded from New Y2 Manufacturing Costs.

(e) Land Costs. [***].

2.6 Incentives. [***]

2.7 Insurance. Toshiba shall maintain or arrange property insurance covering the JV assets in the New Y2 Facility and business interruption insurance in respect of the business conducted at the New Y2 Facility, the scope and amounts of which shall be consistent with Toshiba's practices at the Yokkaichi Facility and as required by any lender or carrier to secure such coverage. This coverage shall provide basically full replacement value of all JV equipment installed in the New Y2 Facility, subject to valuation as part of Toshiba's annual insurance policy renewal, and shall name the applicable JV as a beneficiary in respect of assets owned or leased by it and New Y2 employee expenses covered by business interruption insurance. On an annual basis, or when requested by either Party, the New Y2 Operating Committee shall discuss and review the current insurance coverage and/or the need for any additional property or business interruption insurance in respect of the JV assets in and operations of the New Y2 Facility. Further, SanDisk reserves the right to seek to arrange additional property or business interruption insurance for its own account in respect of such assets or operations, and Toshiba shall cooperate in good faith to provide such information and access as is reasonably necessary for SanDisk to arrange such insurance. If Toshiba makes a recovery from a third party (other than an insurer per the above) in respect of both assets in the New Y2 Facility and other assets, then Toshiba shall allocate to the applicable JVs a share of the net amount of such recovery in proportion to the losses suffered by such JVs and total losses suffered by such JVs and Toshiba.

3. PRODUCTS; RIGHTS TO CLEANROOM SPACE; TOOLS

3.1 BiCS Products.

(a) The JVs may produce BiCS Products at the New Y2 Facility.

(b) BiCS Products manufactured at the Yokkaichi Facility and that are identified [***] as New Y2 lots are referred to as "New Y2 BiCS Products." "JV New Y2 BiCS Products" are New Y2 BiCS Products allocated to a JV under the applicable JV's JV Master Agreement. "New Y2 Unilateral BiCS Products" are New Y2 BiCS Products allocated to [***].

(c) BiCS Products manufactured at the Yokkaichi Facility and identified [***] as Y3 lots are referred to as "Y3 BiCS Products;" BiCS Products manufactured at the Yokkaichi Facility and identified [***] as Y4 lots are referred to as "Y4 BiCS Products;" and BiCS Products manufactured at the Yokkaichi Facility and identified [***] as Y5 lots are referred to as the "Y5 BiCS Products." "JV Y3 BiCS Products" are Y3 BiCS Products allocated to FPL under the FPL Master Agreement; "JV Y4 BiCS Products" are Y4 BiCS Products allocated to FAL under the FAL Master Agreement; and "JV Y5 BiCS Products" are Y5 BiCS Products allocated to FFL under the FFL Master Agreement.

(d) For the avoidance of doubt, [***].

3.2 Rights to Cleanroom Space.

(a) JV BiCS Space. The Parties acknowledge that each of the JVs has the right to invest in and secure production capacity and/or cleanroom space in the New Y2 Facility, the Y3 Facility, the Y4 Facility and the Y5 Facility for the production of JV BiCS Products (the cleanroom space actually so utilized for production of BiCS Products at any time, such JV's "JV BiCS Space"). In the event of an expiration or dissolution of a JV or termination of a JV Master Agreement for any reason, without any limitation on Toshiba's use or disposal of the facilities or assets of such JV, each Parent Party shall consider in good faith potential negative impacts on the remaining JVs' respective production capacities and utilization of their respective JV Space in the Yokkaichi Facility.

(b) New Y2 Non-JV Space. The Parent Parties have the right to invest in and secure production capacity and/or cleanroom space in the New Y2 Facility as follows:

(i) [***]

(ii) Yokkaichi Unilateral BiCS Expansion Space. [***]

(iii) Toshiba Capacity Conversion. [***]

3.3 Tool Acquisition, Usage and Layout.

(a) JV Tools. Acquisitions of JV BiCS Tools shall be made in accordance with the terms for NAND Flash Memory Products tool acquisitions in the applicable JV Master Agreement, and JV BiCS Tools may be installed in any facility in the Yokkaichi Facility as mutually agreed by the Parent Parties.

(b) Toshiba R&D Tools. [***]

(c) BiCS Unilateral Tools. [***]

(d) Tool Layout. [***]

3.4 NAND Flash Memory Products.

(a) Notwithstanding anything to the contrary in this Agreement, the Parties acknowledge that NAND Flash Memory Products may be manufactured using tools installed in the New Y2 Facility cleanroom space if and to the extent agreed in a JV Business Plan or by the applicable JV Operating Committee. Any such manufacture of NAND Flash Memory Products (including as to expansion or technology transition) shall be conducted pursuant to the terms of the applicable JV's JV Agreements as if such JV Agreements contemplated the manufacture of NAND Flash Memory Products in the New Y2 Facility.

(b) Any NAND Flash Memory Products manufactured at the Yokkaichi Facility and that are identified [***] as New Y2 lots are referred to as "New Y2 NAND Flash Memory Products." "JV New Y2 NAND Flash Memory Products" are New Y2 NAND Flash Memory Products allocated to a JV under the applicable JV's JV Master Agreement. The

definitions of "Y3 NAND Flash Memory Products," "Y4 NAND Flash Memory Products," "Y5 NAND Flash Memory Products" and "JV Y5 NAND Flash Memory Products" in the JV Agreements are hereby replaced with the following definitions:

(i) "Y3 NAND Flash Memory Products" means NAND Flash Memory Products manufactured at the Yokkaichi Facility and identified [***] as Y3 lots;

(ii) "Y4 NAND Flash Memory Products" means NAND Flash Memory Products manufactured at the Yokkaichi Facility and identified [***] as Y4 lots; and

(iii) "Y5 NAND Flash Memory Products" means NAND Flash Memory Products manufactured at the Yokkaichi Facility and identified [***] as Y5 lots, and "JV Y5 NAND Flash Memory Products" means Y5 NAND Flash Memory Products (as defined herein) allocated to FFL under the FFL Master Agreement.

(c)Allocation of monthly lot output of NAND Flash Memory Products under the JV Master Agreements is hereby amended as follows:

(i)the actual monthly lot output of Y3 NAND Flash Memory Products will be allocated between the Parent Parties in the manner set forth in the JVRA as if all of such output were from the Y3 Facility;

(ii)the actual monthly lot output of Y4 NAND Flash Memory Products will be allocated between the Parent Parties in the manner set forth in the JVRA as if all of such output were from the Y4 Facility;

(iii)the actual monthly lot output of Y5 NAND Flash Memory Products will be allocated between the Parent Parties in the manner set forth in the FFL Master Agreement as if all of such output were from the Y5 Facility; and

(iv)the actual monthly lot output of New Y2 NAND Flash Memory Products will be allocated between the Parent Parties in the manner set forth in this Agreement as if all of such output were BiCS Product output from the New Y2 Facility;

in each case, provided, that during any month in which the planned production of NAND Flash Memory Products is [***], output will be allocated between the Parent Parties [***].

4. RAMP-UP PROCESS

4.1 Minimum Commitment. Unless otherwise agreed in writing between the Parent Parties, the Parent Parties shall, through the JVs, make the investments necessary for (i) [***] L/M in aggregate New Y2 Facility production capacity for [***] and (ii) [***] L/M in aggregate New Y2 Facility production capacity for [***], the investments for both (i) and (ii) to be [***] (the foregoing, as further described below, the "Minimum Commitment").

(a) [***]

(b)[***]

(c)[***]

4.2 Yokkaichi BiCS Expansion. [***].

4.3 [***].

4.4 BiCS Conversions and BiCS Technology Transitions. The JVs shall be given priority for any BiCS Conversion or BiCS Technology Transition. Should any of FPL, FAL or FFL not accept any proposal for a BiCS Conversion or BiCS Technology Transition, the non-rejecting Parent Party may implement such BiCS Conversion or BiCS Technology Transition on its capacity, and [***]. Subject to the foregoing priority granted to the JVs, nothing in this Agreement shall in any way limit Toshiba's ability to implement BiCS Conversions or BiCS Technology Transitions within the Toshiba Capacity, which shall be made in Toshiba's sole discretion. For the avoidance of doubt, any BiCS Conversion or BiCS Technology Transition involving the use of the New Y2 Facility shall be managed as a technology transition by the Operating Committees in accordance with the JV Agreements and the Parties' past practice.

4.5 Failure to Invest.

(a) Minimum Commitment. If SanDisk fails for any reason to make (or authorize the JVs to make) the investment necessary to implement its [***] of the Minimum Commitment [***], then [***].

(b) Ramp-Up Commitment. If a Parent Party fails for any reason to make (or authorize the JVs to make) the investment necessary to implement its [***] of a Ramp-Up Commitment, then the other Parent Party (so long as it has made and authorized the investment necessary to implement its [***] of the Minimum Commitment) may[***]

(c) [***]

5. PRIORITY

5.1 [***]

5.2 [***].

6. New Y2 Operating Committee

6.1 Committee Purpose and Authority. There will be an Operating Committee for New Y2 Facility operations (the "New Y2 Operating Committee") consisting of a senior executive designated by each of SanDisk and Toshiba (each such individual, the "SanDisk Representative" and the "Toshiba Representative," respectively), each of whom shall have an engineering background and represent the designating Party on aday-to-day basis at the New Y2 Facility. The New Y2 Operating Committee shall work together and endeavor to make the New

Y2 Facility the most advanced and competitive memory fabrication facility in the world. The New Y2 Operating Committee will have the authority to determine all matters concerning the day-to-day operations of the New Y2 Facility (including staffing matters as provided in Article 7), subject to the requirements of this Agreement.

6.2 Parent Party Representatives.

(a) Replacement. Each Parent Party shall notify the other Parent Party in advance of any replacement of its representative on the New Y2 Operating Committee. If a Parent Party requests in good faith that the other Parent Party's representative be replaced with another person from the other Parent Party's organization, the other Party shall consider and discuss in good faith with the requesting Parent Party such request, provided, that such replacement, if any, may be determined solely by such other Parent Party.

(b) [***].

6.3 Committee Meetings. The New Y2 Operating Committee shall communicate on a day-to-day basis with respect to the status of New Y2 Facility operations and any other issues that may arise and shall meet in person no less than one time per week, or such other times and frequency as mutually agreed by all members of such committee. The New Y2 Operating Committee shall hold a monthly review meeting in English at the Yokkaichi Facility on the [***] of each calendar month, unless otherwise agreed by the New Y2 Operating Committee. The New Y2 Operating Committee shall prepare and distribute to the Parent Parties (at least three Business Days in advance of the New Y2 Operating Committee's monthly review meetings) monthly reports in English with respect to the engineering activities, operations and cost information of the New Y2 Facility

6.4 Dispute Resolution. If the members of the New Y2 Operating Committee are unable to agree on any issue after [***] (by agreement of its two members), they shall submit such matter together with their respective recommendations to the applicable Board of Executive Officers of the applicable JV(s), which shall endeavor to immediately resolve the issue or escalate such issue, as applicable in the manner set forth in the applicable JV Master Agreement.

7. ENGINEERS AND HEADCOUNT PLAN

7.1 New Y2 JV Engineers; Personnel. As used in this Agreement:

(a) "New Y2 JV Engineers" means [***];

(b) "Toshiba Personnel" means [***];

(c) "SanDisk Personnel" means [***];

(d) "Personnel" means [***]; and

(e) "SanDisk Team" means [***].

7.2 New Y2 JV Headcount Plan. [***]

7.3 Staffing. [***].

7.4 Integration; Headcount Working Group. Integration of the SanDisk Team into the New Y2 Facility organization, organization structure, updates on SanDisk's and Toshiba's respective hiring of New Y2 JV Engineers, access to the New Y2 Operating Committee, SanDisk Team member communications with SanDisk, [***] and related matters will be discussed by the Headcount Working Group (as defined in the FFL Master Agreement), as applicable, and, subject to and without any limitation on the effect of the Information Security Agreement as applicable, provided for and resolved in the manner set forth in the FFL Master Agreement with respect to personnel at the Y5 Facility, except that matters to be handled by the Y5 Operating Committee will be handled instead by the New Y2 Operating Committee.

7.5 SanDisk Team. With respect to the SanDisk Team, subject to and without any limitation on the effect of the Information Security Agreement, the Parties agree as follows:

(a) Language Skills. Recognizing that Japanese language skills will be necessary for personnel working at the New Y2 Facility, SanDisk shall seek to minimize the number of SanDisk New Y2 JV Engineers seconded to the New Y2 Facility who are not highly proficient in Japanese, and SanDisk shall ensure that those members of the SanDisk Team who are not Japanese speakers receive some language training in Japanese at SanDisk's cost before being sent to work at the New Y2 Facility and SanDisk shall use commercially reasonable efforts to ensure that such language training is appropriate to such SanDisk Team member's position at the New Y2 Facility.

(b) Reimbursement; Conditions. SanDisk's New Y2 JV Engineers shall be integrated by Toshiba at the Yokkaichi Facility and shall work together with Toshiba's New Y2 JV Engineers to seek to ensure the optimal operation of the New Y2 Facility from a cost and technology perspective. [***].

(c) SanDisk Personnel. [***]

(d)[***]

(e)[***]

(f)[***]

(g) Employment Relationship. All members of the SanDisk Team will remain employees of SanDisk (or the SanDisk Affiliate, as applicable).

7.6 Indemnification. Each Parent Party will indemnify the other Parties from any claim by any of such Parent Party's employees, consultants or agents (such Parent Party being the "Employer") (a) based on other than willful misconduct of such Employer, its employees,

consultants or agents or (b) that he or she has rights, or is owed obligations, as an employee of the Party that is not the Employer.

7.7 Other Personnel. [***].

8. MANUFACTURING COSTS

8.1 New Y2 Manufacturing Costs. "New Y2 Manufacturing Costs" means [***] Charges, [***] Charges and [***] Charges, as reconciled pursuant to Section 8.1(d).

(a) [***]

(b) [***]

(c) [***]

(d) Manufacturing Cost Reconciliation. Within [***] after the end of each JV fiscal quarter, Toshiba shall perform the manufacturing cost reconciliations of [***] Charges and [***] Charges, in each case as described above (together, the "Quarterly Manufacturing Cost Reconciliation"). Toshiba personnel at the New Y2 Facility shall provide a forecast of the Quarterly Manufacturing Cost Reconciliation to the JVs and SanDisk every month.

8.2 New Y2 Manufacturing Cost Allocation Framework. New Y2 Manufacturing Costs shall be shared by the Parties and shall be either New Y2 Fixed Manufacturing Costs or New Y2 Variable Manufacturing Costs, in each case as determined in the manner set forth in this Article 8. [***]

8.3 New Y2 Manufacturing Cost Allocation Methodology.

(a) [***].

(b) [***].

(c) New Y2 Manufacturing Costs allocated to New Y2 Products will be further allocated as set forth in Section 8.4(b).

(d) Within [***] after the end of each JV fiscal quarter, Toshiba shall provide to SanDisk a reconciliation of the allocation of New Y2 Manufacturing Costs that reflects [***] during the fiscal quarter. Toshiba personnel at the New Y2 Facility will provide a forecast of such quarterly reconciliation to the JVs and SanDisk every month.

(e) In the event that there is [***] circumstances warrant a deviation from the allocation methodology set forth in Sections 8.3(a) through 8.3(d), then the Parent Parties shall [***].

8.4 New Y2 Product Manufacturing Costs.

(a) "New Y2 Product Manufacturing Costs" means [***].

(b) All New Y2 Product Manufacturing Costs will be either New Y2 Product Fixed Manufacturing Costs or New Y2 Product Variable Manufacturing Costs.

(i) New Y2 Product Fixed Manufacturing Costs. "New Y2 Product Fixed Manufacturing Costs" means [***]

(ii) New Y2 Product Variable Manufacturing Costs. "New Y2 Product Variable Manufacturing Costs" means [***]

8.5 Accounting and Cost Methodology. New Y2 Manufacturing Costs methodology will in principle be in accordance with the existing accounting and cost methodology used by the JVs in the Yokkaichi Facility.

8.6 No Duplication of Costs or Expenses. It is the intent of the Parties that any payments made by the Parties under or pursuant to any Master Operative Document shall not be duplicative and that the Parties shall in no event be required to pay or contribute more than once for any service, product or development work provided under the Master Operative Documents, if such service, product or development work is provided under more than one Master Operative Document. In addition, to the extent that a Party makes a direct payment for any service, product or development work under a Master Operative Document, the cost incurred by Toshiba (from the Yokkaichi Facility) or the JVs, as the case may be, in connection with the provision of such service, product or development work shall not be included in the applicable wafer price charged to such Party.

9. FOUNDRY AND PURCHASE AND SUPPLY ARRANGEMENTS

9.1 New Y2 Foundry Arrangements.

(a) Die Sort, Equipment and Raw Materials. Die sorting facilities will be located at [***] or such other place mutually agreed by the Parent Parties. Toshiba's use of any of FPL's, FAL's and FFL's manufacturing equipment located in the New Y2 Facility in the manufacture of BiCS Products will be governed by the FPL Lease Agreement, the FAL Lease Agreement and the FFL Lease Agreement, respectively. Toshiba shall be responsible for obtaining the raw materials and services to be used in the manufacture of BiCS Products and other JV New Y2 Products, if any.

(b) Foundry Production. Toshiba shall manufacture BiCS Products at the New Y2 Facility for the JVs as ordered by the JVs pursuant to the Foundry Agreements. Toshiba (from the Yokkaichi Facility) and the JVs shall use their best efforts to achieve the manufacturing capacity set forth in the JV Business Plans, which will include any plans for JV use of cleanroom space in the New Y2 Facility. Wafers produced in the New Y2 Facility will be

sorted between the Parent Parties such that aggregate yield losses will be shared on an equal basis.

(c) Operating Relationship. The Parent Parties shall provide personnel necessary for the manufacture of BiCS Products for and on behalf of the JVs as described in Article 7.

(d) Consideration to be Paid to Toshiba. Toshiba shall be compensated by the JVs as provided in the Foundry Agreements, [***]

9.2 Purchase and Supply Agreements. For the avoidance of doubt, the rights, obligations and procedures for the purchase by Toshiba and SanDisk from FPL, FAL and FFL of JV BiCS Products manufactured in whole or in part at the New Y2 Facility shall be as set forth in the FPL Purchase and Supply Agreements, the FAL Purchase and Supply Agreements and the FFL Purchase and Supply Agreements, respectively.

9.3 Equal Right to JV Production. For the avoidance of doubt, each of the Parent Parties shall have the right and obligation, through the JVs, to utilize 50% of the manufacturing capacity for JV BiCS Products manufactured in whole or in part at the Yokkaichi Facility, on an Equivalent Lot basis, as provided in the JV Master Agreements.

9.4 New Y2 Product Output Allocation. The actual monthly lot output of New Y2 Products shall be allocated among the JVs, Toshiba and SanDisk, as applicable, based on the New Y2 Capacity Ratio; provided, that during any month in which the planned production capacity of New Y2 Products is [***], Toshiba and SanDisk will be allocated output of such New Y2 Products [***].

9.5 Alternative Use of Allotted Capacity. For the avoidance of doubt, any alternative use of a Party's allotted manufacturing capacity for JV BiCS Products within the New Y2 Facility will be as permitted in, and subject to and governed by the terms of, the applicable JV's JV Master Agreement.

10. RESEARCH AND DEVELOPMENT

10.1 [***].

10.2 [***]

10.3 [***]

10.4 [***]

10.5 [***]

10.6 No Change to Common R&D. Notwithstanding anything in this Article 10, except as may be otherwise agreed in writing between the Parties, the Common R&D Agreement shall continue in full force and effect in accordance with its terms, and the agreements regarding equipment, materials and development provided for in the Common R&D Agreement shall continue to be part of the Common R&D Agreement.

11. NEW Y2 INFORMATION AND DATA SHARING

11.1 Management and Operating Reports. Upon the request of either Toshiba or SanDisk, the New Y2 Operating Committee shall provide Toshiba and SanDisk with, simultaneously in Japanese and English, those management and operating reports identified on Schedule 11.1 and as mutually agreed upon from time to time by the Parent Parties. Upon reasonable request from SanDisk, Toshiba employees shall explain such reports to SanDisk's employees and respond to questions from SanDisk's employees; provided, however, that SanDisk acknowledges and agrees that Toshiba will not be responsible for SanDisk's failure to understand any such reports.

11.2 Production Control; Access to New Y2 Data. Toshiba shall provide SanDisk [***] on a non-discriminatory basis [***] with respect to [***]; provided, that the cost necessary for making such system available to SanDisk will be borne by [***]. Each Party will be provided the same real-time access to New Y2 data relating to JV Products.

11.3 Engineering Wafers. Each of the Parent Parties will have full access to all operational and engineering data and reports related to engineering wafers manufactured for JV Products manufactured at the New Y2 Facility.

11.4 Unilateral Capacity Data. For any Toshiba Capacity in the New Y2 Facility, Toshiba shall provide to the JVs all data necessary to determine whether the Toshiba Capacity is being operated [***], including but not limited to [***].

11.5 [***]

12. OTHER MODIFICATIONS TO CERTAIN MASTER OPERATIVE DOCUMENTS

To update their agreement as expressed in certain of the Master Operative Documents to, among other things, take into account the New Y2 Facility and to reflect that the installation of tools and utilization of clean room space by each of the JVs is not limited to any one fabrication facility within the Yokkaichi Facility, the Parties agree that the Master Operative Documents are hereby amended as set forth below, and as necessary to give effect to the purpose and intent of this Article 12 whether or not expressly set forth below.

12.1 Defined Terms. Capitalized terms used in the Master Operative Documents that are assigned meanings in Exhibit A to this Agreement are hereby revised to have the respective meanings assigned to them in Exhibit A to this Agreement unless the context otherwise requires.

12.2 JV Master Agreements.

(a) Allocation of Lot Output. Allocation of monthly lot output under the JV Master Agreements is hereby amended as follows:

(i) the actual monthly lot output of Y3 BiCS Products will be allocated between the Parent Parties in the manner set forth in the JVRA as if all of such output were from the Y3 Facility;

(ii) the actual monthly lot output of Y4 BiCS Products will be allocated between the Parent Parties in the manner set forth in the JVRA as if all of such output were from the Y4 Facility; and

(iii) the actual monthly lot output of Y5 BiCS Products will be allocated between the Parent Parties in the manner set forth in the FFL Master Agreement as if all of such output were NAND Flash Memory Product lot output from the Y5 Facility;

in each case, provided, that during any month in which the planned production is [***], output will be allocated between the Parent Parties [***].

(b) Alternative Use of Allotted Capacity. The rights of each Parent Party under the JV Agreements to use a portion of its total allocated capacity in the Y3 Facility, the Y4 Facility and from the JV Space in the Y5 Facility to cause to be manufactured Proprietary NAND Flash Memory Products, subject to the conditions and limitations set forth in the JV Agreements, are hereby extended to the JV Space in the New Y2 Facility.

(c) Engineering Wafers. The rights of the Parent Parties to receive Evaluation Wafers and Qualification Wafers (each as defined in the JV Master Agreements) under the JV Master Agreements apply to Evaluation Wafers and Qualification Wafers manufactured in the New Y2 Facility.

(d) Y3, Y4 and Y5 Capacity Ratios. The capacity ratios used to calculate output and cost allocation for the Y3 Facility and the Y4 Facility as set forth in Schedule 4.1(b)(i) to the JVRA and for the Y5 Facility as set forth in Section 7.4 of FFL Master Agreement are hereby replaced with the capacity ratios initially set forth on Schedule 12.2(d) to this Agreement and updated from time to time by the Parent Parties as mutually agreed.

(e) [***]

12.3 JV Operating Agreements; Management and Operating Reports. The management and operating reports identified on Schedule 5.3 to each JV Operating Agreement will take into account any utilization by FPL, FAL and FFL, as applicable, of the JV Space.

12.4 JV Purchase and Supply Agreements; Foundry Agreements. Article 7 in each of the FFL Purchase and Supply Agreements and in the FFL Foundry Agreement is hereby amended to add the New Y2 Facility to [***] such that "[***]" is replaced with "[***]."

12.5 JV Lease Agreements. All references to the Y3 Facility and the Y4 Facility in the FPL Lease Agreement and the FAL Lease Agreement, respectively, are hereby amended to refer to all of the Yokkaichi Facility.

13. CONFIDENTIALITY AND DISCLOSURE

13.1 Public Announcements. Neither Parent Party shall, nor shall it permit any of its Affiliates to, without the prior written consent of the other Parent Party:

(a) issue any public release, announcement or other document, or otherwise publicly disclose any information or make any public statement, concerning the operations of the New Y2 Facility or production of BiCS Products that refers to the other Parent Party or any of its Affiliates in connection therewith (other than a general reference to affiliation with the JVs) and (i) concerns the financial condition or results of operations of the JVs, other than as required by any applicable Law or accounting standard with respect to the financial disclosure obligations of either Parent Party, or (ii) disparages either Parent Party or the JVs' performance or reflects negatively on either Parent Party's commitment to the New Y2 Facility; or

(b) publicly file all or any part of any New Agreement or the BiCS LDA or any description thereof, or issue or otherwise make publicly available any press release, announcement or other document that contains Confidential Information belonging to the other Parent Party (or its Affiliates) or the JVs, except as may be required by applicable Law (in which case such Parent Party shall (or shall cause the Person required to make such filing to) cooperate with the other Parent Party, to the extent reasonable and practicable, in obtaining any confidential treatment for such filing requested by the other Parent Party).

Each Parent Party shall use commercially reasonable efforts to grant or deny any approval required under this Section 13.1 within five Business Days of receipt of written request by the other Parent Party; provided, however, that a Parent Party's failure to respond within said time period shall not be deemed to constitute such Parent Party's approval or consent.

13.2 Non-Disclosure Obligations.

(a) For a period of [***] from the date of receipt of each item of Confidential Information disclosed by one Party (the "Disclosing Party") under any New Agreement, the other Party (the "Receiving Party") shall safeguard such item of Confidential Information, shall keep it in confidence, and shall use reasonable efforts, consistent with those used in the protection of its own confidential information, to prevent its disclosure of such Confidential Information to third parties.

(b) Notwithstanding the foregoing Section 13.2(a), the Receiving Party shall not be obligated by this Section 13.2 with respect to information that: (i) is already known to the Receiving Party at the time of its receipt from the Disclosing Party as reasonably evidenced by its written records; (ii) is or becomes publicly available without breach of this Agreement by the Receiving Party; (iii) is made available to a third party by the Disclosing Party without

restriction on disclosure; (iv) is rightfully received by the Receiving Party from a third party without restriction and without breach of this Agreement; (v) is independently developed by the Receiving Party as reasonably evidenced by its written records contemporaneous with such development; (vi) is disclosed with the prior written consent of the Disclosing Party, provided, that each recipient from the Receiving Party shall execute a confidentiality agreement prohibiting further disclosure of the Confidential Information, under terms no less restrictive that those provided in this Agreement; (vii) is required to be disclosed by the order of a Governmental Authority, provided, that the Receiving Party shall give the Disclosing Party prompt notice of such request so that the Disclosing Party has an opportunity to defend, limit or protect such disclosure; or (viii) is required to be disclosed by applicable securities or other Laws, provided, that SanDisk shall, prior to any such disclosure required by the U.S. Securities and Exchange Commission, provide Toshiba with notice which includes a copy of the proposed disclosure and consider in good faith Toshiba's timely input with respect to such disclosure.

(c) The Receiving Party shall use its reasonable best efforts to limit dissemination of the Disclosing Party's Confidential Information to such of its employees who have a need to know such information for the purpose for which such information was disclosed. The Receiving Party understands that disclosure or dissemination of the Disclosing Party's Confidential Information not expressly authorized hereunder would cause irreparable injury to the Receiving Party, for which monetary damages would not be an adequate remedy and would entitle the Disclosing Party to equitable relief in addition to any remedies the Disclosing Party may have hereunder or at law.

(d) For purposes of the confidentiality obligations in the Existing Agreements and the New Agreements, information shall not be considered to have been made available to a third party by the Disclosing Party without restriction on disclosure if such information was only made available to such third party as a result of an inadvertent or unintentional disclosure of such information by the Disclosing Party. In the event that the Disclosing Party's disclosure of Confidential Information to the Receiving Party is inadvertent or unintended and the Disclosing Party, upon becoming aware of such inadvertent or unintended disclosure, promptly notifies the Receiving Party in writing that such disclosure was inadvertent or unintended, the Receiving Party shall promptly (and in any event in less than **[***]**) destroy all such Confidential Information. In addition, if the Receiving Party reasonably believes that the Disclosing Party's disclosure of Confidential Information to the Receiving Party was inadvertent or unintended, the Receiving Party shall promptly notify the Disclosing Party of such belief and, if requested by the Disclosing Party, promptly (and in any event in less than [***]) destroy all such Confidential Information. If requested by the Disclosing Party, the Receiving Party shall certify in writing that all such Confidential Information has been destroyed.

(e) Nothing in this Agreement shall be construed as granting or conferring any rights, licenses or relationships by the transmission of the Confidential Information.

13.3 Ownership and Return of Information. All Confidential Information disclosed hereunder shall remain the property of the Disclosing Party. Upon request by the Disclosing Party, the Receiving Party shall return all Confidential Information of the Disclosing Party,

including any and all copies thereof, or certify in writing that all such Confidential Information had been destroyed.

14. TERM AND TERMINATION

14.1 Term. This Agreement shall continue in full force and effect until the latest of the termination of (a) the FPL Master Agreement, (b) the FAL Master Agreement and (c) the FFL Master Agreement, unless earlier terminated as hereinafter provided. The term of this Agreement may be extended by mutual agreement of both Parent Parties.

14.2 Termination. Notwithstanding the foregoing Section 14.1, this Agreement may be terminated:

(a) by the mutual written agreement of the Parties, in which case this Agreement will terminate on the date mutually agreed by the Parties;

(b) by either Parent Party upon [***] written notice to the other Parent Party, if (i) (A) the other Parent Party has failed to make (or authorize the JVs to make) the investment necessary to implement its share of the Minimum Commitment [***] or (B) has failed to pay [***], and (ii) the terminating Parent Party is not itself in material breach of any material Master Operative Document; or

(c) by either Parent Party, upon written notice to the other Parent Party, if the other Parent Party (i) makes an assignment of all or substantially all its assets for the benefit of creditors, (ii) has filed a voluntary petition in bankruptcy or insolvency or any other legal action or document seeking reorganization, readjustment or arrangement of its business under any Law relating to bankruptcy or insolvency, or (iii) is adjudicated to be bankrupt or insolvent under any such Law, or has a receiver appointed over all or substantially all of its property, by a competent Governmental Authority; in which case of (i), (ii) or (iii), this Agreement will terminate on the 30th day after such notice of termination is given.

14.3 Termination for Material Breach. The Parent Parties agree and acknowledge that in the event of a final determination by an arbitral tribunal under Section 17.4 that a Parent Party has committed or is committing a continuing material breach of any ofSections [***]of this Agreement that [***] (any such breach, a "Material Breach"), and the breaching Parent Party fails to cure such breach within [***] after such determination, then thenon-breaching Parent Party shall have as a remedy for Material Breach the termination of this Agreement, in addition to all other legal and equitable remedies available to such Parent Party. In the event that a Parent Party expressly asserts in writing a Material Breach, the dispute shall proceed as specified in Section 17.4, provided, however, that

(a) no matters other than the existence of such Material Breach (and counterclaims and defenses directly related to the conduct or circumstances underlying the asserted Material Breach) shall be submitted to or determined by the arbitral tribunal;

(b) the Parent Parties shall use their respective reasonable best efforts to complete and finalize the Terms of Reference within [***] following such assertion of Material Breach; and

(c) the Parent Parties shall instruct the arbitral tribunal, with the full assistance and cooperation of the Parent Parties, to endeavor to submit its draft award on the existence of the Material Breach to the Court of Arbitration of the ICC for approval within [***] following the effective date of the Terms of Reference, provided, that any failure to issue an award in such time period shall not be considered a defense or objection to the enforcement of such an award.

The Parent Parties agree to attempt in good faith to resolve any potential claim for Material Breach.

14.4 Termination in Good Faith. Termination of any Master Operative Document by any party thereto may be done only in good faith.

14.5 Survival.

(a) The provisions of Sections 4.5(c), 7.6 and 12.2(e)(i) (except with respect to the New Y2 Facility), Articles 13 and 17, this Article 14 and Exhibit A shall survive any termination or expiration of this Agreement.

(b) So long as (and only for so long as) the Parent Parties have BiCS Products manufacturing capacity in the JVs, the provisions of Article 1, Sections 3.1(c), 3.1(d), 3.2(a) (except with respect to the New Y2 Facility), 3.3(a), 3.3(c), 3.4(b) (except with respect to New Y2 Products), 3.4(c) (except with respect to New Y2 Products), 4.2 (except with respect to the New Y2 Facility), 4.3 and 4.4 (except with respect to the New Y2 Facility) and Articles 5, 10 (excluding Section 10.2 and, with respect to the New Y2 Facility, Section 10.3), Sections 12.1, 12.2(a), 12.3 and 12.5, and Articles 15 and 16 shall also survive any termination or expiration of this Agreement.

14.6 Restructuring Costs.

(a) In the event this Agreement is terminated, the Parent Parties will exercise best efforts to plan such termination in advance with the goal of minimizing related costs. With respect to Toshiba employees and SanDisk employees working at the New Y2 Facility, (A) in the case of those that are Toshiba employees, Toshiba will use its best efforts to retrain or relocate such individuals to other Toshiba facilities, and (B) in the case of those that are SanDisk employees, SanDisk will use its best efforts to retrain or relocate such individuals to other SanDisk facilities, each to the maximum extent possible.

(b) The Parties agree that in the event of such a SanDisk exit from the New Y2 Facility, [***]

(c) Upon any termination of this Agreement, the Parties shall meet and discuss in good faith an estimate of the Restructuring Costs anticipated to be incurred by Toshiba. [***]

14.7 Effect on Other Collaborations. Unless otherwise expressly provided herein, termination of this Agreement shall not affect any surviving rights or obligations of either Parent Party set forth in the Joint Operative Documents. For avoidance of doubt, the BiCS LDA and the Patent Cross License (in each case, including the licenses provided thereunder) shall continue in full force and effect following the termination of this Agreement until its termination or expiration in accordance with its terms.

15. REPRESENTATIONS AND WARRANTIES

Each Parent Party hereby represents and warrants to the other Parent Party as follows:

15.1 Organization and Standing. It is duly organized and validly existing and, where applicable, in good standing under the laws of the jurisdiction in which it is organized.

15.2 Authority; Enforceability. It has the requisite power and authority to enter into the New Agreements, to execute any certificates or other instruments to be executed by it in connection therewith and otherwise carry out the transactions contemplated by the New Agreements. All proceedings required to be taken by it to authorize the execution, delivery and performance of the New Agreements, and any such certificates and instruments, have been properly taken. This Agreement has been duly and validly executed and delivered by it and constitutes a valid and binding obligation of it, enforceable against it in accordance with its terms except as enforceability may be limited by bankruptcy, insolvency, fraudulent conveyance or similar laws affecting the enforcement of creditors' rights generally or the availability of equitable remedies (regardless of whether enforceability is considered in a proceeding at law or in equity).

15.3 No Conflict. The execution, delivery and performance of the New Agreements and the BiCS LDA by it and its Affiliates do not and will not (a) breach, violate or conflict with any provision of its charter documents as amended to date, or (b) conflict with or violate any Law applicable to it. No consent, approval or authorization of, or filing with, any Governmental Authority, or any other Person, is required to be made or obtained by it in connection with the execution, delivery and performance by it of any New Agreement or the consummation by it of the transactions contemplated thereby.

15.4 Proceedings. There are no actions, claims, investigations or proceedings pending, or to its knowledge threatened, by or before any Governmental Authority that, if adversely determined, would have a material adverse effect on it or on the conduct of the business of any of the JVs as contemplated in the Master Operative Documents or on its ability to perform any material obligation under any Master Operative Document.

15.5 Litigation; Decrees. There are no Actions pending, or, to its knowledge, threatened that (a) are reasonably likely, based on information known to it as of the date hereof, to have a material adverse effect on the conduct of the business of any of the JVs as contemplated by the Master Operative Documents or BiCS LDA or (b) relate to any of the transactions contemplated by the Master Operative Documents or BiCS LDA in a manner which is material to its, any of its Affiliates' or any of the JVs' ability to carry out the transactions contemplated hereby and thereby or which could have a material adverse effect on the conduct of the business of any of the JVs as contemplated in the Master Operative Documents or BiCS LDA. There is no judgment, order, writ or decree that substantially restrains its ability to consummate the transactions contemplated by the New Agreements or the BiCS LDA.

15.6 Compliance with Other Instruments. Neither it nor any of its Affiliates that is party to any New Agreement is in default in any material respect in the performance of any material obligation, agreement, instrument or undertaking to which such Person is a party or by which such Person or any of its properties is bound. There is no such obligation, agreement, instrument or undertaking to which it or any of its Affiliates is a party or by which any of its Affiliates or any of its or their properties is bound, in each case that is reasonably likely to have a material adverse effect on the Parties' production of BiCS Products as contemplated by the Master Operative Documents.

15.7 Patents and Proprietary Rights. To its knowledge, it owns or possesses sufficient legal rights to all patents, utility models, trademarks, service marks, trade names, copyrights, applications for any of the foregoing, mask works, software, trade secrets, licenses, information and proprietary rights and processes (collectively, "Intellectual Property") necessary (a) to carry out its or any of its Affiliates' obligations under the Master Operative Documents and (b) for the conduct of the business of any of the JVs as contemplated in the Master Operative Documents, without any conflict with or infringement of the rights of others, except as will not have a material adverse effect on either (a) or (b) above. It has not received any communications alleging that its Intellectual Property violates, or by its or any of its Affiliates entering into the transactions contemplated by the Master Operative Documents, would violate the Intellectual Property of any other Person or entity, which violation could reasonably be expected to have a material adverse effect on either (a) or (b) above.

15.8 Compliance with Laws. It and each of its Affiliates has complied and is complying in all material respects with all Laws, except where the failure to so comply would not have a material adverse effect on its or any of its Affiliates ability to perform its or their obligations under the Master Operative Documents or on the production of BiCS Products as contemplated by the Master Operative Documents.

15.9 Patent Cross Licenses. [***]

16. COST TRANSPARENCY

As to costs charged to SanDisk and related to JV operations or joint development, Toshiba shall endeavor in good faith to (a) provide an appropriate level of transparency to

reasonably demonstrate Toshiba's compliance with the terms of the Master Operative Documents and (b) increase transparency, on a going-forward basis, as compared to periods prior to the date of this Agreement, in each case in a manner consistent with the good faith protection of Toshiba's proprietary information and the efficient operation of the JVs and joint development activities.

17. MISCELLANEOUS

17.1 Entire Agreement. This Agreement, together with the exhibit(s) and schedules hereto and the other Master Operative Documents, constitute the entire agreement of the Parties to this Agreement with respect to the subject matter hereof and supersedes all prior written and oral agreements and understandings with respect to such subject matter.

17.2 Undertaking as to Affiliate Obligations. Each Parent Party shall cause all covenants, conditions and agreements to be performed, observed or satisfied by any of its Affiliates that are a parties to any New Agreement to be fully and faithfully observed, performed and satisfied by such Affiliate, and shall not cause or permit to exist any breach or default of such covenants, conditions or agreements arising from such Affiliate's action or inaction. Nothing in this Section 17.2 shall be construed to create any right in any Person other than the Parties.

17.3 Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of California applicable to agreements made and to be performed entirely within such state without regard to the conflict of laws principles of such state, except where application of Japanese law is mandatory. Each New Agreement shall be governed in accordance with its governing law provision and, in the absence of any such provision, by the first sentence of this Section 17.3.

17.4 Dispute Resolution; Arbitration. Any dispute concerning this Agreement shall be referred to the applicable JV's Management Representatives and handled by them in accordance with the applicable JV Master Agreement. If the Management Representatives cannot resolve such dispute in accordance with the terms of the applicable JV Master Agreement, then such dispute will be settled by binding arbitration in San Francisco, California. The dispute shall be heard by a panel of three arbitrators pursuant to the rules of the International Chamber of Commerce. The awards of such arbitration shall be final and binding upon the parties thereto. Each party will bear its own fees and expenses associated with the arbitration. Filing fees and arbitrator fees charged by the International Chamber of Commerce shall be borne equally by the Parent Parties.

17.5 Remedies.

(a) Except as may otherwise be specifically provided in the New Agreements, the rights and remedies of the parties under this Agreement are cumulative and are not exclusive of any rights or remedies which the parties hereto would otherwise have.

(b)Equitable relief, including the remedies of specific performance and injunction, shall be available with respect to any actual or attempted breach of this Agreement; provided, however, in the absence of exigent circumstances, the Parties shall refrain from commencing any lawsuit or seeking judicial relief in connection with such actual or attempted breach that is contemplated to be addressed by the dispute resolution process set forth in this Agreement until the Parties have attempted to resolve the subject dispute by following said dispute resolution process to its conclusion.

(c)If the due date for any amount required to be paid under any New Agreement is not a Business Day, such amount shall be payable on the next succeeding Business Day; provided, that if payment cannot be made due to the existence of a banking crisis or international payment embargo, such amount may be paid within the following 30 days.

(d)IN THE ABSENCE OF ACTUAL FRAUD, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO OR BE REQUIRED TO INDEMNIFY ANY OTHER PARTY OR ANY OF THEIR RESPECTIVE AFFILIATES UNDER THIS AGREEMENT (OR ANY AGREEMENT INTO WHICH THIS PROVISION IS INCORPORATED) FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL OR INDIRECT DAMAGE OF ANY KIND, (INCLUDING WITHOUT LIMITATION LOSS OF PROFIT OR DATA), WHETHER OR NOT ADVISED OF THE POSSIBILITY OF SUCH LOSS.

17.6 Relationship of the Parties. The Parties are independent contractors and no provision of or action pursuant to any New Agreement shall constitute any Party acting as the direct or indirect agent or partner of the other Party for any purpose or in any sense whatsoever. Nothing contained in this Agreement is intended to, or shall be deemed to, create a partnership or fiduciary relationship between SanDisk and Toshiba for any purpose. No Party shall take a position contrary to this Section 17.6.

17.7 Official Language. The official language of this Agreement is the English language only, which language shall be controlling in all respects, and all versions of this Agreement in any other language shall not be binding on the parties hereto or nor shall such other versions be admissible in any legal proceeding, including arbitration, brought under this Agreement. All communications and notices to be made or given pursuant to this Agreement shall be in the English language.

17.8 No Implied Licenses. All rights not expressly granted hereunder or under other agreements between the Parties are hereby retained in their entirety by such Party. Moreover, there are no implied grants or licenses hereunder and the only rights or licenses granted to either Party hereunder are limited to those rights and licenses expressly set forth herein.

17.9 Export Laws. No Party shall export or re-export, directly or indirectly, any technical information disclosed hereunder or direct product thereof to any destination prohibited or restricted by the export control regulations of Japan or the United States, including the U.S. Export Administration Regulations, without the prior authorization from the appropriate Governmental Authorities. No Party shall use technical information supplied by any other Party

hereunder for any purpose to develop or manufacture nuclear, chemical, biological weapons or missiles (hereafter "weapons of mass destruction"). No Party shall knowingly sell any products manufactured using any other Party's technical information to any third party if it knows that the end-user of the products will use them for the development and/or manufacture of the weapons of mass destruction.

17.10 Definitions; Interpretation.

(a) Certain Definitions. Capitalized terms used but not defined in the main body of this Agreement shall have the meanings assigned to them in Exhibit A. Capitalized terms used but not defined in either of the main body of this Agreement or in Exhibit A shall have the meaning ascribed to such terms in the FFL Master Agreement.

(b) Treatment of Ambiguities. The Parties acknowledge that each Party has participated in the drafting of this Agreement, and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in the construction or interpretation of this Agreement.

(c) References; Construction. Unless otherwise indicated herein, with respect to any reference made in this Agreement to a Section, Article, Schedule or Exhibit, such reference shall be to a section or article of, or a schedule or exhibit to, this Agreement. The article and section headings contained in this Agreement and the recitals at the beginning of this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. Any reference made in this Agreement to a statute or statutory provision shall mean such statute or statutory provision as it has been amended through the date as of which the particular portion of the Agreement is to take effect, or to any successor statute or statutory provision relating to the same subject as the statutory provision so referred to in this Agreement, and to any then applicable rules or regulations promulgated thereunder. Whenever the words "include," "includes" or "including" are used in this Agreement, they shall be deemed, unless the context clearly indicates to the contrary, to be followed by the words "but (is/are) not limited to." The words "herein," "hereof," "hereunder" and words of like import shall refer to this Agreement as a whole (including its Schedules and Exhibits), unless the context clearly indicates to the contrary. Words used herein, regardless of the number and gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine or neuter, as the context indicates is appropriate. Any reference made in this Agreement to another Master Operative Document shall be deemed, unless the context clearly indicates to the contrary, to refer to such Master Operative Document as such Master Operative Document may be amended or supplemented from time to time.

(d) Order of Precedence. To the extent that a provision in this Agreement expressly conflicts with another Master Operative Document, then the provisions of this Agreement will control as to such conflict; provided, however, that unless otherwise provided herein, the provisions of the Master Operative Documents remain in effect.

17.1 Notices and Contact Information. All notices, reports and other communications to be given or made under this Agreement shall be in writing and shall be deemed received when delivered by hand, courier or overnight delivery service, or by facsimile (if confirmed within two Business Days by delivery of a copy by hand, courier or overnight delivery service), or five days after being mailed by certified or registered mail, return receipt requested, with appropriate postage prepaid and shall be directed to the address of such Party specified below (or at such other address as such Party shall designate by like notice):

(a) If to SanDisk Corporation, SanDisk Cayman, SanDisk Ireland or SanDisk Flash:

SanDisk Corporation
951 SanDisk Drive
Milpitas, CA 95035 USA
Telephone: +1 408 801-1000
Facsimile: [***]
Attention: Chief Executive Officer and President

With a copy to:

SanDisk Corporation
951 SanDisk Drive
Milpitas, CA 95035 USA
Telephone: [***]
Facsimile: [***]
Attention: Chief Legal Officer

(b) If to Toshiba:

Toshiba Corporation
Semiconductor & Storage Products Company
1-1 Shibaura 1-Chome
Minato-Ku, Tokyo 105-8001 Japan
Telephone: [***]
Facsimile: [***]
Attention: Memory Division, Vice President

With a copy to:

Toshiba Corporation
Semiconductor & Storage Products Company
Legal Affairs Division
1-1 Shibaura 1-Chome
Minato-Ku, Tokyo 105-8001 Japan
Telephone: [***]
Facsimile: [***]
Attention: General Manager

(c) If to any of the JVs, then to each of the addressees at (a) and (b) above.

17.12 Assignment. Except as separately agreed by the Parties in writing, none of the Parties may transfer this Agreement or any of its rights hereunder (except for any transfer to an Affiliate or in connection with a merger, consolidation or sale of all or substantially all the assets or the outstanding securities of such Party, which transfer will not require any consent of the other Parties hereunder) without the prior written consent of the each of the other Parties (which consent may be withheld by each such other Party in such other Party's sole discretion), and any such purported transfer without such consents will be void.

17.13 Amendment and Waiver. This Agreement may not be amended, modified or supplemented except by a written instrument executed by each Party. No waiver of any provision of this Agreement shall be effective unless set forth in a written instrument signed by the Party waiving such provision. No failure or delay by a Party in exercising any right, power or remedy under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of the same preclude any further exercise thereof or the exercise of any other right, power or remedy. Without limiting the foregoing, no waiver by a Party of any breach by any other Party of any provision hereof shall be deemed to be a waiver of any subsequent breach of that or any other provision hereof.

17.14 Severability. If a term of any New Agreement or the application of any such term is or becomes illegal, invalid or unenforceable in any respect under any jurisdiction, that will not affect (a) the legality, validity or enforceability in that jurisdiction of any other term of the New Agreements or (b) the legality, validity or enforceability in any other jurisdictions of that or any other term of the New Agreements. To the extent permitted by applicable law, the Parties waive any provision of Law that renders any provision of this Agreement invalid, illegal or unenforceable in any respect. Such term shall be replaced by a mutually acceptable provision, which being valid, legal and enforceable comes closest to the intention of the Parties underlying such illegal, invalid or unenforceable provision.

17.15 Counterparts; Effectiveness. This Agreement may be executed in counterparts, each of which shall be binding as of the date first written above, and all of which shall constitute one and the same instrument. Each such counterpart shall be deemed an original, and it shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart. The exchange of copies of this Agreement and of signature pages by facsimile transmission, portable document format (.pdf) or other electronic format shall be deemed to be their original signatures for all purposes. This Agreement shall not become effective until one or more counterparts have been executed by each Party and delivered to the other Parties.

**[**The remainder of this page is intentionally left blank.**]**

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective duly authorized representatives as of the date first written above.

**SANDISK CORPORATION**

By: /s/ Sanjay Mehrotra
Name: Sanjay Mehrotra
Title: President and CEO

**TOSHIBA CORPORATION**

By: /s/ Seiichi Mori
Name: Seiichi Mori
Title: President and CEO, Semiconductor & Storage Products Company, Corporate Senior Vice President

**SANDISK (CAYMAN) LIMITED**

By: /s/ Judy Bruner
Name: Judy Bruner
Title: Director

**FLASH PARTNERS, LTD.**

By: /s/ Atsuyoshi Koike
Name: Atsuyoshi Koike
Title: Representative Director

**SANDISK (IRELAND) LIMITED**

By: /s/ Stephanie Wells
Name: Stephanie Wells
Title: Director

**FLASH ALLIANCE, LTD.**

By: /s/ Atsuyoshi Koike
Name: Atsuyoshi Koike
Title: Representative Director

**SANDISK FLASH B.V.**

By: /s/ Stephanie Wells
Name: Stephanie Wells
Title: Director

**FLASH FORWARD, LTD.**

By: /s/ Atsuyoshi Koike
Name: Atsuyoshi Koike
Title: Executive Director

**EXHIBIT A**
**DEFINITIONS**

"3D Collaboration Agreement" means the 3D Collaboration Agreement, dated as of June 13, 2008, between SanDisk Corporation and Toshiba.

"Action" means a lawsuit, arbitration or other legal proceeding pending by or against or affecting a Party or any of its Affiliates or any of their respective properties.

"Affiliate" means, with respect to any specified Person, any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with, the Person specified, and "control", when used with respect to any Person, means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities or otherwise, and the terms "controlling" and "controlled" have meanings correlative to the foregoing; provided, however, that the term Affiliate (a) when used in relation to any JV or Subsidiary thereof, shall not include the Parent Parties or any Affiliate of either of them, and (b) when used in relation to SanDisk or Toshiba or their respective Affiliates, shall not include any JV or Subsidiary thereof.

"Agreement" has the meaning set forth in the preamble to this Agreement.

[***]

"Amendment to Patent Indemnification Agreement" means that certain Amendment to Patent Indemnification, dated as of even date herewith, amending that certain Patent Indemnification Agreement, dated as of September 10, 2004, in each case by and among Toshiba, SanDisk Corporation and SanDisk [***].

"Amended JMDY Agreement" means that certain Amended and Restated Joint Memory Development Yokkaichi Agreement, dated as of even date herewith, by and between Toshiba and SanDisk Corporation.

"BiCS Conversion" has the meaning set forth in Section 2.1.

"BiCS Expansions" means [***].

"BiCS LDA" has the meaning set forth in the Recitals.

"BiCS Patent Indemnification Agreement" means the BiCS Patent Indemnification Agreement, dated as of even date herewith, by and between Toshiba and SanDisk Corporation.

"BiCS Process Technology" has the meaning set forth in Section 1.2.

[***]

"BiCS Products" has the meaning set forth for the term "BiCS Memory Products" in the BiCS LDA.

"BiCS Technology" means semiconductor memory technology [***].

"BiCS Technology Transitions" has the meaning set forth in Section 2.1.

"Building Depreciation Prepayment" has the meaning set forth in Section 2.5(c).

"Business Day" means any day (other than a day which is a Saturday, Sunday or legal holiday in the State of California or Japan) on which commercial banks are open for business in the State of California or Tokyo, Japan.

"Common R&D Agreement" means that certain Fifth Amended and Restated Common R&D and Participation Agreement, by and between the Parties, dated as of March 1, 2011.

"Confidential Information" means information disclosed in written, recorded, graphical or other tangible form which is marked as "Confidential", "Proprietary" or in some other manner to indicate its confidential nature, and/or orally or in other intangible form, identified as confidential at the time of disclosure and confirmed as confidential information in writing within thirty (30) days of its initial disclosure.

[***]

"Demolition Costs" means [***].

[***]

[***]

"Disclosing Party" has the meaning set forth in Section 13.2(a).

"Employer" has the meaning set forth in Section 7.6.

"Equivalent Lot" means [***].

"Existing Agreements" means the JV Agreements, the BiCS LDA and the Joint Operative Documents.

"FAL" has the meaning set forth in the preamble.

"FAL Foundry Agreement" has the meaning set forth for the term "FA Foundry Agreement" in the FAL Master Agreement.

"FAL Lease Agreement" means that certain Equipment Lease Agreement, dated as of July 7, 2006, by and between FAL and Toshiba.

"FAL Master Agreement" means that certain Flash Alliance Master Agreement, dated as of July 7, 2006, by and among Toshiba, SanDisk Corporation and SanDisk Ireland.

"FAL MCEIA" means that certain Flash Alliance Mutual Contribution and Environmental Indemnification Agreement, dated as of July 7, 2006, by and among Toshiba, SanDisk Corporation and SanDisk Ireland.

"FAL Purchase and Supply Agreement" means (i) with respect to Toshiba, that certain Purchase and Supply Agreement, dated as of July 7, 2006, by and between FAL and Toshiba, or (ii) with respect to SanDisk Ireland, that certain Purchase and Supply Agreement dated as of July 7, 2006, by and between FAL and SanDisk Ireland.

"FFL" has the meaning set forth in the preamble.

"FFL Foundry Agreement" has the meaning set forth for the term "FF Foundry Agreement" in the FFL Master Agreement.

"FFL Lease Agreement" means that certain Equipment Lease Agreement, dated as of even date herewith, by and between FFL and Toshiba.

"FFL Master Agreement" means that certain Flash Forward Master Agreement, dated as of July 13, 2010, by and among Toshiba, SanDisk Corporation and SanDisk Flash.

"FFL MCEIA" means that certain Flash Forward Mutual Contribution and Environmental Indemnification Agreement, dated as of July 13, 2010, by and among Toshiba, SanDisk Corporation and SanDisk Flash.

"FFL Purchase and Supply Agreement" means (i) with respect to Toshiba, that certain Purchase and Supply Agreement, dated as of March 1, 2011, by and between FFL and Toshiba, or (ii) with respect to SanDisk Flash, that certain Purchase and Supply Agreement dated as of March 1, 2011, by and between FFL and SanDisk Flash.

"First Wafer Out Date" means the date on which the first production utilizing the New Y2 Facility for a portion of its manufacturing process is completed.

"Foundry Agreements" means the FAL Foundry Agreement, FFL Foundry Agreement and FPL Foundry Agreement.

"FPL" has the meaning set forth in the preamble.

"FPL Commitment and Extension Agreement" means that certain FPL Commitment and Extension Agreement, dated as of even date herewith, by and between Toshiba and SanDisk Corporation.

"FPL Foundry Agreement" has the meaning set forth for the term "FP Foundry Agreement" in the FPL Master Agreement.

"FPL Lease Agreement" means that certain Equipment Lease Agreement, dated as of September 10, 2004, by and between FPL and Toshiba.

"FPL Master Agreement" means that certain Flash Partners Master Agreement, dated as of September 10, 2004, by and among Toshiba, SanDisk Corporation and SanDisk Cayman.

"FPL MCEIA" means that certain Mutual Contribution and Environmental Indemnification Agreement, dated as of September 10, 2004, by and among Toshiba, SanDisk Corporation and SanDisk Cayman.

"FPL Purchase and Supply Agreement" means (i) with respect to Toshiba, that certain Purchase and Supply Agreement, dated as of September 10, 2004, by and between FPL and Toshiba, or (ii) with respect to SanDisk Cayman, that certain Purchase and Supply Agreement dated as of September 10, 2004, by and between FPL and SanDisk Cayman.

"Governmental Authority" means any (a) nation, principality, state, commonwealth, province, territory, county, municipality, district or other jurisdiction of any nature; (b) federal, state, local, municipal, foreign or other government; (c) governmental or quasi-governmental authority of any nature (including any governmental division, subdivision, department, agency, bureau, branch, office, commission, council, board, instrumentality, officer, official, representative, organization, unit, body or Person and any court or other tribunal); or (d) individual, Person or body (including any stock exchange) exercising, or entitled to exercise, any executive, legislative, judicial, administrative, regulatory, police, military or taxing authority or power of any nature.

"Information Security Agreement" means that certain Information Security Agreement, dated as of even date herewith, by and between Toshiba and SanDisk Corporation.

"Infrastructure Costs" means the [***].

"Intellectual Property" has the meaning set forth in meansSection 15.7.

"JMDY Project" means the joint development project established to cooperate on the development of the pilot line at the Yokkaichi Facility pursuant to the Amended JMDY Agreement and this Agreement.

"Joint Operative Documents" means the Common R&D Agreement, the Product Development Agreement, the Patent Cross License, the 3D Collaboration Agreement, the Amended JMDY Agreement, the JVRA and the [***].

[***]

"JV" has the meaning set forth in the Recitals.

"JV Agreements" means the FAL Master Agreement, the FFL Master Agreement, the FPL Master Agreement, the JV Operating Agreements, the Foundry Agreements, the Purchase and Supply Agreements, the JV Lease Agreements, the JV MCEIAs, and the Patent Indemnification Agreements.

"JV BiCS Products" means JV Y3 BiCS Products, JV Y4 BiCS Products, JV Y5 BiCS Products and JV New Y2 BiCS Products.

"JV BiCS Space" has the meaning set forth in Section 3.2(a).

"JV BiCS Tools" means tools used in the JV BiCS Space of the New Y2 Facility, the Y3 Facility, the Y4 Facility or the Y5 Facility.

"JV Business Plan" has, with respect to a JV, the meaning given to the term "Business Plan" in the respective JV's JV Master Agreement.

"JV Lease Agreements" means the FPL Lease Agreement, the FAL Lease Agreement and FFL Lease Agreement.

"JV Master Agreements" means the FAL Master Agreement, the FFL Master Agreement and the FPL Master Agreement.

"JV MCEIAs" means the FPL MCEIA, the FAL MCEIA and the FFL MCEIA.

"JV New Y2 BiCS Products" has the meaning set forth in Section 3.1(b).

"JV New Y2 Products" means JV New Y2 BiCS Products plus any other products manufactured using New Y2 Facility cleanroom space in accordance with Article 3 that are identified [***] as New Y2 lots and allocated to a JV under the applicable JV's JV Master Agreement.

"JV Operating Agreements" means that certain Operating Agreement of Flash Partners, Ltd. dated as of September 10, 2004, that certain Operating Agreement of Flash Alliance, Ltd. dated as of July 7, 2006, and that certain Operating Agreement of Flash Forward, Ltd., dated as of March 1, 2011.

"JV Products" means NAND Flash Memory Products and BiCS Products, in each case manufactured for the JVs.

"JV Space" means JV BiCS Space plus any cleanroom space used for the production of NAND Flash Memory Products by the JVs in the Yokkaichi Facility.

"JV Y3 BiCS Products" has the meaning set forth in Section 3.1(c).

"JV Y4 BiCS Products" has the meaning set forth in Section 3.1(c).

"JV Y5 BiCS Products" has the meaning set forth in Section 3.1(c).

"JVRA" means that certain Joint Venture Restructure Agreement, dated as of January 29, 2009, by and among the Parties, the JVs and certain of their respective Affiliates.

"L/M" means either lots per month or Equivalent Lots per month, in each case as mutually agreed by the Parties.

"Law" means all applicable provisions of all (a) constitutions, treaties, statutes, laws (including common law), rules, regulations, ordinances or codes; (b) orders, decisions, judgments, awards or decrees; and (c) requests, guidelines or directives (whether or not having the force of law), in each case of any Governmental Authority of any applicable jurisdiction.

"Management Representatives" has the meaning set forth in the JV Agreements.

"Master Operative Documents" means the Existing Agreements and the New Agreements.

"Material Breach" has the meaning set forth in Section 14.3.

[***]

"Minimum Commitment" has the meaning set forth in Section 4.1.

"NAND Flash Memory Products" has the meaning set forth in the JV Agreements.

"New Agreements" has the meaning set forth in the Recitals.

"New Y2 BiCS Products" has the meaning set forth in Section 3.1(b).

"New Y2 Capacity Ratio" for either SanDisk or Toshiba means [***].

[***]

"New Y2 Facility" means the newly constructed production facility, owned by Toshiba and forming part of the Yokkaichi Facility, including a building shell, cleanroom, and all culverts, piping, ducting and associated infrastructure connecting thereto.

"New Y2 Fixed Manufacturing Costs" means the New Y2 Manufacturing Costs described on Schedule 8.4(b)(i).

"New Y2 JV Engineers" has the meaning set forth in Section 7.1(a).

"New Y2 JV Headcount Plan" has the meaning set forth in Section 7.2.

"New Y2 Manufacturing Costs" has the meaning set forth in Section 8.1.

"New Y2 MCEIA" means that certain New Y2 Mutual Contribution and Environmental Indemnification Agreement, dated as of even date herewith, by and among Toshiba, SanDisk Cayman, SanDisk Ireland and SanDisk Flash.

"New Y2 Operating Committee" has the meaning set forth in Section 6.1.

"New Y2 Product Fixed Manufacturing Costs" has the meaning set forth in Section 8.4(b)(i).

"New Y2 Product Variable Manufacturing Costs" has the meaning set forth in Section 8.4(b)(ii).

"New Y2 Products" means New Y2 BiCS Products plus any other products manufactured using New Y2 Facility cleanroom space in accordance with Article 3 that are identified [***] as New Y2 lots.

[***]

"New Y2 Unilateral BiCS Expansion" means a Yokkaichi Unilateral BiCS Expansion made within the New Y2 Facility.

"New Y2 Unilateral BiCS Products" has the meaning set forth in Section 3.1(b).

"New Y2 Unilateral Conversion Space" has the meaning set forth in Section 3.2(b)(iii).

"New Y2 Unilateral Space" means (i) any Yokkaichi Unilateral BiCS Expansion Space within the New Y2 Facility, (ii) [***], (iii) New Y2 Unilateral Conversion Space, and (iv) any cleanroom space in the New Y2 Facility attributable to NAND Flash production capacity resulting from any NAND Flash unilateral expansions or unilateral technology transitions effected in accordance with this Agreement.

"New Y2 Variable Manufacturing Costs" means the New Y2 Manufacturing Costs described on Schedule 8.4(b)(ii).

"Non-NAND Products" means any technology or product other than NAND Flash Memory Products.

"Operating Committees" means the Y3 Operating Committee, Y4 Operating Committee, Y5 Operating Committee (each as defined in the JV Agreements) and the New Y2 Operating Committee (as defined in this Agreement).

[***]

[***]

"Other Toshiba Facilities" means any wafer fabrication facilities other than the Yokkaichi Facility and that are wholly owned by Toshiba or any of Toshiba's wholly owned Subsidiaries.

"Parent Parties" has the meaning set forth in the preamble to this Agreement.

"Parties" has the meaning set forth in the preamble to this Agreement.

"Patent Cross License" means the Patent Cross License Agreement, dated as of July 30, 1997, between Toshiba and SanDisk Corporation.

"Patent Indemnification Agreements" means the following agreements:

(a) the BiCS Patent Indemnification Agreement;

(b) the Patent Indemnification Agreement, by and among Toshiba, SanDisk Corporation and SanDisk [***], dated July 13, 2010;

(c) the Patent Indemnification Agreement, by and among Toshiba, SanDisk Corporation and SanDisk [***], dated July 7, 2006; and

(d) the Patent Indemnification Agreement, by and among Toshiba, SanDisk Corporation and SanDisk [***], dated September 10, 2004.

"Person" means any individual or entity, including any private or public real estate operating company or real estate investment trust, exempted company, exempted limited partnership, private limited company, corporation, partnership, limited partnership, limited liability company, trust, charitable trust or other legal entity, wherever organized, or any unincorporated association or Governmental Authority.

"Personnel" has the meaning set forth in Section 7.1(d).

"Product Development Agreement" means the Third Amended and Restated Product Development Agreement, dated as of March 1, 2011, between SanDisk Corporation and Toshiba.

"Proprietary BiCS Products" has the meaning set forth in Section 1.5(a)(i)(B).

[***]

"Purchase and Supply Agreements" means the FPL Purchase and Supply Agreements, the FAL Purchase and Supply Agreements, and the FFL Purchase and Supply Agreements.

"Quarterly Manufacturing Cost Reconciliation" has the meaning set forth in Section 8.1(d).

"Ramp-Up Commitment" means the investment necessary to implement an agreed BiCS Expansion, BiCS Technology Transition or BiCS Conversion, as set forth in a JV's Investment Plan (as defined in the JV Agreements), after the Minimum Commitment has been fulfilled.

"Receiving Party" has the meaning set forth in Section 13.2(a).

"Restructuring Costs" has the meaning set forth in Section 14.6(b)(ii).

"R/W" has the meaning given in the 3D Collaboration Agreement.

"SanDisk" has the meaning set forth in the preamble to this Agreement.

"SanDisk Cayman" has the meaning set forth in the preamble to this Agreement.

"SanDisk Flash" has the meaning set forth in the preamble to this Agreement.

"SanDisk Ireland" has the meaning set forth in the preamble to this Agreement.

"SanDisk Personnel" has the meaning set forth in Section 7.1(c).

"SanDisk Representative" has the meaning set forth in Section 6.1.

[***]

"SanDisk Team" has the meaning set forth in Section 7.1(e).

"SEC" means the Securities and Exchange Commission of the United States.

"Securities Act" means the Securities Act of 1933, as amended, and the rules and regulations of the SEC promulgated thereunder from time to time.

[***]

[***]

[***]

"Soil Remediation Costs" means the costs of [***]

"Subsidiary" of any Person means any other Person:

i. more than 50% of whose outstanding shares or securities (representing the right to vote for the election of directors or other managing authority) are, or

ii. which does not have outstanding shares or securities (as may be the case in a partnership, joint venture or unincorporated association), but more than 50% of whose ownership interest representing the right to make decisions (equivalent to those generally reserved for the board of directors of a corporation) for such other Person is,

now or hereafter owned or controlled, directly or indirectly, by such Person, but such other Person shall be deemed to be a Subsidiary only so long as such ownership or control exists; provided, however, that the term Subsidiary, when used in relation to a Party or any of its Affiliates, shall not include any JV or any of the JVs' Subsidiaries (except that, when used in relation to a Party that is a JV, the term Subsidiary shall include such JV's own Subsidiaries).

"Start-Up Costs" has the meaning set forth in Section 2.5(d).

"Start-Up Period" has the meaning set forth in Section 2.5(d).

"Toshiba" has the meaning set forth in the preamble to this Agreement.

"Toshiba Capacity" has the meaning ascribed to such term in the JVRA and includes, for the avoidance of doubt, any Toshiba Unilateral Expansion Space (as defined in the FFL Master Agreement) and any Yokkaichi Unilateral BiCS Expansion Space (as defined in this Agreement).

"Toshiba Personnel" has the meaning set forth in Section 7.1(b).

[***]

[***]

"Toshiba Representative" has the meaning set forth in Section 6.1.

"Y3 BiCS Products" has the meaning set forth in Section 3.1(c).

[***]

"Y3 Facility" means the production facility within the Yokkaichi Facility described in the FPL Master Agreement.

"Y3 NAND Flash Memory Products" means NAND Flash Memory Products manufactured at the Yokkaichi Facility and identified [***] as Y3 lots.

"Y3 Products" means products manufactured at the Yokkaichi Facility and identified [***] as Y3 lots.

"Y4 BiCS Products" has the meaning set forth in Section 3.1(c).

[***]

"Y4 Facility" means the production facility within the Yokkaichi Facility described in the FAL Master Agreement.

"Y4 NAND Flash Memory Products" means NAND Flash Memory Products manufactured at the Yokkaichi Facility and identified [***] as Y4 lots.

"Y4 Products" means products manufactured at the Yokkaichi Facility and identified [***] as Y4 lots.

"Y5 BiCS Products" has the meaning set forth in Section 3.1(c).

[***]

"Y5 Facility" means the production facility within the Yokkaichi Facility described in the FFL Master Agreement.

"Y5 NAND Flash Memory Products" means NAND Flash Memory Products manufactured at the Yokkaichi Facility and identified [***] as Y5 lots.

"Y5 Products" means products manufactured at the Yokkaichi Facility and identified [***] as Y5 lots.

"Yokkaichi BiCS Expansion" has the meaning set forth in Section 4.2.
[***]

"Yokkaichi Facility" means Toshiba's facilities in Yokkaichi Japan, including the New Y2 Facility, the Y3 Facility, the Y4 Facility, the Y5 Facility and Toshiba's Asahi facility.

"Yokkaichi Unilateral BiCS Expansion" has the meaning set forth in Section 4.2(c)(i).

"Yokkaichi Unilateral BiCS Expansion Space" has the meaning set forth in Section 3.2(b)(ii).

**Schedule 8.1(a)**

**[***] Charges**

[***]

**Schedule 8.1(b)**

**[***] Charges**

(including but not limited to)

[***]

**Schedule 8.4(b)(i)**

**Fixed Manufacturing Costs**

All of the costs listed below, each of which shall be calculated in a manner consistent with past practices:

[***]

**Schedule 8.4(b)(ii)**

**Variable Manufacturing Costs**

All of the costs listed below, each of which shall be calculated in a manner consistent with past practices:

[***]

**Schedule 11.1**

**Management and Operating Reports**

[***]

**Schedule 12.2(d)**

**Y3, Y4, Y5 and New Y2 Capacity Ratios**

[***]

**Exhibit 10.11**

CERTAIN CONFIDENTIAL PORTIONS HAVE BEEN REDACTED FROM THIS EXHIBIT BECAUSE THEY ARE BOTH (i) NOT MATERIAL AND (ii) A TYPE THAT THE REGISTRANT TREATS AS PRIVATE OR CONFIDENTIAL. INFORMATION THAT HAS BEEN OMITTED HAS BEEN IDENTIFIED IN THIS DOCUMENT WITH A PLACEHOLDER IDENTIFIED BY THE MARK "[***]".

**Execution Version**

**FAL COMMITMENT AND EXTENSION AGREEMENT**

This FAL COMMITMENT AND EXTENSION AGREEMENT (this "Agreement") is made as of December 12, 2017, by and among Toshiba Memory Corporation, a Japanese corporation ("TMC"), Western Digital Corporation, a Delaware corporation ("WD"), SanDisk LLC, a Delaware limited liability company ("SanDisk") and SanDisk (Ireland) Limited, a company organized under the laws of the Republic of Ireland ('SanDisk Ireland" and, together with WD, SanDisk and TMC, the "Parties").

WHEREAS, Toshiba Corporation ("Toshiba"), SanDisk and SanDisk Ireland entered into that certain Flash Alliance Master Agreement on July 7, 2006 (as amended, the "FA Master Agreement"), and the other FA Operative Documents, which collectively provide for the management and operation of Flash Alliance Limited, a Japanese *tokurei yugen kaisha* ("Flash Alliance") and which by their terms are set to expire as of December 31, 2021;

WHEREAS, on May 12, 2016, SanDisk Corporation, together with its Subsidiaries, became wholly owned indirect Subsidiaries of WD and SanDisk Corporation subsequently converted from a Delaware corporation to a Delaware limited liability company that is now known as SanDisk LLC;

WHEREAS, on even date herewith, WD, Toshiba, and TMC entered into the Parent Guarantee and Undertaking as to Collaboration, which sets forth, among other things, certain rights and obligations of the parties thereto with respect to WD's participation in activities related to the Collaboration (as defined therein), including those contemplated by the FA Operative Documents;

WHEREAS, Toshiba and TMC claim that, effective as of April 1, 2017, Toshiba completed a corporate demerger by operation of law that transferred to TMC, Toshiba's wholly-owned Subsidiary, substantially all of the assets and liabilities of Toshiba's memory business, and that TMC has assumed Toshiba's position as a party to the FA Operative Documents;

WHEREAS, following the execution of the Confidential Settlement and Mutual Release Agreement, dated as of even date herewith, by and among Toshiba, TMC, WD, SanDisk, and certain of SanDisk's Subsidiaries, Toshiba intends to transfer certain other assets and liabilities related to Toshiba's memory business to TMC, including Toshiba's equity ownership interests in Flash Alliance; and

WHEREAS, the Parties desire to extend the term of Flash Alliance, the FA Master Agreement and the other FA Operative Documents, and to specify the terms and conditions on which such extension is hereby agreed.

NOW, THEREFORE, on the terms and subject to the conditions and limitations set forth in this Agreement, with reference to Section 2.1 of Appendix A to the FA Operative Documents and Section 2.4 of the FA Operating Agreement, the Parties hereby agree as follows:

**1. RELATION TO FA OPERATIVE DOCUMENTS**

1.1 Application of Appendix A. Appendix A to the FA Operative Documents, as amended by this Agreement ("Appendix A"), shall apply to this Agreement. The capitalized terms used but not defined in this Agreement shall have the respective meanings assigned to them in Appendix A (or, if not defined in Appendix A, the respective meanings assigned to them in the FA Master Agreement) and the rules of construction and documentary conventions set forth in Appendix A shall apply to this Agreement as if set forth herein.

1.2 Effect of this Agreement. Except as expressly set forth in this Agreement, the FA Operative Documents shall be unaffected by this Agreement, and this Agreement shall be governed by and subject to the terms of the FA Operative Documents as amended hereby. From and after the date of this Agreement, each reference in any FA Operative Document to "this Agreement," "hereof," "hereunder" or words of like import, and all references to such FA Operative Document in any and all agreements, instruments, documents, notes, certificates and other writings of every kind of nature (other than in this Agreement or as otherwise expressly provided) shall be deemed to mean such FA Operative Document, as amended by and giving effect to this Agreement, whether or not such amendment is expressly referenced.

1.3 Addition to FA Operative Documents. This Agreement shall be deemed to be an FA Operative Document and the definition of "FA Operative Documents" as set forth in Appendix A is hereby amended so as to include this Agreement.

**2. EXTENSION**

2.1 FAL Term Extended. Section 2.4 ("Term; Extension") of the FA Operating Agreement is hereby amended and restated in its entirety as follows:

"Term; Extension. The Company shall be terminated on December 31, 2029, unless extended by mutual written agreement of all the Shareholders or earlier terminated in accordance with Section 11 (Dissolution). Any such extension shall be effective only upon the written agreement of all of the Shareholders and shall be on such terms and for such period as set forth in such agreement. The Shareholders agree to meet, no later than December 31, 2028, to discuss the possible extension of the term of the Company."

2.2 Flash Alliance Articles of Incorporation. Promptly following the date hereof, the Parties shall cause Article 4 of the Articles of Incorporation of Flash Alliance to be amended to extend the term of Flash Alliance to December 31, 2029.

**3. OTHER COVENANTS AND AMENDMENTS**

3.1 Material Breach. Section 8.1 ("Termination") of the FA Master Agreement is hereby amended to add the following provision as a new Section 8.1(l) thereof:

"(l) The Parties agree and acknowledge that in the event of a final determination by an arbitral tribunal under Section 2.5 of Appendix A that a Party has committed or is

committing a continuing material breach of any of [***] of this Agreement that would reasonably be expected to cause material damage to Flash Alliance or the non-breaching Party (any such breach, a "Material Breach"), and the breaching Party fails to cure such breach within [***] after such determination, then the non-breaching Party shall have as a remedy for Material Breach the termination of Flash Alliance and of this Agreement and the FA Operative Documents, in addition to all other legal and equitable remedies available to such Party. Notwithstanding anything to the contrary in Appendix A, any such termination shall constitute an "Event of Default" of the breaching Party for all purposes of this Agreement and of that certain FAL Commitment and Extension Agreement dated as of December 12, 2017.

In the event that a Party asserts a Material Breach in a written notice to the other Party, the dispute shall proceed as specified in Section 2.5 of Appendix A, provided, however, that

(i) no matters other than the existence of such Material Breach (and counterclaims and defenses directly related to the conduct or circumstances underlying the asserted Material Breach) shall be submitted to or determined by the arbitral tribunal;

(ii) the Parties shall use their respective reasonable best efforts to complete and finalize the Terms of Reference within [***] following such assertion of Material Breach; and

(iii) the Parties shall instruct the arbitral tribunal, with the full assistance and cooperation of the Parties, to endeavor to submit its draft award on the existence of the Material Breach to the Court of Arbitration of the ICC for approval within [***] following the effective date of the Terms of Reference, provided, that any failure to issue an award in such time period shall not be considered a defense or objection to the enforcement of such award.

The Parties agree to attempt in good faith to resolve any potential claim for Material Breach."

3.2 Restructuring Costs. Section 8.1(j) of the FA Master Agreement is hereby amended and restated in its entirety as follows:

"In connection with any termination of Flash Alliance, the FA Master Agreement and/or the FA Operating Agreement:

(i) the Parties shall exercise their respective reasonable best efforts to plan such termination in advance with the goal of minimizing related costs;

(ii) with respect to employees of TMC and employees of WD or any of its Subsidiaries working at the Y4 Facility, (A) in the case of those that are employees of TMC, TMC shall use its reasonable best efforts to retrain or relocate such individuals to other TMC facilities, and (B) in the case of those that are employees of WD or any of its Subsidiaries, WD shall use its reasonable best efforts to retrain or relocate such individuals to other WD facilities, in each case to the maximum extent possible;

(iii) [***]

(iv) [***]

(v) [***]

3.3 Consequences of Deadlock Termination. Section 8.1(f)(i) of the FA Master Agreement is hereby amended and restated in its entirety as follows: " (i) there shall be no capacity ramp-down rights or obligations,".

**4. MISCELLANEOUS**

4.1 Term. This Agreement shall continue in full force and effect until the latest of (a) the termination of the FA Master Agreement, (b) the completion of the dissolution, liquidation and winding up of Flash Alliance, and (c) the date on which a single Party owns all of the Shares.

4.2 Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of California applicable to agreements made and to be performed entirely within such state without regard to the conflict of laws principles of such state, except where application of Japanese law is mandatory.

4.3 Further Assurances. Each Party shall from time to time, and shall cause its Affiliates who are party to any FA Operative Document from time to time to, at the reasonable request of the other Parties, and without further consideration (unless otherwise provided for under the FA Operative Documents), execute and deliver such instruments, cooperate and take any other actions as may be reasonably necessary to effectuate (i) the provisions of this Agreement and (ii) the transactions contemplated herein.

4.4 Other Terms. Further to Section 1.1 above, the general, miscellaneous, interpretive, non-disclosure and other terms and conditions provided in Appendix A shall apply to this Agreement as if set forth herein.

4.5 No Admission. Nothing in this Agreement shall constitute or be used as an admission, acquiescence, acknowledgement, or agreement by anyone as to the merit of any claims or defenses, whether or not asserted in any arbitration or other litigation, except to enforce the provisions of this Agreement or any part of any other agreement expressly amended herein. In addition, nothing in this Agreement shall constitute or be used as an admission in any arbitration, litigation, or other proceeding regarding the interpretation of any other agreement.

**[**The remainder of this page is intentionally left blank.**]**

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective duly authorized representatives as of the date first written above.

**WESTERN DIGITAL CORPORATION**

By: /s/ Michael C. Ray
Name: Michael C. Ray
Title: Executive Vice President, Chief Legal Officer and Secretary

**TOSHIBA MEMORY CORPORATION**

By: /s/ Yasuo Naruke
Name: Yasuo Naruke
Title: President and Chief Executive Officer

**SANDISK LLC**

By: /s/ Michael C. Ray
Name: Michael C. Ray
Title: Sole Manager

**SANDISK (IRELAND) LIMITED**

By: /s/ Michael C. Ray
Name: Michael C. Ray
Title: Director

**Exhibit 10.12**

CERTAIN CONFIDENTIAL PORTIONS HAVE BEEN REDACTED FROM THIS EXHIBIT BECAUSE THEY ARE BOTH (i) NOT MATERIAL AND (ii) A TYPE THAT THE REGISTRANT TREATS AS PRIVATE OR CONFIDENTIAL. INFORMATION THAT HAS BEEN OMITTED HAS BEEN IDENTIFIED IN THIS DOCUMENT WITH A PLACEHOLDER IDENTIFIED BY THE MARK "[***]".

**Execution Version**

# Y6 FACILITY AGREEMENT

by and among

TOSHIBA MEMORY CORPORATION,

WESTERN DIGITAL CORPORATION,

SANDISK LLC,

SANDISK (CAYMAN) LIMITED,

SANDISK (IRELAND) LIMITED,

SANDISK FLASH B.V.,

FLASH PARTNERS, LTD.,
FLASH ALLIANCE, LTD.

and

FLASH FORWARD, LTD.

dated as of

December 12, 2017

**TABLE OF CONTENTS**
(continued)

**TABLE OF CONTENTS**
(continued)

CERTAIN CONFIDENTIAL PORTIONS HAVE BEEN REDACTED FROM THIS EXHIBIT BECAUSE THEY ARE BOTH (i) NOT MATERIAL AND (ii) A TYPE THAT THE REGISTRANT TREATS AS PRIVATE OR CONFIDENTIAL. INFORMATION THAT HAS BEEN OMITTED HAS BEEN IDENTIFIED IN THIS DOCUMENT WITH A PLACEHOLDER IDENTIFIED BY THE MARK "[***]".

**Execution Version**

**Y6 FACILITY AGREEMENT**

This Y6 FACILITY AGREEMENT (this "Agreement") is made as of December 12, 2017, by and among Toshiba Memory Corporation, a Japanese corporation ("TMC"), Western Digital Corporation, a Delaware corporation ("WD") (together with TMC, the "Parent Parties"), SanDisk LLC, a Delaware limited liability company ("SanDisk LLC"), SanDisk (Cayman) Limited, a company organized under the laws of the Cayman Islands ("SanDisk Cayman"), SanDisk (Ireland) Limited, a company organized under the laws of the Republic of Ireland ("SanDisk Ireland"), SanDisk Flash B.V., a company organized under the laws of The Netherlands ("SanDisk Flash," and collectively with SanDisk LLC, SanDisk Cayman and SanDisk Ireland, "SanDisk"), Flash Partners, Ltd., a Japanese *tokurei yugen kaisha* ("FPL"), Flash Alliance, Ltd., a Japanese *tokurei yugen kaisha* ("FAL"), and Flash Forward, Ltd., a Japanese *godo kaisha* ("FFL," and collectively with TMC, WD, SanDisk, FPL and FAL, the "Parties").

WHEREAS, Toshiba Corporation ("Toshiba") and TMC claim that, effective as of April 1, 2017, Toshiba completed a corporate demerger by operation of law that transferred to TMC, Toshiba's wholly-owned Subsidiary, substantially all of the assets and liabilities of Toshiba's memory business, and that TMC has assumed Toshiba's position as a party to the Master Operative Documents (as defined in Exhibit A);

WHEREAS, following the execution of the Settlement Agreement, Toshiba intends to transfer certain other assets and liabilities related to Toshiba's memory business to TMC, including Toshiba's equity ownership interests in FPL, FAL, and FFL;

WHEREAS, on even date herewith, WD, Toshiba, TMC, SanDisk, and the JVs entered into the Undertaking (as defined in Exhibit A) which sets forth, among other things, certain rights and obligations of the parties thereto with respect to WD's participation in activities related to the Collaboration (as defined therein), including those contemplated by the Master Operative Documents;

WHEREAS, FPL, FAL and FFL (collectively, with any future joint venture operations mutually agreed between TMC and WD, the "JVs" and, each, a "JV") are engaged in the manufacture of NAND Flash Memory Products and BiCS Products;

WHEREAS, TMC plans to build and facilitize the Y6 Facility (as defined in Exhibit A) primarily for use in converting existing production capacity into capacity for the production of BiCS Products, and the Parties intend that the JVs acquire such BiCS Products and invest in tools for the manufacture of such BiCS Products in accordance with the production framework established in the New Y2 Agreement;

WHEREAS, TMC has begun and will continue to unilaterally implement a portion of the Phase I Investment (as defined in Exhibit A), with the resulting capacity to be Toshiba Capacity (such unilateral implementation, which constitutes in part a Yokkaichi Unilateral BiCS

Expansion, and in part a BiCS Conversion and BiCS Technology Transition on Toshiba Capacity, the "Phase I Implementation");

WHEREAS, the Parties desire to set forth the terms and conditions of the construction and use of the Y6 Facility;

WHEREAS, WD and TMC are concurrently entering into the WD-TMC PCLA; and

WHEREAS, some or all of the Parties, among others, are concurrently entering into this Agreement, the Amendment to the FPL Commitment and Extension Agreement, the FAL Commitment and Extension Agreement, the FFL Commitment and Extension Agreement, the Patent Indemnification Termination Agreement, the Amended JMDY Agreement and the Y6 MCEIA (each as defined in Exhibit A, and collectively, the "New Agreements");

NOW, THEREFORE, the Parties hereby agree as follows:

1. FRAMEWORK

1.1 New Y2 Production Framework. The Parties acknowledge and agree that the terms and conditions set forth in Article 1 of the New Y2 Agreement apply to the manufacture of BiCS Products in the Y6 Facility; provided, however, to the extent any provision of Article 1 of the New Y2 Agreement expressly conflicts with any provision in this Agreement, the provision in this Agreement shall control as to such conflict.

2. Y6 FACILITY AND CONSTRUCTION

2.1 Purpose of Y6. The Parties acknowledge and agree that (a) the primary purpose of the Y6 Facility is the installation of tools that, as operated by TMC in conjunction with other Yokkaichi Facility tools, enable the Parties to convert their then-existing production capacity for NAND Flash Memory Products (including NAND capacity in the JVs and Toshiba Capacity) into production capacity for BiCS Products ("BiCS Conversion") and (b) the Y6 Facility may also be used by the Parties for (i) transitions of their then-existing production capacity for a given BiCS Product to production capacity for another technology node of such BiCS Product ("BiCS Technology Transitions"), and BiCS Expansions (as defined in Exhibit A), (ii) the manufacture of other products (including supporting capacity expansions and technology transitions of such other products) and (iii) the development of new technologies or products, in each case of (ii) and (iii), as mutually agreed between the Parent Parties from time to time.

2.2 First JV Wafer Out. The Parties target Y6 Facility cleanroom readiness to occur [***] with respect to wafer capacity from the implementation of the Minimum Commitment, with a First JV Wafer Out Date targeted [***].

2.3 Rights and Responsibilities in Construction.

(a) TMC. TMC shall (i) direct the design, construction and facilitization of the Y6 Facility and (ii) exercise commercially reasonable efforts to ensure that the Y6 Facility is (A) insurable, (B) designed and constructed to mutually acceptable high levels of risk control

standards and (C) completed on a schedule consistent with achieving the First JV Wafer Out Date provided for in Section 2.2. TMC shall maintain the Y6 Facility at mutually acceptable high levels of risk control standards in accordance with current practice.

(b) WD. In connection with the construction and facilitization of the Y6 Facility, (i) WD shall (and the Parent Parties shall cause the JVs to) assist TMC in minimizing the time required to obtain required administrative approvals, and (ii) WD and its agents shall have (with prior coordination with TMC and the construction coordinators for the Y6 Facility) reasonable access to the Y6 Facility construction site and to all appropriate information pertaining to the construction of the Y6 Facility and necessary for WD to participate in the JV operations in the Y6 Facility; provided, that WD shall be solely responsible for all damage caused by such access.

2.4 Phases of Construction. The shell of the Y6 Facility shall be built in two phases of substantially similar size, and the cleanroom within each such phase shall be built in two phases of substantially similar size (i.e., a total of four phases). [***]

2.5 Construction Costs and Related Costs.

(a) Building Depreciation Prepayment. Each of the Parent Parties agrees to prepay 6,750,000,000 Japanese Yen to FFL as a prepayment for the Y6 building depreciation (such prepayment amount, the "Building Depreciation Prepayment") [***]. The Building Depreciation Prepayment shall be made [***] within 30 days after the date hereof; [***].

(b) Start-Up Costs. The Parties acknowledge that one or more of the Parties have incurred or will incur actual costs in connection with constructing the Y6 Facility and preparing the Y6 Facility for production during the period prior to the start of volume production at the Y6 Facility (the "Start-Up Period"), including such actual costs incurred by TMC in connection with the Phase I Implementation, and personnel costs, materials costs and other operating expenses, for which each Parent Party has the obligation ultimately to bear 50% ("Start-Up Costs"). The Parent Parties shall discuss in good faith and agree upon the Start-Up Costs borne by the Parties and the means and timing by which each Party, as applicable, shall be reimbursed or credited for having incurred more than 50% of the Start-Up Costs or shall make payments due for having incurred less than 50% of theStart-Up Costs; provided, that the determination and allocation of Start-Up Costs and the means and timing of reimbursement shall be in a manner substantially similar to that utilized in connection with the start-up costs of the New Y2 Facility. Start-Up Costs will be excluded from Y6 Manufacturing Costs.

(c) Land Costs. [***]

2.6 Incentives. [***]

2.7 Insurance. TMC shall maintain or arrange property insurance covering the JV assets in the Y6 Facility and business interruption insurance in respect of the business conducted at the Y6 Facility, the scope and amounts of which shall be consistent with existing practices at the Yokkaichi Facility and as required by any lender or carrier to secure such coverage. This coverage shall provide basically full replacement value of all JV equipment installed in the Y6 Facility, subject to valuation as part of TMC's annual insurance policy renewal, and shall name the applicable JV as a beneficiary in respect of assets owned or leased by it and Y6 employee expenses covered by business interruption insurance. On an annual basis, or when requested by either Party, the Y6 Operating Committee shall discuss and review the current insurance coverage and/or the need for any additional property or business interruption insurance in respect of the JV assets in and operations of the Y6 Facility. Further, WD reserves the right to seek to arrange additional property or business interruption insurance for its own account in respect of such assets or operations, and TMC shall cooperate in good faith to provide such information and access as is reasonably necessary for WD to arrange such insurance. If TMC makes a recovery from a third party (other than an insurer per the above) in respect of both assets in the Y6 Facility and other assets, then TMC shall allocate to the applicable JVs a share of the net amount of such recovery in proportion to the losses suffered by such JVs and total losses suffered by such JVs and TMC.

3. PRODUCTS; RIGHTS TO CLEANROOM SPACE; TOOLS

3.1 BiCS Products.

(a) The JVs may produce BiCS Products at the Y6 Facility.

(b) BiCS Products manufactured at the Yokkaichi Facility and that are identified [***] as Y6 lots are referred to as "Y6 BiCS Products." "JV Y6 BiCS Products" are Y6 BiCS Products allocated to a JV under the applicable JV's JV Master Agreement. "Y6 Unilateral BiCS Products" are Y6 BiCS Products allocated to [***]. The reference to "Yokkaichi Unilateral BiCS Expansions" in Section 3.1(b) of the New Y2 Agreement is hereby amended to include Yokkaichi Unilateral BiCS Expansions as defined in this Agreement.

(c) For the avoidance of doubt, [***].

3.2 Rights to Cleanroom Space.

(a) JV BiCS Space. The Parties acknowledge that each of the JVs has the right to invest in and secure production capacity and/or cleanroom space in the Y6 Facility for the production of JV BiCS Products. The definition of "JV BiCS Space," as defined in the New Y2 Agreement, is hereby amended to include the cleanroom space in the Y6 Facility actually so utilized by the JVs for production of BiCS Products at any time. In the event of an expiration or dissolution of a JV or termination of a JV Master Agreement for any reason, without any

limitation on TMC's use or disposal of the facilities or assets of such JV, each Parent Party shall consider in good faith potential negative impacts on the remaining JVs' respective production capacities and utilization of their respective JV Space in the Yokkaichi Facility.

(b) Y6 Non-JV Space. The Parent Parties have the right to invest in and secure production capacity and/or cleanroom space in the Y6 Facility as follows:

(i) [***].

(ii) Yokkaichi Unilateral BiCS Expansion Space. [***]

(iii) TMC Capacity Conversion. [***]

3.3 Tool Acquisition, Usage and Layout.

(a) JV Tools. Acquisitions of JV BiCS Tools shall be made in accordance with the terms for NAND Flash Memory Products tool acquisitions in the applicable JV Master Agreement, and JV BiCS Tools may be installed in the Y6 Facility as mutually agreed by the Parent Parties.

(b) Toshiba R&D Tools. [***]

(c) BiCS Unilateral Tools. [***]

(d) Tool Layout. [***]

3.4 NAND Flash Memory Products. Notwithstanding anything to the contrary in this Agreement, the Parties acknowledge that NAND Flash Memory Products may be manufactured using tools installed in the Y6 Facility cleanroom space if and to the extent agreed in a JV Business Plan or by the applicable JV Operating Committee. Any such manufacture of NAND Flash Memory Products (including as to expansion or technology transition) shall be conducted pursuant to the terms of the applicable JV's JV Agreements as if such JV Agreements contemplated the manufacture of NAND Flash Memory Products in the Y6 Facility. Any NAND Flash Memory Products manufactured at the Yokkaichi Facility and that are [***] as Y6 lots are referred to as "Y6 NAND Flash Memory Products." "JV Y6 NAND Flash Memory Products" are Y6 NAND Flash Memory Products allocated to a JV under the applicable JV's JV Master Agreement. Allocation of monthly lot output of NAND Flash Memory Products under the JV Master Agreements is hereby amended to include the following: the actual monthly lot output of Y6 NAND Flash Memory Products will be allocated between the Parent Parties in the manner set forth in this Agreement as if all of such output were BiCS Product output from the Y6 Facility; provided, that during any month in which the planned production of NAND Flash Memory Products is [***] output will be allocated between the Parent Parties [***].

4. RAMP-UP PROCESS

4.1 Minimum Commitment. Unless otherwise agreed in writing between the Parent Parties, the Parent Parties shall, through the JVs, make the investments necessary for [***] L/M in aggregate JV production capacity using the Y6 Facility for BiCS Products, of which (i) [***] L/M shall be implemented [***] and (ii) [***] L/M shall be implemented [***], the investments for both (i) and (ii) to be divided equally between the Parent Parties (the foregoing, as further described below, the "Minimum Commitment").

(a) [***]

(b) [***]

(c) [***]

4.2 Yokkaichi BiCS Expansion. [***]

4.3 Other Facility Expansions. [***]

4.4 BiCS Conversions and BiCS Technology Transitions Without limiting TMC's implementation of BiCS Conversions or BiCS Technology Transitions as part of the Phase I Implementation, the JVs shall be given priority for any BiCS Conversion or BiCS Technology Transition. Should any of FPL, FAL or FFL not accept any proposal for a BiCS Conversion or BiCS Technology Transition, the non-rejecting Parent Party may implement such BiCS Conversion or BiCS Technology Transition on its capacity, and [***]. Subject to the foregoing priority granted to the JVs, nothing in this Agreement shall in any way limit TMC's ability to implement BiCS Conversions or BiCS Technology Transitions within the Toshiba Capacity, which shall be made in TMC's sole discretion. For the avoidance of doubt, any BiCS Conversion or BiCS Technology Transition involving the use of the New Y2 Facility or the Y6 Facility shall be managed as a technology transition by the Operating Committees in accordance with the JV Agreements and past practices at the Yokkaichi Facility.

4.5 Failure to Invest.

(a) Minimum Commitment. If WD fails for any reason to make (or authorize the JVs to make) the investment necessary to implement its 50% share of the Minimum Commitment [***], then [***]

(b) Ramp-Up Commitment. If a Parent Party fails for any reason to make (or authorize the JVs to make) the investment necessary to implement its 50% share of a Ramp-Up Commitment, then the other Parent Party (so long as it has made and authorized the investment necessary to implement its 50% share of the Minimum Commitment) may [***].

[***]

4.6 Phase I Investment Cost Sharing. With respect to TMC's unilateral implementation of its share of the Phase I Investment:

[***]

4.7 Iwate Facility. The Parent Parties will discuss in good faith WD's participation in BiCS Expansions, BiCS Conversions and BiCS Technology Transitions at TMC's fabrication facility under construction in Iwate, Japan (the "Iwate Facility"). Without limiting Sections 4.3 and 4.4, [***], the terms for any BiCS Expansion, BiCS Conversion or BiCS Technology Transition at the Iwate Facility (including with respect to cost allocations) shall, except as set forth below, be substantially the same as the terms that apply to the manufacture of BiCS Products at the Yokkaichi Facility under the Master Operative Documents. The parties acknowledge and agree that the foregoing terms shall be reasonably adjusted if the Parent Parties' respective investment levels in the Iwate Facility [***]. Some terms may be subject to

good faith discussions regarding reasonable adjustments from the terms that apply to the manufacture of BiCS Products at the Yokkaichi Facility given the site-specific attributes of the Iwate Facility. WD's participation in any BiCS Expansion, BiCS Conversion or BiCS Technology Transition at the Iwate Facility shall be subject to the Parent Parties' agreement on one or more written definitive agreements that set forth the terms and conditions applicable to WD's participation in the Iwate Facility, including those described in this Section 4.7.

4.8 Prior Agreement. Sections 4.2, 4.3 and 4.4 hereof supersede and replace Sections 4.2, 4.3 and 4.4 of the New Y2 Agreement, respectively, from the date hereof.

5. BiCS PRODUCTS PRIORITY

5.1 [***]

5.2 [***]

5.3 Prior Agreement. This Article 5 supersedes and replaces Section 5.1 of the New Y2 Agreement from the date hereof.

6. Y6 OPERATING COMMITTEE

6.1 Committee Purpose and Authority. There will be an Operating Committee for Y6 Facility operations (the "Y6 Operating Committee") consisting of a senior executive designated by each of WD and TMC (each such individual, the "WD Representative" and the "TMC Representative," respectively), each of whom shall have an engineering background and represent the designating Party on a day-to-day basis at the Y6 Facility. The Y6 Operating Committee shall work together and endeavor to make the Y6 Facility the most advanced and competitive memory fabrication facility in the world. The Y6 Operating Committee will have the authority to determine all JV-related matters concerning the day-to-day operations of the Y6 Facility (including staffing matters as provided in Article 7), subject to the requirements of this Agreement and consistent with past practice at the Yokkaichi Facility.

6.2 Parent Party Representatives

(a) Replacement. Each Parent Party shall notify the other Parent Party in advance of any replacement of its representative on the Y6 Operating Committee. If a Parent Party requests in good faith that the other Parent Party's representative be replaced with another person from the other Parent Party's organization, the other Party shall consider and discuss in good faith with the requesting Parent Party such request, provided, that such replacement, if any, may be determined solely by such other Parent Party.

(b) [***]

6.3 Committee Meetings. The Y6 Operating Committee shall communicate on a day-to-day basis with respect to the status of Y6 Facility operations and any other issues that may arise and shall meet in person no less than one time per week, or such other times and frequency as mutually agreed by all members of such committee. The Y6 Operating Committee shall hold a monthly review meeting in English at the Yokkaichi Facility on the [***] of each calendar month, unless otherwise agreed by the Y6 Operating Committee. The Y6 Operating Committee shall prepare and distribute to the Parent Parties (at least three Business Days in advance of the Y6 Operating Committee's monthly review meetings) monthly reports in English with respect to the engineering activities, operations and cost information of the Y6 Facility.

6.4 Dispute Resolution. If the members of the Y6 Operating Committee are unable to agree on any issue after [***] (by agreement of its two members), they shall submit such matter together with their respective recommendations to the applicable Board of Directors or Board of Executive Officers of the applicable JV(s), which shall endeavor to immediately resolve the issue or escalate such issue, as applicable in the manner set forth in the applicable JV Master Agreement.

7. ENGINEERS AND HEADCOUNT PLAN

7.1 Y6 JV Engineers; Personnel. As used in this Agreement:

(a) "Y6 JV Engineers" means [***];

(b) "TMC Personnel" means [***];

(c) "WD Personnel" means [***];

(d) "Personnel" means [***]; and

(e) "WD Team" means [***].

7.2 Y6 JV Headcount Plan. [***].

7.3 Staffing. [***].

7.4 Integration; Headcount Working Group. Integration of the WD Team into the Y6 Facility organization, organization structure, updates on the hiring of Y6 JV Engineers by WD or TMC (or their respective Affiliates), access to the Y6 Operating Committee, WD Team member communications with WD, [***] and related matters will be discussed by the Headcount Working Group (as defined in the FFL Master Agreement), as applicable, and, subject to and without any limitation on the effect of the Information Security Agreement as applicable, provided for and resolved in the manner set forth in the FFL Master Agreement with respect to personnel at the Y5 Facility, except that matters to be handled by the Y5 Operating Committee will be handled instead by the Y6 Operating Committee.

7.5 WD Team. With respect to the WD Team, subject to and without any limitation on the effect of the Information Security Agreement, the Parties agree as follows:

(a) Language Skills. Recognizing that Japanese language skills will be necessary for personnel working at the Y6 Facility, WD shall seek to minimize the number of Y6 JV Engineers seconded by WD or any of its Affiliates to the Y6 Facility who are not highly proficient in Japanese, and WD shall ensure that those members of the WD Team who are not Japanese speakers receive some language training in Japanese at WD's cost before being sent to work at the Y6 Facility and WD shall use commercially reasonable efforts to ensure that such language training is appropriate to such WD Team member's position at the Y6 Facility.

(b) Reimbursement; Conditions. WD's and its Affiliates' Y6 JV Engineers shall be integrated by TMC at the Yokkaichi Facility and shall work together with TMC's and its Affiliates' Y6 JV Engineers to seek to ensure the optimal operation of the Y6 Facility from a cost and technology perspective. [***]

(c) WD Personnel. [***]

(d) [***]

(e) [***]

(f) [***]

(g) Employment Relationship. All members of the WD Team will remain employees of WD (or the WD Affiliate, as applicable).

7.6 Indemnification. Each Parent Party will indemnify the other Parties from any claim by any of such Parent Party's or its Affiliate's employees, consultants or agents (such Parent Party being the "Employer") (a) based on other than willful misconduct of such Employer or its Affiliate, its or its Affiliate's employees, consultants or agents or (b) that he or she has rights, or is owed obligations, as an employee of the Party that is not the Employer or its Affiliate.

7.7 Other Personnel. [***]

8. MANUFACTURING COSTS

8.1 Y6 Manufacturing Costs. "Y6 Manufacturing Costs" means [***]

(a) [***]

(b) [***]

(c) [***]

(d) Manufacturing Cost Reconciliation. Within [***] after the end of each JV fiscal quarter, TMC shall perform the manufacturing cost reconciliations of [***] Charges and [***] Charges, in each case as described above (together, the "Quarterly Manufacturing Cost Reconciliation"). TMC personnel at the Y6 Facility shall provide a forecast of the Quarterly Manufacturing Cost Reconciliation to the JVs and WD every month.

8.2 Y6 Manufacturing Cost Allocation Framework. Y6 Manufacturing Costs shall be shared by the Parties and shall be either Y6 Fixed Manufacturing Costs or Y6 Variable Manufacturing Costs, in each case as determined in the manner set forth in this Article 8. [***]

8.3 Y6 Manufacturing Cost Allocation Methodology.

(a) [***]

(b) [***]

(c) Y6 Manufacturing Costs allocated to Y6 Products will be further allocated as set forth in Section 8.4(b).

(d) Within [***] after the end of each JV fiscal quarter, TMC shall provide to WD a reconciliation of the allocation of Y6 Manufacturing Costs that reflects [***] during the fiscal quarter. TMC personnel at the Y6 Facility will provide a forecast of such quarterly reconciliation to the JVs and WD every month.

(e) In the event that there is [***] circumstances warrant a deviation from the allocation methodology set forth in Sections 8.3(a) through 8.3(d), then the Parent Parties shall [***]

8.4 Y6 Product Manufacturing Costs.

(a) "Y6 Product Manufacturing Costs" means [***]

(b) All Y6 Product Manufacturing Costs will be either Y6 Product Fixed Manufacturing Costs or Y6 Product Variable Manufacturing Costs.

(i) Y6 Product Fixed Manufacturing Costs. "Y6 Product Fixed Manufacturing Costs" means [***]

(ii) Y6 Product Variable Manufacturing Costs. "Y6 Product Variable Manufacturing Costs" means [***]

8.5 Accounting and Cost Methodology. Y6 Manufacturing Costs methodology will in principle be in accordance with the existing accounting and cost methodology used by the JVs in the Yokkaichi Facility.

8.6 No Duplication of Costs or Expenses. It is the intent of the Parties that any payments made by the Parties under or pursuant to any Master Operative Document shall not be duplicative and that the Parties shall in no event be required to pay or contribute more than once for any service, product or development work provided under the Master Operative Documents, if such service, product or development work is provided under more than one Master Operative Document. In addition, to the extent that a Party makes a direct payment for any service, product or development work under a Master Operative Document, the cost incurred by TMC (from the Yokkaichi Facility) or the JVs, as the case may be, in connection with the provision of such

service, product or development work shall not be included in the applicable wafer price charged to such Party.

9. FOUNDRY AND PURCHASE AND SUPPLY ARRANGEMENTS

9.1 Y6 Foundry Arrangements.

(a) Die Sort, Equipment and Raw Materials. Die sorting facilities will be located at [***] or such other place mutually agreed by the Parent Parties. TMC's use of any of FPL's, FAL's and FFL's manufacturing equipment located in the Y6 Facility in the manufacture of BiCS Products will be governed by the FPL Lease Agreement, the FAL Lease Agreement and the FFL Lease Agreement, respectively. TMC shall be responsible for obtaining the raw materials and services to be used in the manufacture of JV Y6 Products.

(b) Foundry Production. TMC shall manufacture BiCS Products at the Y6 Facility for the JVs as ordered by the JVs pursuant to the Foundry Agreements. TMC (from the Yokkaichi Facility) and the JVs shall use their best efforts to achieve the manufacturing capacity set forth in the JV Business Plans, which will include any plans for JV use of cleanroom space in the Y6 Facility. Wafers produced in the Y6 Facility will be sorted between the Parent Parties such that aggregate yield losses will be shared on an equal basis.

(c) Operating Relationship. The Parent Parties shall provide personnel necessary for the manufacture of BiCS Products for and on behalf of the JVs as described in Article 7.

(d) Consideration to be Paid to TMC. TMC shall be compensated by the JVs as provided in the Foundry Agreements, [***]

9.2 Purchase and Supply Agreements. For the avoidance of doubt, the rights, obligations and procedures for the purchase by the Parent Parties from FPL, FAL and FFL of JV BiCS Products manufactured in whole or in part at the Y6 Facility shall be as set forth in the FPL Purchase and Supply Agreements, the FAL Purchase and Supply Agreements and the FFL Purchase and Supply Agreements, respectively, of TMC (in the case of TMC) and the applicable SanDisk party (in the case of WD).

9.3 Equal Right to JV Production. For the avoidance of doubt, TMC, on one hand, and WD and SanDisk, on the other hand, shall have the right and obligation, through the JVs, to utilize 50% of the manufacturing capacity for JV BiCS Products manufactured in whole or in part at the Y6 Facility, on an Equivalent Lot basis, as provided in the JV Master Agreements.

9.4 Y6 Product Output Allocation. The actual monthly lot output of Y6 Products shall be allocated among the JVs, TMC and WD, as applicable, based on the Y6 Capacity Ratio; provided, that during any month in which the planned production capacity of Y6 Products is [***], TMC and WD will be allocated output of such Y6 Products [***].

9.5 Alternative Use of Allocated Capacity. For the avoidance of doubt, any alternative use of a Party's allotted manufacturing capacity for JV BiCS Products within the Y6 Facility will be as permitted in, and subject to and governed by the terms of, the applicable JV's JV Master Agreement.

10. RESEARCH AND DEVELOPMENT

10.1 [***]

10.2 [***]

10.3 [***]

10.4 [***]

10.5 No Change to Common R&D. Except as set forth in this Article 10, or as may be otherwise agreed in writing between the Parties, the Common R&D Agreement shall continue in full force and effect in accordance with its terms, and the agreements regarding equipment, materials and development provided for in the Common R&D Agreement shall continue to be part of the Common R&D Agreement.

11. Y6 INFORMATION AND DATA SHARING

11.1 Management and Operating Reports. Upon the request of either TMC or WD, the Y6 Operating Committee shall provide TMC and WD with, simultaneously in Japanese and English, those management and operating reports identified on Schedule 11.1 and as mutually agreed upon from time to time by the Parent Parties. Upon reasonable request from WD, TMC employees shall explain such reports to employees of WD and its Subsidiaries and respond to questions from employees of WD and its Subsidiaries; provided, however, that WD acknowledges and agrees that TMC will not be responsible for WD's or any of its Subsidiaries' failure to understand any such reports.

11.2 Production Control; Access to Y6 Data. TMC shall provide, consistent with past practice, employees of WD and its Subsidiaries [***]; provided, that the cost necessary for making such system available to such employees will be borne by [***]. Each Party will be provided the same real-time access to Y6 data relating to JV Products.

11.3 Engineering Wafers. Each of the Parent Parties will have full access to all operational and engineering data and reports related to engineering wafers manufactured for JV Products manufactured at the Y6 Facility.

11.4 Unilateral Capacity Data. For any Toshiba Capacity in the Y6 Facility, TMC shall provide to the JVs all data necessary to determine whether the Toshiba Capacity is being operated [***], including but not limited to [***].

11.5 [***]

12. OTHER MODIFICATIONS TO CERTAIN MASTER OPERATIVE DOCUMENTS

To update their agreement as expressed in certain of the Master Operative Documents to, among other things, take into account the Y6 Facility and to provide for the installation of tools and utilization of clean room space by each of the JVs within the Y6 Facility, the Parties agree that the Master Operative Documents are hereby amended as set forth below.

12.1 JV Master Agreements.

(a) Proprietary Flash Products. The rights of each Parent Party under the JV Agreements to use a portion of its total allocated capacity in the Y3 Facility, the Y4 Facility and from the JV Space in the Y5 Facility and the New Y2 Facility to cause to be manufactured Proprietary Flash Products, subject to the conditions and limitations set forth in the JV Agreements, are hereby extended to the JV Space in the Y6 Facility. Each Parent Party may use a portion of its total allocated capacity from the JV Space in the Y6 Facility to cause to be manufactured Proprietary Flash Products, subject to each of the limitations, conditions and Parent Party undertakings in respect of Proprietary Flash Products provided under the applicable JV Master Agreement, as amended by the New Y2 Agreement, for the manufacture of Proprietary Flash Products in the Yokkaichi Facility. If a Parent Party requests a modification to the limitations, conditions and undertakings for the manufacture of Proprietary Flash Products, the Parent Parties will discuss such requested modification.

(b) Engineering Wafers. The rights of the Parent Parties to receive Evaluation Wafers and Qualification Wafers (each as defined in the JV Master Agreements) under the JV Master Agreements apply to Evaluation Wafers and Qualification Wafers manufactured in the Y6 Facility. For the avoidance of doubt, WD may ship its share of Evaluation Wafers and Qualification Wafers to any location in its sole discretion subject to any terms and conditions of the Master Operative Documents that relate or apply to the shipment of Evaluation Wafers or Qualification Wafers by SanDisk, including applicable export control requirements; provided, that any such shipment by WD shall comply with applicable shipping procedures at the Yokkaichi Facility consistent with past practice.

(c) Y3, Y4, Y5 and New Y2 Capacity Ratios. The capacity ratios used to calculate output and cost allocation for the Y3 Facility, the Y4 Facility, the Y5 Facility and the New Y2 Facility as set forth in Schedule 12.2(d) to the New Y2 Agreement are hereby replaced with the capacity ratios initially set forth on Schedule 12.1(c) to this Agreement and updated from time to time by the Parent Parties as mutually agreed.

(d) [***]

(e) Ramp Down; Termination Capacity. For the avoidance of doubt, with respect to the obligations of the Parent Parties under (i) Sections 8.1(d)(i), 8.1(e)(i), and 8.1(f)(i) of the FAL Master Agreement, (ii) Sections 8.1(d)(i), 8.1(e)(i), and 8.1(f)(i) of the FPL Master Agreement and (iii) Sections 9.1(d)(i) and 9.1(f)(i) of the FFL Master Agreement to continue to manufacture NAND Flash Memory Products and BiCS Products in the event of a termination of such JV Master Agreement under the circumstances described therein, the Termination Capacity for NAND Flash Memory Products and the Termination Capacity

for BiCS Products shall take into account the Requesting Party's (as defined in the applicable JV Master Agreement) NAND Flash Memory Products capacity allocation and BiCS Products capacity allocation, respectively, available from the applicable JV in the Y6 Facility.

12.2 JV Operating Agreements; Management and Operating Reports. The management and operating reports identified on Schedule 5.3 to each JV Operating Agreement will take into account any utilization by FPL, FAL and FFL, as applicable, of the JV Space in the Y6 Facility.

12.3 JV Foundry Agreements.

(a) The reference to JV Y5 NAND Flash Memory Products in Article 5 of the FFL Foundry Agreement is hereby revised to include JV Y6 BiCS Products manufactured for FFL.

(b) Purchases from TMC by:

(i) FPL of JV Y6 BiCS Products manufactured for FPL shall be made in accordance with the terms of the FPL Foundry Agreement for purchases of Products (as defined therein), provided, that the purchase prices and manufacturing costs for JV Y6 BiCS Products manufactured for FPL shall be calculated and allocated in accordance with Article 8 hereof;

(ii) FAL of JV Y6 BiCS Products manufactured for FAL shall be made in accordance with the terms of the FAL Foundry Agreement for purchases of Products (as defined therein), provided, that the purchase prices and manufacturing costs for JV Y6 BiCS Products manufactured for FAL shall be calculated and allocated in accordance with Article 8 hereof; and

(iii) FFL of JV Y6 BiCS Products manufactured for FFL shall be made in accordance with the terms of the FFL Foundry Agreement for purchases of Products (as defined therein), provided, that the purchase prices and manufacturing costs for JV Y6 BiCS Products manufactured for FFL shall be calculated and allocated in accordance with Article 8 hereof.

(c) [***]

12.4 JV Purchase and Supply Agreements.

(a) The capitalized term "Products" in the FFL Purchase and Supply Agreements is hereby revised to include JV Y6 BiCS Products manufactured for FFL in accordance with the Purchase Specification as thereinafter defined.

(b) Purchases by TMC or WD from:

(i) FPL of JV Y6 BiCS Products manufactured for FPL shall be made in accordance with the terms of the TMC's (in the case of TMC) and SanDisk Cayman's (in the

case of WD, as if WD were SanDisk Cayman) FPL Purchase and Supply Agreement for purchases of Products (as defined therein), provided, that with respect to such purchases of JV Y6 BiCS Products manufactured for FPL, any price or charge that is calculated or determined under Article 4 ("Purchase Prices of Products; Title Transfer") of the FPL Purchase and Supply Agreement based on Article 4 of the FPL Foundry Agreement shall instead be based on Article 8 hereof;

(ii) FAL of JV Y6 BiCS Products manufactured for FAL shall be made in accordance with the terms of the TMC's (in the case of TMC) and SanDisk Ireland's (in the case of WD, as if WD were SanDisk Ireland) FAL Purchase and Supply Agreement for purchases of Products (as defined therein), provided, that with respect to such purchases of JV Y6 BiCS Products manufactured for FAL, any price or charge that is calculated or determined under Article 4 ("Purchase Prices of Products; Title Transfer") of the FAL Purchase and Supply Agreement based on Article 4 of the FAL Foundry Agreement shall instead be based on Article 8 hereof; and

(iii) FFL of JV Y6 BiCS Products manufactured for FFL shall be made in accordance with the terms of TMC's (in the case of TMC) and SanDisk Flash's (in the case of WD, as if WD were SanDisk Flash) FFL Purchase and Supply Agreement for purchases of Products (as defined therein) provided, that with respect to such purchases of JV Y6 BiCS Products manufactured for FFL, any price or charge that is calculated or determined under Article 4 ("Purchase Prices of Products; Title Transfer") of the FFL Purchase and Supply Agreement based on Article 4 of the FFL Foundry Agreement shall instead be based on Article 8 hereof.

(c) [***]

12.5 JV Lease Agreements. All references to Y3 NAND Flash Memory Products in the FPL Lease Agreement are hereby revised to include JV Y6 BiCS Products manufactured for FPL. All references to Y4 NAND Flash Memory Products in the FAL Lease Agreement are hereby revised to include JV Y6 BiCS Products manufactured for FAL. All references to Y5 NAND Flash Memory Products, JV Y5 BiCS Products or JV New Y2 BiCS Products in the FFL Lease Agreement are hereby revised to include JV Y6 BiCS Products manufactured for FFL.

13. MEMORY R&D CENTER

13.1 Memory R&D Center. TMC agrees to discuss in good faith the scope of use of the building being constructed by TMC adjacent to the Y6 Facility, known to the Parties as the "Memory R&D Center", for joint development efforts between TMC and WD and/or other activities related to the operation of the JVs, including development under the Amended JMDY Agreement. For the avoidance of doubt, nothing in this Article 13 shall limit TMC's right to decide the use and disposition of the Memory R&D Center in its sole discretion except as otherwise agreed by the Parent Parties.

13.2 [***]

(b) the scope of access rights of WD's and its Subsidiaries' personnel to the Memory R&D Center and information related to the Parties' use of the Memory R&D Center for cost sharing purposes; provided, that such access shall be subject to (i) the terms and conditions applicable to safety, site security, and/or information security set forth in the Master Operative Documents, including those set forth in the Information Security Agreement, Section 6.10(b)(vii) of the FFL Master Agreement, Section 7.5(f) of the New Y2 Agreement, Section 1.05(h)(vii) of the JMDY Agreement, Section 7.5(f) of this Agreement, the corresponding provisions in the Undertaking, in each case, as if access by any applicable personnel of WD or any of its Subsidiaries to the Memory R&D Center were access by personnel of WD or any of its Subsidiaries to the applicable building or facility governed by the foregoing terms and conditions and (ii) any other terms and conditions applicable to WD's and its Subsidiaries' personnel's access to the Memory R&D Center as may be mutually agreed by the Parent Parties.

14. CONFIDENTIALITY AND DISCLOSURE

14.1 Public Announcements. Neither Parent Party shall, nor shall it permit any of its Affiliates to, without the prior written consent of the other Parent Party:

(a) issue any public release, announcement or other document, or otherwise publicly disclose any information or make any public statement, concerning the operations of the Y6 Facility that refers to the other Parent Party or any of its Affiliates in connection therewith (other than a general reference to affiliation with the JVs) and (i) concerns the financial condition or results of operations of the JVs, other than as required by any applicable Law or accounting standard with respect to the financial disclosure obligations of either Parent Party, or (ii)(A) disparages either Parent Party or the JVs' performance or (B) reflects negatively on either Parent Party's commitment to the Y6 Facility; or

(b) publicly file all or any part of any New Agreement or any description thereof, or issue or otherwise make publicly available any press release, announcement or other document that contains Confidential Information belonging to the other Parent Party (or its Affiliates) or the JVs, except as may be required by applicable Law (in which case such Parent Party shall (or shall cause the Person required to make such filing to) cooperate with the other Parent Party, to the extent reasonable and practicable, in obtaining any confidential treatment for such filing requested by the other Parent Party).

Each Parent Party shall use commercially reasonable efforts to grant or deny any approval required under this Section 14.1 within five Business Days of receipt of written request by the other Parent Party; provided, however, that a Parent Party's failure to respond within said time period shall not be deemed to constitute such Parent Party's approval or consent.

14.2 Non-Disclosure Obligations.

(a) For a period of [***] from the date of receipt of each item of Confidential Information disclosed by one Party (the "Disclosing Party") under this Agreement, the Patent Indemnification Termination Agreement or the Y6 MCEIA, the other Party (the "Receiving Party") shall safeguard such item of Confidential Information, shall keep it in confidence, and

shall use reasonable efforts, consistent with those used in the protection of its own confidential information, to prevent its disclosure of such Confidential Information to third parties.

(b) Notwithstanding the foregoing Section 14.2(a), the Receiving Party shall not be obligated by this Section 14.2 with respect to information that: (i) is already known to the Receiving Party at the time of its receipt from the Disclosing Party as reasonably evidenced by its written records; (ii) is or becomes publicly available without breach of this Agreement by the Receiving Party; (iii) is made available to a third party by the Disclosing Party without restriction on disclosure; (iv) is rightfully received by the Receiving Party from a third party without restriction and without breach of this Agreement; (v) is independently developed by the Receiving Party as reasonably evidenced by its written records contemporaneous with such development; (vi) is disclosed with the prior written consent of the Disclosing Party, provided, that each recipient from the Receiving Party shall execute a confidentiality agreement prohibiting further disclosure of the Confidential Information, under terms no less restrictive that those provided in this Agreement; (vii) is required to be disclosed by the order of a Governmental Authority, provided, that the Receiving Party shall give the Disclosing Party prompt notice of such request so that the Disclosing Party has an opportunity to defend, limit or protect such disclosure; or (viii) is required to be disclosed by applicable securities or other Laws, provided, that WD shall, prior to any such disclosure required by the U.S. Securities and Exchange Commission, provide TMC with notice which includes a copy of the proposed disclosure and consider in good faith TMC's timely input with respect to such disclosure.

(c) The Receiving Party shall use its reasonable best efforts to limit dissemination of the Disclosing Party's Confidential Information to such of its employees who have a need to know such information for the purpose for which such information was disclosed. The Receiving Party understands that disclosure or dissemination of the Disclosing Party's Confidential Information not expressly authorized hereunder would cause irreparable injury to the Receiving Party, for which monetary damages would not be an adequate remedy and would entitle the Disclosing Party to equitable relief in addition to any remedies the Disclosing Party may have hereunder or at law.

(d) For purposes of the confidentiality obligations in the Existing Agreements and the New Agreements, information shall not be considered to have been made available to a third party by the Disclosing Party without restriction on disclosure if such information was only made available to such third party as a result of an inadvertent or unintentional disclosure of such information by the Disclosing Party. In the event that the Disclosing Party's disclosure of Confidential Information to the Receiving Party is inadvertent or unintended and the Disclosing Party, upon becoming aware of such inadvertent or unintended disclosure, promptly notifies the Receiving Party in writing that such disclosure was inadvertent or unintended, the Receiving Party shall promptly (and in any event in less than [***] destroy all such Confidential Information. In addition, if the Receiving Party reasonably believes that the Disclosing Party's disclosure of Confidential Information to the Receiving Party was inadvertent or unintended, the Receiving Party shall promptly notify the Disclosing Party of such belief and, if requested by the Disclosing Party, promptly (and in any event in less than [***] destroy all such Confidential

Information. If requested by the Disclosing Party, the Receiving Party shall certify in writing that all such Confidential Information has been destroyed.

(e) Nothing in this Agreement shall be construed as granting or conferring any rights, licenses or relationships by the transmission of the Confidential Information.

14.3 Ownership and Return of Information. All Confidential Information disclosed hereunder shall remain the property of the Disclosing Party. Upon request by the Disclosing Party, the Receiving Party shall return all Confidential Information of the Disclosing Party, including any and all copies thereof, or certify in writing that all such Confidential Information had been destroyed.

15. TERM AND TERMINATION

15.1 Term. This Agreement shall continue in full force and effect until the latest of the termination of (a) the FPL Master Agreement, (b) the FAL Master Agreement and (c) the FFL Master Agreement, unless earlier terminated as hereinafter provided. The term of this Agreement may be extended by mutual agreement of both Parent Parties.

15.2 Termination. Notwithstanding the foregoing Section 15.1, this Agreement may be terminated:

(a) by the mutual written agreement of the Parties, in which case this Agreement will terminate on the date mutually agreed by the Parties;

(b) by either Parent Party upon [***] written notice to the other Parent Party, if (i) (A) the other Parent Party has failed to make (or authorize the JVs to make) the investment necessary to implement its share of the Minimum Commitment [***] or (B) has failed to pay [***], and (ii) TMC (in the case of termination by TMC), or WD or SanDisk (in the case of termination by WD) is not in material breach of any material Master Operative Document; or

(c) by either Parent Party, upon written notice to the other Parent Party, if the other Parent Party (i) makes an assignment of all or substantially all its assets for the benefit of creditors, (ii) has filed a voluntary petition in bankruptcy or insolvency or any other legal action or document seeking reorganization, readjustment or arrangement of its business under any Law relating to bankruptcy or insolvency, or (iii) is adjudicated to be bankrupt or insolvent under any such Law, or has a receiver appointed over all or substantially all of its property, by a competent Governmental Authority; in which case of (i), (ii) or (iii), this Agreement will terminate on the 30th day after such notice of termination is given.

15.3 Termination for Material Breach. The Parent Parties agree and acknowledge that in the event of a final determination by an arbitral tribunal under Section 17.4 that a Parent Party has committed or is committing a continuing material breach of any ofSections [***] of this Agreement or Sections [***] of the New Y2 Agreement (by TMC, in the case of TMC, or by SanDisk, in the case of WD) that [***] (any such breach, a "Material Breach"), and the breaching Parent Party fails to cure such breach within [***] after such determination, then the non-

breaching Parent Party shall have as a remedy for Material Breach the termination of this Agreement, in addition to all other legal and equitable remedies available to such Parent Party. In the event that a Parent Party expressly asserts in writing a Material Breach, the dispute shall proceed as specified in Section 17.4, provided, however, that

(a) no matters other than the existence of such Material Breach (and counterclaims and defenses directly related to the conduct or circumstances underlying the asserted Material Breach) shall be submitted to or determined by the arbitral tribunal;

(b) the Parent Parties shall use their respective reasonable best efforts to complete and finalize the Terms of Reference within [***] following such assertion of Material Breach; and

(c) the Parent Parties shall instruct the arbitral tribunal, with the full assistance and cooperation of the Parent Parties, to endeavor to submit its draft award on the existence of the Material Breach to the Court of Arbitration of the ICC for approval within [***] following the effective date of the Terms of Reference, provided, that any failure to issue an award in such time period shall not be considered a defense or objection to the enforcement of such an award.

The Parent Parties agree to attempt in good faith to resolve any potential claim for Material Breach. Notwithstanding anything to the contrary in the New Y2 Agreement, the Parent Parties and SanDisk acknowledge and agree that in the event of a final determination by an arbitral tribunal in accordance with this Section 15.3 that a Parent Party has committed or is committing a continuing material breach of Sections [***] of this Agreement that would reasonably be expected to cause material damage to the JVs or the non-breaching Parent Party, such breach shall be deemed a "Material Breach" of the New Y2 Agreement (by SanDisk, in the case of such a material breach of this Agreement by WD) and, if the breaching Parent Party fails to cure such breach within [***] after such determination, the non-breaching Parent Party shall have the right to immediately exercise the remedies set forth in Section 14.3 of the New Y2 Agreement without the necessity for further arbitration.

15.4 Termination in Good Faith. Termination of any Master Operative Document by any party thereto may be done only in good faith.

15.5 Survival.

(a) The provisions of Sections 4.5(c), 7.6, and 12.1(e), Article 14 (except Section 14.1(a)(ii)(B)), this Article 15, Article 17 and Exhibit A shall survive any termination or expiration of this Agreement.

(b) So long as (and only for so long as) the Parent Parties have BiCS Products manufacturing capacity in the JVs, the provisions of Sections 3.2(a) (except with respect to the Y6 Facility), 3.3(c), 4.2 (except with respect to the Y6 Facility), 4.3 (except with respect to the Y6 Facility), 4.4 (except with respect to the Y6 Facility), Article 5 (except with respect to the Y6 Facility), Section 10.5, and Article 16 shall also survive any termination or expiration of this Agreement.

(c) Article 13 shall survive any termination or expiration of this Agreement until the expiration or termination of the Amended JMDY Agreement and shall terminate thereafter.

15.6 Restructuring Costs.

(a) In the event this Agreement is terminated, the Parent Parties will exercise best efforts to plan such termination in advance with the goal of minimizing related costs. With respect to employees of TMC and employees of WD or any of its Subsidiaries working at the Y6 Facility, (A) in the case of those that are employees of TMC or any of its Subsidiaries, TMC will use its best efforts to retrain or relocate such individuals to other TMC facilities, and (B) in the case of those that are employees of WD or any of its Subsidiaries, WD will use its best efforts to retrain or relocate such individuals to other WD facilities, each to the maximum extent possible.

(b) The Parties agree that in the event of such a WD exit from the Y6 Facility,

[***]

(c) Upon any termination of this Agreement, the Parties shall meet and discuss in good faith an estimate of the Restructuring Costs anticipated to be incurred by TMC. [***]

15.7 Effect on Other Collaborations. Unless otherwise expressly provided herein, termination of this Agreement shall not affect any surviving rights or obligations set forth in the Joint Operative Documents. For avoidance of doubt, the BiCS LDA and the WD-TMC PCLA (in each case, including the licenses provided thereunder) shall be unaffected by the termination of this Agreement, and the BiCS LDA and the WD-TMC PCLA shall terminate or expire in accordance with each of such agreement's terms.

16. REPRESENTATIONS AND WARRANTIES

Each Parent Party hereby represents and warrants to the other Parent Party as follows:

16.1 Organization and Standing. It is duly organized and validly existing and, where applicable, in good standing under the laws of the jurisdiction in which it is organized.

16.2 Authority; Enforceability. It has the requisite power and authority to enter into the New Agreements, to execute any certificates or other instruments to be executed by it in connection therewith and otherwise carry out the transactions contemplated by the New Agreements. All proceedings required to be taken by it to authorize the execution, delivery and performance of the New Agreements, and any such certificates and instruments, have been properly taken. This Agreement has been duly and validly executed and delivered by it and constitutes a valid and binding obligation of it, enforceable against it in accordance with its terms except as enforceability may be limited by bankruptcy, insolvency, fraudulent conveyance or similar laws affecting the enforcement of creditors' rights generally or the availability of

equitable remedies (regardless of whether enforceability is considered in a proceeding at law or in equity).

16.3 No Conflict. The execution, delivery and performance of the New Agreements and the BiCS LDA by it and its Affiliates do not and will not (a) breach, violate or conflict with any provision of its charter documents as amended to date, or (b) conflict with or violate any Law applicable to it. No consent, approval or authorization of, or filing with, any Governmental Authority, or any other Person, is required to be made or obtained by it in connection with the execution, delivery and performance by it of any New Agreement or the consummation by it of the transactions contemplated thereby.

16.4 Proceedings. Except for any action, claim, investigation or proceeding (i) threatened, asserted, or pending between or among WD and/or any of its Affiliates, on the one hand, and TMC and/or Toshiba, and/or any of its or their Affiliates, on the other hand or (ii) that falls within the scope of any release, waiver, dismissal, or covenant not to sue set forth in the Settlement Agreement, there are no actions, claims, investigations or proceedings pending, or to its knowledge threatened, by or before any Governmental Authority that, if adversely determined, would have a material adverse effect on it or on the conduct of the business of any of the JVs as contemplated in the Master Operative Documents or on its ability to perform any material obligation under any Master Operative Document.

16.5 Litigation; Decrees. Except for any Action threatened, asserted, or pending (i) between or among WD and/or any of its Affiliates, on the one hand, and TMC and/or Toshiba, and/or any of its or their Affiliates, on the other hand or (ii) that falls within the scope of any release, waiver, dismissal, or covenant not to sue set forth in the Settlement Agreement, there are no Actions pending, or, to its knowledge, threatened that (a) are reasonably likely, based on information known to it as of the date hereof, to have a material adverse effect on the conduct of the business of any of the JVs as contemplated by the Master Operative Documents or BiCS LDA or (b) relate to any of the transactions contemplated by the Master Operative Documents or BiCS LDA in a manner which is material to its, any of its Affiliates' or any of the JVs' ability to carry out the transactions contemplated hereby and thereby or which could have a material adverse effect on the conduct of the business of any of the JVs as contemplated in the Master Operative Documents or BiCS LDA. Except for any judgment, order, writ, or decree in connection with any Action (i) between or among WD and/or any of its Affiliates, on the one hand, and TMC and/or Toshiba, and/or any of its or their Affiliates, on the other hand or (ii) that falls within the scope of any release, waiver, dismissal, or covenant not to sue set forth in the Settlement Agreement, there is no judgment, order, writ or decree that substantially restrains its ability to consummate the transactions contemplated by the New Agreements or the BiCS LDA.

16.6 Compliance with Other Instruments. Except (i) as may have been asserted by WD and/or any of its Affiliates, on the one hand, and TMC and/or Toshiba, and/or any of its or their Affiliates, on the other hand or (ii) any default asserted in connection with any Action, claim, investigation or proceeding that falls within the scope of any release, waiver, dismissal, or covenant not to sue set forth in the Settlement Agreement, neither it nor any of its Affiliates that is party to any New Agreement is in default in any material respect in the performance of any

material obligation, agreement, instrument or undertaking to which such Person is a party or by which such Person or any of its properties is bound. Except for any obligation, agreement, instrument or undertaking between or among (i) WD and/or any of its Affiliates, (ii) TMC and/or Toshiba, and/or any of its or their Affiliates, and/or (iii) any of the JVs, there is no such obligation, agreement, instrument or undertaking to which it or any of its Affiliates is a party or by which any of its Affiliates or any of its or their properties is bound, in each case that is reasonably likely to have a material adverse effect on the Parties' use of the Y6 Facility as contemplated by the New Agreements.

16.7 Patents and Proprietary Rights. To its knowledge, it owns or possesses sufficient legal rights to all patents, utility models, trademarks, service marks, trade names, copyrights, applications for any of the foregoing, mask works, software, trade secrets, licenses, information and proprietary rights and processes (collectively, "Intellectual Property") necessary (a) to carry out its or any of its Affiliates' obligations under the Master Operative Documents and (b) for the conduct of the business of any of the JVs as contemplated in the Master Operative Documents, without any conflict with or infringement of the rights of others, except as will not have a material adverse effect on either (a) or (b) above. Except for any communications (i) between or among WD and/or any of its Affiliates, on the one hand, and TMC and/or Toshiba, and/or any of its or their Affiliates, on the other hand, or (ii) in connection with any Action, claim, investigation or proceeding that falls within the scope of any release, waiver, dismissal, or covenant not to sue set forth in the Settlement Agreement, including any communications referenced in Schedule 2.1 of the Settlement Agreement, it has not received any communications alleging that its Intellectual Property violates, or by its or any of its Affiliates entering into the transactions contemplated by the Master Operative Documents, would violate the Intellectual Property of any other Person or entity, which violation could reasonably be expected to have a material adverse effect on either (a) or (b) above.

16.8 Compliance with Laws. It and each of its Affiliates has complied and is complying in all material respects with all Laws, except where the failure to so comply would not have a material adverse effect on its or any of its Affiliates ability to perform its or their obligations under the Master Operative Documents or on the production of BiCS Products as contemplated by the Master Operative Documents.

16.9 Patent Cross Licenses. [***]

17. MISCELLANEOUS

17.1 Entire Agreement. This Agreement, together with the exhibit(s) and schedules hereto and the other Master Operative Documents, constitute the entire agreement of the Parties to this Agreement with respect to the subject matter hereof and supersedes all prior written and oral agreements and understandings with respect to such subject matter.

17.2 Undertaking as to Affiliate Obligations. Each Parent Party shall cause all covenants, conditions and agreements to be performed, observed or satisfied by any of its Affiliates that are parties to any New Agreement to be fully and faithfully observed, performed and satisfied by such Affiliate, and shall not cause or permit to exist any breach or default of such covenants,

conditions or agreements arising from such Affiliate's action or inaction. Nothing in this Section 17.2 shall be construed to create any right in any Person other than the Parties. In the case of an affirmative covenant or other action required of WD or permitted to be taken by WD hereunder or under any other New Agreement, WD may perform or satisfy such affirmative covenant or other action directly or indirectly by causing one or more of its Subsidiaries to fully perform or satisfy such affirmative covenant or other action. Notwithstanding anything to the contrary in any Master Operative Document, if WD consents or agrees to TMC's or any of its Affiliate's taking an action or inaction that is subject to SanDisk's consent or agreement under a Master Operative Document, WD's providing such consent or agreement shall satisfy such requirement for SanDisk's consent.

17.3 Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of California applicable to agreements made and to be performed entirely within such state without regard to the conflict of laws principles of such state, except where application of Japanese law is mandatory. Each New Agreement shall be governed in accordance with its governing law provision and, in the absence of any such provision, by the first sentence of this Section 17.3.

17.4 Dispute Resolution; Arbitration. Any dispute concerning this Agreement shall be referred to the applicable JV's Management Representatives and handled by them in accordance with the applicable JV Master Agreement. If the Management Representatives cannot resolve such dispute in accordance with the terms of the applicable JV Master Agreement, then such dispute will be settled by binding arbitration in San Francisco, California. The dispute shall be heard by a panel of three arbitrators pursuant to the rules of the International Chamber of Commerce. The awards of such arbitration shall be final and binding upon the parties thereto. Each party will bear its own fees and expenses associated with the arbitration. Filing fees and arbitrator fees charged by the International Chamber of Commerce shall be borne equally by the Parent Parties.

17.5 Remedies.

(a) Except as may otherwise be specifically provided in the New Agreements, the rights and remedies of the parties under this Agreement are cumulative and are not exclusive of any rights or remedies which the parties hereto would otherwise have.

(b) Equitable relief, including the remedies of specific performance and injunction, shall be available with respect to any actual or attempted breach of this Agreement; provided, however, in the absence of exigent circumstances, the Parties shall refrain from commencing any lawsuit or seeking judicial relief in connection with such actual or attempted breach that is contemplated to be addressed by the dispute resolution process set forth in this Agreement until the Parties have attempted to resolve the subject dispute by following said dispute resolution process to its conclusion.

(c) If the due date for any amount required to be paid under any New Agreement is not a Business Day, such amount shall be payable on the next succeeding Business

Day; provided, that if payment cannot be made due to the existence of a banking crisis or international payment embargo, such amount may be paid within the following 30 days.

(d) IN THE ABSENCE OF ACTUAL FRAUD, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO OR BE REQUIRED TO INDEMNIFY ANY OTHER PARTY OR ANY OF THEIR RESPECTIVE AFFILIATES UNDER THIS AGREEMENT (OR ANY AGREEMENT INTO WHICH THIS PROVISION IS INCORPORATED) FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL OR INDIRECT DAMAGE OF ANY KIND, (INCLUDING WITHOUT LIMITATION LOSS OF PROFIT OR DATA), WHETHER OR NOT ADVISED OF THE POSSIBILITY OF SUCH LOSS.

17.6 Relationship of the Parties. The Parties are independent contractors and no provision of or action pursuant to any New Agreement shall constitute any Party acting as the direct or indirect agent or partner of the other Party for any purpose or in any sense whatsoever. Nothing contained in this Agreement is intended to, or shall be deemed to, create a partnership or fiduciary relationship between WD and TMC for any purpose. No Party shall take a position contrary to this Section 17.6.

17.7 Official Language. The official language of this Agreement is the English language only, which language shall be controlling in all respects, and all versions of this Agreement in any other language shall not be binding on the parties hereto or nor shall such other versions be admissible in any legal proceeding, including arbitration, brought under this Agreement. All communications and notices to be made or given pursuant to this Agreement shall be in the English language.

17.8 No Implied Licenses. All rights not expressly granted hereunder or under other agreements between the Parties are hereby retained in their entirety by such Party. Moreover, there are no implied grants or licenses hereunder and the only rights or licenses granted to either Party hereunder are limited to those rights and licenses expressly set forth herein.

17.9 Export Laws. No Party shall export or re-export, directly or indirectly, any technical information disclosed hereunder or direct product thereof to any destination prohibited or restricted by the export control regulations of Japan or the United States, including the U.S. Export Administration Regulations, without the prior authorization from the appropriate Governmental Authorities. No Party shall use technical information supplied by any other Party hereunder for any purpose to develop or manufacture nuclear, chemical, biological weapons or missiles (hereafter "weapons of mass destruction"). No Party shall knowingly sell any products manufactured using any other Party's technical information to any third party if it knows that the end-user of the products will use them for the development and/or manufacture of the weapons of mass destruction.

17.10 Definitions; Interpretation.

(a) Certain Definitions. Capitalized terms used but not defined in the main body of this Agreement shall have the meanings assigned to them in Exhibit A. Capitalized terms used but not defined in either of the main body of this Agreement or in Exhibit A shall

have the meaning ascribed to such terms in the New Y2 Agreement or, if not defined therein, in the FFL Master Agreement.

(b) Treatment of Ambiguities. The Parties acknowledge that each Party has participated in the drafting of this Agreement, and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in the construction or interpretation of this Agreement.

(c) References; Construction. Unless otherwise indicated herein, with respect to any reference made in this Agreement to a Section, Article, Schedule or Exhibit, such reference shall be to a section or article of, or a schedule or exhibit to, this Agreement. The article and section headings contained in this Agreement and the recitals at the beginning of this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement or any other agreement. Any reference made in this Agreement to a statute or statutory provision shall mean such statute or statutory provision as it has been amended through the date as of which the particular portion of the Agreement is to take effect, or to any successor statute or statutory provision relating to the same subject as the statutory provision so referred to in this Agreement, and to any then applicable rules or regulations promulgated thereunder. Whenever the words "include," "includes" or "including" are used in this Agreement, they shall be deemed, unless the context clearly indicates to the contrary, to be followed by the words "but (is/are) not limited to." The words "herein," "hereof," "hereunder" and words of like import shall refer to this Agreement as a whole (including its Schedules and Exhibits), unless the context clearly indicates to the contrary. Words used herein, regardless of the number and gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine or neuter, as the context indicates is appropriate. Any reference made in this Agreement to another Master Operative Document shall be deemed, unless the context clearly indicates to the contrary, to refer to such Master Operative Document as such Master Operative Document may be amended or supplemented from time to time.

(d) Order of Precedence. To the extent that a provision in this Agreement expressly conflicts with another Master Operative Document, then the provisions of this Agreement will control as to such conflict; provided, however, that unless otherwise provided herein, the provisions of the Master Operative Documents remain in effect.

(e) Other Clarifications. Unless the context clearly indicates the contrary, any reference in this Agreement to (i) actions by, or events relating to, TMC and occurring prior to April 1, 2017 shall refer to actions by, or events relating to, Toshiba, and (ii) rights, obligations, or allocations ascribed to WD hereby, but which are set forth in a Master Operative Document to which WD is not a party, shall refer to the corresponding rights, obligations, or allocations of the applicable SanDisk party to such Master Operative Document, as if WD were named *in lieu* of such applicable SanDisk party. For the avoidance of doubt, (A) nothing herein shall be deemed an assignment or transfer to WD of any rights or allocations ascribed to a SanDisk party in any Master Operative Document and (B) subclause (A) does not alter any rights or obligations of any Party pursuant to the Undertaking.

17.11 Notices and Contact Information. All notices, reports and other communications to be given or made under this Agreement shall be in writing and shall be deemed received (X) if delivered by hand, courier or overnight delivery service, when delivered, or (Y) if delivered by e-mail, the earlier of: (I) when the recipient, by an email sent to the email address for the sending Party stated in this Section 17.11 or by a notice delivered by another method in accordance with this Section 17.11, acknowledges having received that email (*provided*, *however*, that an automatic "read receipt" will not constitute acknowledgment of an email for purposes of this Section 17.11(Y)(I)) or (II) when the email is delivered, if followed within two Business Days by delivery of a copy by hand, courier or overnight delivery service, or (Z) if delivered by mail, five days after being mailed by certified or registered mail, return receipt requested, with appropriate postage prepaid, and, in each case, shall be directed to the address of such Party specified below (or at such other address as such Party shall designate by like notice):

(a) If to WD or SanDisk:

Western Digital Corporation
951 SanDisk Drive
Milpitas, CA 95035 USA
Telephone: (408) 801-1000
E-mail: [***]
Attention: Executive Vice President, Memory Technology

With a copy to:

Western Digital Corporation
5601 Great Oaks Parkway
San Jose, CA 95119
Telephone: (408) 717-6000
E-mail: [***]
Attention: Chief Legal Officer

(b) If to TMC:

Toshiba Memory Corporation
1-1 Shibaura 1-chome
Minato-ku, Tokyo 105-0023 Japan
Telephone: [***]
E-mail: [***]
Attention: Memory Division, Vice President

With a copy to:
Toshiba Memory Corporation
1-1 Shibaura 1-chome
Minato-ku, Tokyo 105-0023 Japan
Telephone: [***]
E-mail: [***]
Attention: General Manager, Legal Affairs Division

(c) If to any of the JVs, then to each of the addressees at (a) and (b) above.

17.12 Assignment. Except as separately agreed by the Parties in writing, none of the Parties may transfer this Agreement or any of its rights hereunder (except for any transfer to an Affiliate or in connection with a merger, consolidation or sale of all or substantially all the assets or the outstanding securities of such Party, which transfer will not require any consent of the other Parties hereunder) without the prior written consent of the each of the other Parties (which consent may be withheld by each such other Party in such other Party's sole discretion), and any such purported transfer without such consents will be void.

17.13 Amendment and Waiver. This Agreement may not be amended, modified or supplemented except by a written instrument executed by each Party. No waiver of any provision of this Agreement shall be effective unless set forth in a written instrument signed by the Party waiving such provision. No failure or delay by a Party in exercising any right, power or remedy under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of the same preclude any further exercise thereof or the exercise of any other right, power or remedy. Without limiting the foregoing, no waiver by a Party of any breach by any other Party of any provision hereof shall be deemed to be a waiver of any subsequent breach of that or any other provision hereof.

17.14 Severability. If a term of any New Agreement or the application of any such term is or becomes illegal, invalid or unenforceable in any respect under any jurisdiction, that will not affect (a) the legality, validity or enforceability in that jurisdiction of any other term of the New Agreements or (b) the legality, validity or enforceability in any other jurisdictions of that or any other term of the New Agreements. To the extent permitted by applicable law, the Parties waive any provision of Law that renders any provision of this Agreement invalid, illegal or unenforceable in any respect. Such term shall be replaced by a mutually acceptable provision, which being valid, legal and enforceable comes closest to the intention of the Parties underlying such illegal, invalid or unenforceable provision.

17.15 Counterparts; Effectiveness. This Agreement may be executed in counterparts, each of which shall be binding as of the date first written above, and all of which shall constitute one and the same instrument. Each such counterpart shall be deemed an original, and it shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart. The exchange of copies of this Agreement and of signature pages by facsimile transmission, portable document format (.pdf) or other electronic format shall be deemed to be their original signatures for all purposes. This Agreement shall not become effective until one or more counterparts have been executed by each Party and delivered to the other Parties.

17.16 No Admission. Nothing in this Agreement shall constitute or be used as an admission, acquiescence, acknowledgement, or agreement by anyone as to the merit of any claims or defenses, whether or not asserted in any arbitration or other litigation, except to enforce the provisions of this Agreement or any part of any other agreement expressly amended herein. In addition, nothing in this Agreement shall constitute or be used as an admission in any arbitration, litigation, or other proceeding regarding the interpretation of any other agreement.

**[**The remainder of this page is intentionally left blank.**]**

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective duly authorized representatives as of the date first written above.

**WESTERN DIGITAL CORPORATION**

By: /s/ Michael C. Ray
Name: Michael C. Ray
Title: Executive Vice President, Chief Legal Officer and Secretary

**SANDISK LLC**

By: /s/ Michael C. Ray
Name: Michael C. Ray
Title: Sole Manager

**SANDISK (CAYMAN) LIMITED**

By: /s/ Michael C. Ray
Name: Michael C. Ray
Title: Director

**SANDISK (IRELAND) LIMITED**

By: /s/ Michael C. Ray
Name: Michael C. Ray
Title: Director

**SANDISK FLASH B.V.**

By: /s/ Michael C. Ray
Name: Michael C. Ray
Title: Director

**TOSHIBA MEMORY CORPORATION**

By: /s/ Yasuo Naruke
Name: Yasuo Naruke
Title: President and Chief Executive Officer

**FLASH PARTNERS, LTD.**

By: /s/ Hideyuki Kobayashi
Name: Hideyuki Kobayashi
Title: President and Chief Executive Officer

**FLASH ALLIANCE, LTD.**

By: /s/ Atsuyoshi Koike
Name: Atsuyoshi Koike
Title: President and Chief Executive Officer

**FLASH FORWARD, LTD.**

By: /s/ Hideyuki Kobayashi
Name: Hideyuki Kobayashi
Title: President and Chief Executive Officer

**EXHIBIT A**
**DEFINITIONS**

"3D Collaboration Agreement" means the 3D Collaboration Agreement, dated as of June 13, 2008, between SanDisk LLC and TMC.

"3D Memory Products" has the meaning set forth in the 3D Collaboration Agreement.

"Action" means a lawsuit, arbitration or other legal proceeding pending by or against or affecting a Party or any of its Affiliates or any of their respective properties.

"Affiliate" means, with respect to any specified Person, any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with, the Person specified, and "control", when used with respect to any Person, means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities or otherwise, and the terms "controlling" and "controlled" have meanings correlative to the foregoing; provided, however, that the term Affiliate (a) when used in relation to any JV or Subsidiary thereof, shall not include the Parent Parties or any Affiliate of either of them, and (b) when used in relation to WD or TMC or their respective Affiliates, shall not include any JV or Subsidiary thereof.

"Agreement" has the meaning set forth in the preamble to this Agreement.

[***]

"Amended JMDY Agreement" means that certain Amended and Restated Joint Memory Development Yokkaichi Agreement, dated as of even date herewith, by and between TMC and SanDisk LLC.

"Amendment to FPL Commitment and Extension Agreement" means the Amendment to FPL Commitment and Extension Agreement, dated as of even date herewith, by and among TMC, WD, SanDisk LLC and SanDisk Cayman.

"BiCS Conversion" has the meaning set forth in Section 2.1.

"BiCS Expansions" means [***].

"BiCS LDA" means that certain BiCS License & Development Agreement, dated as of March 1, 2011, by and between TMC and SanDisk LLC.

[***]

"BiCS Products" has the meaning set forth for the term "BiCS Memory Products" in the BiCS LDA.

"BiCS Technology" has the meaning set forth in the BiCS LDA.

"BiCS Technology Transitions" has the meaning set forth in Section 2.1.

"Building Depreciation Prepayment" has the meaning set forth in Section 2.5(a).

"Business Day" means any day (other than a day which is a Saturday, Sunday or legal holiday in the State of California or Japan) on which commercial banks are open for business in the State of California or Tokyo, Japan.

"Common R&D Agreement" means that certain Fifth Amended and Restated Common R&D and Participation Agreement, by and between TMC and SanDisk LLC, dated as of March 1, 2011.

"Confidential Information" means information disclosed in written, recorded, graphical or other tangible form which is marked as "Confidential", "Proprietary" or in some other manner to indicate its confidential nature, and/or orally or in other intangible form, identified as confidential at the time of disclosure and confirmed as confidential information in writing within thirty (30) days of its initial disclosure.

[***]

[***]

[***]

"Disclosing Party" has the meaning set forth in Section 14.2(a).

"Employer" has the meaning set forth in Section 7.6.

"Equivalent Lot" means [***].

"Existing Agreements" means the JV Agreements and the Joint Operative Documents.

"FAL" has the meaning set forth in the preamble.

"FAL Commitment and Extension Agreement" means the FAL Commitment and Extension Agreement, dated as of even date herewith, by and among TMC, WD, SanDisk LLC and SanDisk Ireland.

"FAL Foundry Agreement" has the meaning set forth for the term "FA Foundry Agreement" in the FAL Master Agreement.

"FAL Lease Agreement" means that certain Equipment Lease Agreement, dated as of July 7, 2006, by and between FAL and TMC.

"FAL Master Agreement" means that certain Flash Alliance Master Agreement, dated as of July 7, 2006, by and among TMC, SanDisk LLC and SanDisk Ireland.

"FAL MCEIA" means that certain Flash Alliance Mutual Contribution and Environmental Indemnification Agreement, dated as of July 7, 2006, by and among TMC, SanDisk LLC and SanDisk Ireland.

"FAL Purchase and Supply Agreement" means (i) with respect to TMC, that certain Purchase and Supply Agreement, dated as of July 7, 2006, by and between FAL and TMC, or (ii) with respect to SanDisk Ireland, that certain Purchase and Supply Agreement dated as of July 7, 2006, by and between FAL and SanDisk Ireland.

"FFL" has the meaning set forth in the preamble.

"FFL Commitment and Extension Agreement" means the FFL Commitment and Extension Agreement, dated as of even date herewith, by and among TMC, WD, SanDisk LLC and SanDisk Flash.

"FFL Foundry Agreement" has the meaning set forth for the term "FF Foundry Agreement" in the FFL Master Agreement.

"FFL Lease Agreement" means that certain Equipment Lease Agreement, dated as of October 20, 2015, by and between FFL and TMC.

"FFL Master Agreement" means that certain Flash Forward Master Agreement, dated as of July 13, 2010, by and among TMC, SanDisk LLC and SanDisk Flash.

"FFL MCEIA" means that certain Flash Forward Mutual Contribution and Environmental Indemnification Agreement, dated as of July 13, 2010, by and among TMC, SanDisk LLC and SanDisk Flash.

"FFL Purchase and Supply Agreement" means (i) with respect to TMC, that certain Purchase and Supply Agreement, dated as of March 1, 2011, by and between FFL and TMC, or (ii) with respect to SanDisk Flash, that certain Purchase and Supply Agreement dated as of March 1, 2011, by and between FFL and SanDisk Flash.

"First JV Wafer Out Date" means the date on which the first production of wafers utilizing capacity at the Y6 Facility resulting from the implementation of the Minimum Commitment for a portion of such production's manufacturing process is completed.

"Foundry Agreements" means the FAL Foundry Agreement, FFL Foundry Agreement and FPL Foundry Agreement.

"FPL" has the meaning set forth in the preamble.

"FPL Commitment and Extension Agreement" means that certain FPL Commitment and Extension Agreement, dated as of October 20, 2015, by and between TMC and SanDisk LLC.

"FPL Foundry Agreement" has the meaning set forth for the term "FP Foundry Agreement" in the FPL Master Agreement.

"FPL Lease Agreement" means that certain Equipment Lease Agreement, dated as of September 10, 2004, by and between FPL and TMC.

"FPL Master Agreement" means that certain Flash Partners Master Agreement, dated as of September 10, 2004, by and among TMC, SanDisk LLC and SanDisk Cayman, as amended by the FPL Commitment and Extension Agreement.

"FPL MCEIA" means that certain Mutual Contribution and Environmental Indemnification Agreement, dated as of September 10, 2004, by and among TMC, SanDisk LLC and SanDisk Cayman.

"FPL Purchase and Supply Agreement" means (i) with respect to TMC, that certain Purchase and Supply Agreement, dated as of September 10, 2004, by and between FPL and TMC, or (ii) with respect to SanDisk Cayman, that certain Purchase and Supply Agreement dated as of September 10, 2004, by and between FPL and SanDisk Cayman.

"Governmental Authority" means any (a) nation, principality, state, commonwealth, province, territory, county, municipality, district or other jurisdiction of any nature; (b) federal, state, local, municipal, foreign or other government; (c) governmental or quasi-governmental authority of any nature (including any governmental division, subdivision, department, agency, bureau, branch, office, commission, council, board, instrumentality, officer, official, representative, organization, unit, body or Person and any court or other tribunal); or (d) individual, Person or body (including any stock exchange) exercising, or entitled to exercise, any executive, legislative, judicial, administrative, regulatory, police, military or taxing authority or power of any nature.

"Information Security Agreement" means that certain Information Security Agreement, dated as of October 20, 2015, by and between TMC and SanDisk LLC.

"Infrastructure Costs" means [***].

"Intellectual Property" has the meaning set forth in Section 16.7.

"JMDY Project" means the joint development project established to cooperate on the development of the pilot line at the Yokkaichi Facility pursuant to the Amended JMDY Agreement and this Agreement.

"Joint Operative Documents" means the Common R&D Agreement, the Product Development Agreement, the 3D Collaboration Agreement, the Amended JMDY Agreement, the JVRA, [***], the Information Security Agreement, the BiCS LDA, the Settlement Agreement, the Undertaking, and the WD-TMC PCLA.

[***]

"JV" has the meaning set forth in the Recitals.

"JV Agreements" means the FAL Master Agreement, the FFL Master Agreement, the FPL Master Agreement, the JV Operating Agreements, the Foundry Agreements, the Purchase and Supply Agreements, the JV Lease Agreements, the JV MCEIAs, the FPL Commitment and Extension Agreement, the New Y2 Agreement, and the New Y2 MCEIA.

"JV BiCS Products" means JV Y3 BiCS Products, JV Y4 BiCS Products, JV Y5 BiCS Products, JV New Y2 BiCS Products and JV Y6 BiCS Products.

"JV BiCS Space" has the meaning set forth in Section 3.2(a).

"JV BiCS Tools" means tools used in the JV BiCS Space of the New Y2 Facility, the Y3 Facility, the Y4 Facility, the Y5 Facility or the Y6 Facility.

"JV Business Plan" has, with respect to a JV, the meaning given to the term "Business Plan" in the respective JV's JV Master Agreement.

"JV Lease Agreements" means the FPL Lease Agreement, the FAL Lease Agreement and FFL Lease Agreement.

"JV Master Agreements" means the FAL Master Agreement, the FFL Master Agreement and the FPL Master Agreement.

"JV MCEIAs" means the FPL MCEIA, the FAL MCEIA and the FFL MCEIA.

"JV New Y2 BiCS Products" has the meaning set forth in the New Y2 Agreement.

"JV Operating Agreements" means that certain Operating Agreement of Flash Partners, Ltd. dated as of September 10, 2004, as amended by the FPL Commitment and Extension Agreement, that certain Operating Agreement of Flash Alliance, Ltd. dated as of July 7, 2006, and that certain Operating Agreement of Flash Forward, Ltd., dated as of March 1, 2011.

"JV Products" means NAND Flash Memory Products and BiCS Products, in each case manufactured for the JVs.

"JV Space" means JV BiCS Space plus any cleanroom space used for the production of NAND Flash Memory Products by the JVs in the Yokkaichi Facility.

"JV Y3 BiCS Products" has the meaning set forth in the New Y2 Agreement.

"JV Y4 BiCS Products" has the meaning set forth in the New Y2 Agreement.

"JV Y5 BiCS Products" has the meaning set forth in the New Y2 Agreement.

"JV Y6 BiCS Products" has the meaning set forth in Section 3.1(b).

"JV Y6 Products" means the JV Y6 BiCS Products plus any other products manufactured using Y6 Facility cleanroom space in accordance with Article 3 that are identified [***] as Y6 lots and allocated to a JV under the applicable JV's JV Master Agreement.

"JVRA" means that certain Joint Venture Restructure Agreement, dated as of January 29, 2009, by and among the Parties, the JVs and certain of their respective Affiliates.

"L/ M" means either lots per month or Equivalent Lots per month, in each case as mutually agreed by the Parties.

"Law" means all applicable provisions of all (a) constitutions, treaties, statutes, laws (including common law), rules, regulations, ordinances or codes; (b) orders, decisions, judgments, awards or decrees; and (c) requests, guidelines or directives (whether or not having the force of law), in each case of any Governmental Authority of any applicable jurisdiction.

"Management Representatives" has the meaning set forth in the JV Agreements.

"Master Operative Documents" means the Existing Agreements and the New Agreements.

"Material Breach" has the meaning set forth in Section 15.3.

[***]

" Memory R&D Center" has the meaning set forth in Section 13.

"Minimum Commitment" has the meaning set forth in Section 4.1.

"NAND Flash Memory Products" has the meaning set forth in the JV Agreements.

"New Agreements" has the meaning set forth in the Recitals.

"New Y2 Agreement" means that certain New Y2 Facility Agreement, dated as of October 20, 2015, by and among TMC, SanDisk LLC, SanDisk Cayman, SanDisk Ireland, SanDisk Flash, FPL, FAL and FFL.

"New Y2 BiCS Products" means BiCS Products manufactured at the Yokkaichi Facility and that are identified [***] as New Y2 lots.

[***]

"New Y2 Facility" means the production facility within the Yokkaichi Facility described in the New Y2 Agreement.

"New Y2 Products" has the meaning set forth in the New Y2 Agreement.

"New Y2 Unilateral BiCS Expansion" means a Yokkaichi Unilateral BiCS Expansion made within the New Y2 Facility.

"Non-NAND Products" means any technology or product other than NAND Flash Memory Products.

"Operating Committees" means the Y3 Operating Committee, Y4 Operating Committee, Y5 Operating Committee (each as defined in the JV Agreements), the New Y2 Operating Committee (as defined in the New Y2 Agreement) and the Y6 Operating Committee (as defined in this Agreement).

[***]

[***]

"Parent Parties" has the meaning set forth in the preamble to this Agreement.

"Parties" has the meaning set forth in the preamble to this Agreement.

"Patent Indemnification Termination Agreement" means the Termination Agreement, dated as of even date herewith, by and among Toshiba, TMC, WD and SanDisk.

"Person" means any individual or entity, including any private or public real estate operating company or real estate investment trust, exempted company, exempted limited partnership, private limited company, corporation, partnership, limited partnership, limited liability company, trust, charitable trust or other legal entity, wherever organized, or any unincorporated association or Governmental Authority.

"Personnel" has the meaning set forth in Section 7.1(d).

"Phase I Implementation" has the meaning set forth in the Recitals.

"Phase I Investment" means the investments described in the Phase I Document.

"Phase I Document" [***]

"Product Development Agreement" means the Third Amended and Restated Product Development Agreement, dated as of March 1, 2011, between SanDisk LLC and TMC.

[***]

"Proprietary NAND Flash Memory Products" means NAND Flash Memory Products which are proprietary to a Parent Party.

"Proprietary BiCS Products" means BiCS Products that are proprietary to a Parent Party.

"Proprietary Flash Products" means Proprietary NAND Flash Memory Products and Proprietary BiCS Products.

"Purchase and Supply Agreements" means the FPL Purchase and Supply Agreements, the FAL Purchase and Supply Agreements, and the FFL Purchase and Supply Agreements.

"Quarterly Manufacturing Cost Reconciliation" has the meaning set forth in Section 8.1(d).

"Ramp-Up Commitment" means the investment necessary to implement an agreed BiCS Expansion, BiCS Technology Transition or BiCS Conversion, in each case using the Y6 Facility, as set forth in a JV's Investment Plan (as defined in the JV Agreements), after the Minimum Commitment has been fulfilled.

"Receiving Party" has the meaning set forth in Section 14.2(a).

"Restructuring Costs" has the meaning set forth in Section 15.6(b)(ii).

"SanDisk" has the meaning set forth in the preamble to this Agreement.

"SanDisk Cayman" has the meaning set forth in the preamble to this Agreement.

"SanDisk Flash" has the meaning set forth in the preamble to this Agreement.

"SanDisk Ireland" has the meaning set forth in the preamble to this Agreement.

"SanDisk LLC" has the meaning set forth in the preamble to this Agreement.

"SEC" means the Securities and Exchange Commission of the United States.

"Securities Act" means the Securities Act of 1933, as amended, and the rules and regulations of the SEC promulgated thereunder from time to time.

[***]

[***]

[***]

"Settlement Agreement" means the Confidential Settlement and Mutual Release Agreement, dated as of even date herewith, among Toshiba, TMC, WD and SanDisk.

"Subsidiary" of any Person means any other Person:

i. more than 50% of whose outstanding shares or securities (representing the right to vote for the election of directors or other managing authority) are, or

ii. which does not have outstanding shares or securities (as may be the case in a partnership, joint venture or unincorporated association), but more than 50% of whose ownership interest representing the right to make decisions (equivalent to those generally reserved for the board of directors of a corporation) for such other Person is,

now or hereafter owned or controlled, directly or indirectly, by such Person, but such other Person shall be deemed to be a Subsidiary only so long as such ownership or control exists; provided, however, that the term Subsidiary, when used in relation to a Party or any of its Affiliates, shall not include any JV or any of the JVs' Subsidiaries (except that, when used in relation to a Party that is a JV, the term Subsidiary shall include such JV's own Subsidiaries).

"Start-Up Costs" has the meaning set forth in Section 2.5(b).

"Start-Up Period" has the meaning set forth in Section 2.5(b).

"TMC" has the meaning set forth in the preamble to this Agreement.

"TMC Personnel" has the meaning set forth in Section 7.1(b).

"TMC Representative" has the meaning set forth in Section 6.1.

"Toshiba" has the meaning set forth in the Recitals.

"Toshiba Capacity" has the meaning ascribed to such term in the JVRA and includes, for the avoidance of doubt, any Toshiba Unilateral Expansion Space (as defined in the FFL Master Agreement) and any Yokkaichi Unilateral BiCS Expansion Space (as defined in this Agreement).

[***]

[***]

"Undertaking" means the Parent Guarantee and Undertaking as to Collaboration, dated as of even date herewith, entered into by and among WD, Toshiba and TMC, and acknowledged and agreed by SanDisk and the JVs.

" WD" has the meaning set forth in the preamble to this Agreement.

"WD Personnel" has the meaning set forth in Section 7.1(c).

"WD Representative" has the meaning set forth in Section 6.1.

[***]

"WD Team" has the meaning set forth in Section 7.1(e).

"WD-TMC PCLA" means the Patent Cross License Agreement, dated as of even date herewith, between WD and TMC.

[***]

"Y3 Facility" means the production facility within the Yokkaichi Facility described in the FPL Master Agreement.

"Y3 Products" means products manufactured at the Yokkaichi Facility and identified [***] as Y3 lots.

[***]

"Y4 Facility" means the production facility within the Yokkaichi Facility described in the FAL Master Agreement.

"Y4 Products" means products manufactured at the Yokkaichi Facility and identified [***] as Y4 lots.

[***]

"Y5 Facility" means the production facility within the Yokkaichi Facility described in the FFL Master Agreement.

"Y5 Products" means products manufactured at the Yokkaichi Facility and [***] as Y5 lots.

"Y6 BiCS Products" has the meaning set forth in Section 3.1(b).

"Y6 Capacity Ratio" for either WD or TMC means [***]

[***]

"Y6 Facility" means the production facility currently under construction, owned by TMC and forming part of the Yokkaichi Facility, including a building shell, cleanroom, and all culverts, piping, ducting and associated infrastructure connecting thereto.

"Y6 Fixed Manufacturing Costs" means the Y6 Manufacturing Costs described on Schedule 8.4(b)(i).

"Y6 JV Engineers" has the meaning set forth in Section 7.1(a).

"Y6 JV Headcount Plan" has the meaning set forth in Section 7.2.

"Y6 Manufacturing Costs" has the meaning set forth in Section 8.1.

"Y6 MCEIA" means that certain Y6 Mutual Contribution and Environmental Indemnification Agreement, dated as of even date herewith, by and among TMC, SanDisk Cayman, SanDisk Ireland and SanDisk Flash.

"Y6 Operating Committee" has the meaning set forth in Section 6.1.

"Y6 Product Fixed Manufacturing Costs" has the meaning set forth in Section 8.4(b)(i).

"Y6 Product Variable Manufacturing Costs" has the meaning set forth in Section 8.4(b)(ii).

"Y6 Products" means Y6 BiCS Products plus any other products manufactured using Y6 Facility cleanroom space in accordance with Article 3 that are [***] as Y6 lots.

[***]

"Y6 Unilateral BiCS Expansion" means a Yokkaichi Unilateral BiCS Expansion made within the Y6 Facility.

"Y6 Unilateral BiCS Products" has the meaning set forth in Section 3.1(b).

"Y6 Unilateral Conversion Space" has the meaning set forth in Section 3.2(b)(iii).

"Y6 Unilateral Space" means (i) any Yokkaichi Unilateral BiCS Expansion Space within the Y6 Facility, (ii) [***], (iii) Y6 Unilateral Conversion Space, and (iv) any cleanroom space in the Y6 Facility attributable to NAND Flash production capacity resulting from any NAND Flash unilateral expansions or unilateral technology transitions effected in accordance with this Agreement.

"Y6 Variable Manufacturing Costs" means the Y6 Manufacturing Costs described on Schedule 8.4(b)(ii).

"Yokkaichi Facility" means TMC's facilities in Yokkaichi Japan, including the New Y2 Facility, the Y3 Facility, the Y4 Facility, the Y5 Facility, the Y6 Facility and TMC's Asahi facility.

"Yokkaichi BiCS Expansion" has the meaning set forth in Section 4.2.

[***]

"Yokkaichi Unilateral BiCS Expansion" has the meaning set forth in Section 4.2(c)(i).

"Yokkaichi Unilateral BiCS Expansion Space" has the meaning set forth in Section 3.2(b)(ii)

**Exhibit 10.13**

CERTAIN CONFIDENTIAL PORTIONS HAVE BEEN REDACTED FROM THIS EXHIBIT BECAUSE THEY ARE BOTH (i) NOT MATERIAL AND (ii) A TYPE THAT THE REGISTRANT TREATS AS PRIVATE OR CONFIDENTIAL. INFORMATION THAT HAS BEEN OMITTED HAS BEEN IDENTIFIED IN THIS DOCUMENT WITH A PLACEHOLDER IDENTIFIED BY THE MARK "[***]".

Execution Version

---

# K1 FACILITY AGREEMENT

by and among

TOSHIBA MEMORY CORPORATION,

TOSHIBA MEMORY IWATE CORPORATION,

WESTERN DIGITAL CORPORATION,

SANDISK LLC,

SANDISK (CAYMAN) LIMITED,

SANDISK (IRELAND) LIMITED,

SANDISK FLASH B.V.,

FLASH PARTNERS, LTD.,

FLASH ALLIANCE, LTD.

and

FLASH FORWARD, LTD.

dated as of

MAY 15, 2019

---

**TABLE OF CONTENTS**

**TABLE OF CONTENTS**
(continued)

**TABLE OF CONTENTS**
(continued)

**TABLE OF CONTENTS**
(continued)

K1 FACILITY AGREEMENT

This K1 FACILITY AGREEMENT (this "Agreement") is made as of May 15, 2019, by and among Toshiba Memory Corporation, a Japanese corporation ("TMC"), Toshiba Memory Iwate Corporation, a Japanese corporation ("TMI" and together with TMC, "Toshiba Memory"), Western Digital Corporation, a Delaware corporation ("WD") (together with TMC, the "Parent Parties"), SanDisk LLC, a Delaware limited liability company ("SanDisk LLC"), SanDisk (Cayman) Limited, a company organized under the laws of the Cayman Islands ("SanDisk Cayman"), SanDisk (Ireland) Limited, a company organized under the laws of the Republic of Ireland ("SanDisk Ireland"), SanDisk Flash B.V., a company organized under the laws of The Netherlands ("SanDisk Flash," and collectively with SanDisk LLC, SanDisk Cayman and SanDisk Ireland, "SanDisk"), Flash Partners, Ltd., a Japanese *tokurei yugen kaisha* ("FPL"), Flash Alliance, Ltd., a Japanese *tokurei yugen kaisha* ("FAL"), and Flash Forward, Ltd., a Japanese *godo kaisha* ("FFL," and collectively with Toshiba Memory, WD, SanDisk, FPL and FAL, the "Parties").

WHEREAS, FPL, FAL and FFL (collectively, with any future joint venture operations mutually agreed between TMC and WD, the "JVs" and, each, a "JV") are engaged in the manufacture of NAND Flash Memory Products and BiCS Products;

WHEREAS, Toshiba Memory plans to build and facilitize the K1 Facility located within the Kitakami Facility (each as defined in Exhibit A) for use in establishing production capacity for BiCS Products via K1 Capacity Transfers (as defined below), including by making investments to transfer tools from the Yokkaichi Facility to the K1 Facility and in new tools in connection therewith, among other potential uses pursuant to this Agreement;

WHEREAS, TMC intends to conduct certain activities at the Kitakami Facility through TMI, TMC's wholly owned Subsidiary;

WHEREAS, Toshiba Memory, WD, SanDisk and the JVs are concurrently herewith entering into the FFL Second Commitment and Extension Agreement (the "FFL Second Extension Agreement") to, among other things, extend FFL's term to December 31, 2034;

WHEREAS, in reliance on the extension of FFL's term as described in the foregoing recital, the Parties intend for FFL to be the Parent Parties' primary vehicle for joint investments in tools for the manufacture of BiCS Products at the K1 Facility that FFL will acquire in

accordance with a production framework substantially similar to the production framework established in the New Y2 Agreement;

WHEREAS, the Parties desire to set forth the terms and conditions of the construction and use of the K1 Facility; and

WHEREAS, some or all of the Parties, among others, are concurrently entering into this Agreement, the FFL Second Extension Agreement, the Amended JMD Agreement, the Amendment to WD-TMC PCLA, the K1 MCEIA, the Amended FFL Services Agreement and the Amended SanDisk Services Agreement (each as defined in Exhibit A) (collectively, the "New Agreements").

NOW, THEREFORE, the Parties hereby agree as follows:

1. FRAMEWORK

1.1 New Y2 Production Framework. The Parties acknowledge and agree that the terms and conditions set forth in Article 1 of the New Y2 Agreement apply to the manufacture of BiCS Products in the K1 Facility (including, for the avoidance of doubt, with respect to the transfer of BiCS Process Technology (as defined in the New Y2 Agreement), process integration for manufacture of BiCS Products, and the rights of the Parent Parties to market and sell BiCS Products) to the same extent that they would apply if the K1 Facility were the New Y2 Facility and part of the Yokkaichi Facility; provided, however, to the extent any provision of Article 1 of the New Y2 Agreement expressly conflicts with any provision in this Agreement, the provision in this Agreement shall control as to such conflict.

1.2 Other Activities. The phrase "Yokkaichi Facility or any other fabrication facility" in Section 6.11 of the FPL Master Agreement, Section 6.13 of the FAL Master Agreement, Section 6.13 of the FFL Master Agreement, and Section 1.6 of the New Y2 Agreement is hereby replaced with the phrase "Yokkaichi Facility, Kitakami Facility, or any other fabrication facility."

1.3 FFL as Primary Investment Vehicle. FFL shall be the Parent Parties' primary vehicle for joint investments in tools for the Kitakami Facility [***].

1.4 Former JV Capacity.

(a) Notwithstanding anything to the contrary set forth in the Master Operative Documents, but subject to the Ramp Down Provisions, each Parent Party and SanDisk shall have the right, subject to the terms and conditions of this Section 1.4, to use (directly or indirectly through its wholly owned Subsidiaries) for any purpose (other than [***]), including the production of NAND Flash Memory Products and BiCS Products, in

each case, that are not [***]: (i) any capacity of a JV of which such Parent Party or SanDisk, as the case may be, has acquired all of the Units, Shares, or Interests (as applicable); or (ii) any capacity acquired by such Parent Party or SanDisk, as the case may be, from a JV as a result of the dissolution procedures under the JV Operating Agreement of such JV, or in connection with the termination of the JV Master Agreement of such JV (collectively, (i) and (ii) constituting "Former JV Capacity"). [***]

(b) [***]

(c) [***]

(d) [***]

(e) [***]

(f) [***]

(g) [***]

(h) [***]

(i) [***]

2. K1 FACILITY AND CONSTRUCTION

2.1 Purpose of K1. The Parties acknowledge and agree that (a) the K1 Facility may be used for the installation of tools in connection with implementing K1 Capacity Transfers and (b) the K1 Facility may also be used by the Parties for (i) BiCS Expansions, the conversion of their then-existing production capacity for NAND Flash Memory Products (including NAND capacity in the JVs and Toshiba Capacity) into production capacity for BiCS Products ("BiCS Conversion"), and transitions of their then-existing production capacity for a given BiCS Product to production capacity for another technology node of such BiCS Product ("BiCS Technology Transitions"), (ii) the manufacture of other products (including supporting capacity expansions and technology transitions of such other products) and (iii) the development of new technologies or products, in each case of (ii) and (iii), as mutually agreed between the Parent Parties from time to time. [***]

2.2 First JV Wafer Out. The Parties target K1 Facility cleanroom readiness to occur in [***] with respect to wafer capacity from the implementation of the K1 Minimum Commitment, with a First JV Wafer Out Date targeted [***].

2.3 Rights and Responsibilities in Construction.

(a) Toshiba Memory. Toshiba Memory shall (i) direct the design, construction and facilitization of the K1 Facility and (ii) exercise commercially reasonable efforts to ensure that the K1 Facility is (A) insurable, (B) designed and constructed to mutually acceptable high levels of risk control standards and (C) completed on a schedule consistent with achieving the First JV Wafer Out Date provided for in Section 2.2. Toshiba Memory shall maintain the K1 Facility at mutually acceptable high levels of risk control standards in accordance with current practice.

(b) WD. In connection with the construction and facilitization of the K1 Facility, (i) WD shall (and the Parent Parties shall cause the JVs to) assist Toshiba Memory in minimizing the time required to obtain required administrative approvals, and (ii) WD and its agents shall have (with prior coordination with Toshiba Memory and the construction coordinators for the K1 Facility) reasonable access to the K1 Facility construction site and to all appropriate information pertaining to the construction of the K1 Facility and necessary for WD to participate in the JV operations in the K1 Facility; provided, that WD shall be solely responsible for all damage caused by such access.

2.4 Phases of Construction. The shell of the K1 Facility shall be built in one (1) phase, and the cleanroom shall be built in four (4) phases of substantially similar size. [***]

2.5 Construction Costs and Related Costs.

(a) Building Depreciation Prepayment. Prior to each Payment Due Date set forth inSchedule 2.5(a)(i) or if such Payment Due Date is not a Business Day, the Business Day immediately preceding such Payment Due Date [***] WD and TMI shall pay to FFL the Payment Amount set forth for such Payment Due Date in Schedule 2.5(a)(i) (each, a "Building Depreciation Prepayment") [***]

(b) Start-Up Costs. The Parties acknowledge that one or more of the Parties have incurred or will incur actual costs in connection with constructing the K1 Facility and preparing the K1 Facility for production during the period prior to the start of volume production at the K1 Facility, including personnel costs, materials costs and other operating expenses, for which each Parent Party has the obligation ultimately to bear 50% ("Start-Up Costs"). The Parent Parties shall discuss in good faith and agree upon theStart-Up Costs borne by the Parties and the means and timing by which each Party, as applicable, shall be reimbursed or credited for having incurred more than 50% of the Start-Up Costs or shall make payments due for having incurred less than 50% of the Start-Up Costs; provided, that the determination and allocation ofStart-Up Costs and the means

and timing of reimbursement shall be in a manner substantially similar to that utilized in connection with thestart-up costs of the Yokkaichi Facility. [***] Start-Up Costs will be excluded from K1 Manufacturing Costs.

(c) Land Costs. [***]

2.6 Incentives. [***]

2.7 Insurance. Toshiba Memory shall maintain or arrange property insurance covering the JV assets in the K1 Facility and business interruption insurance in respect of the business conducted at the K1 Facility, the scope and amounts of which shall be consistent with existing practices at the Yokkaichi Facility and as required by any lender or carrier to secure such coverage. This coverage shall provide basically full replacement value of all JV equipment installed in the K1 Facility, subject to valuation as part of Toshiba Memory's annual insurance policy renewal, and shall name the applicable JV as a beneficiary in respect of assets owned or leased by it and K1 employee expenses covered by business interruption insurance. On an annual basis, or when requested by either Party, the K1 Operating Committee shall discuss and review the current insurance coverage and/or the need for any additional property or business interruption insurance in respect of the JV assets in and operations of the K1 Facility. Further, WD reserves the right to seek to arrange additional property or business interruption insurance for its own account in respect of such assets or operations, and Toshiba Memory shall cooperate in good faith to provide such information and access as is reasonably necessary for WD to arrange such insurance. If Toshiba Memory makes a recovery from a third party (other than an insurer per the above) in respect of both assets in the K1 Facility and other assets, then Toshiba Memory shall allocate to the applicable JVs a share of the net amount of such recovery in proportion to the losses suffered by such JVs and total losses suffered by such JVs and Toshiba Memory.

3. PRODUCTS; RIGHTS TO CLEANROOM SPACE; TOOLS

3.1 BiCS Products.

(a) Subject to Section 1.3, the JVs may produce BiCS Products at the K1 Facility.

(b) BiCS Products manufactured at the Kitakami Facility and that are identified [***] as K1 lots are referred to as "K1 BiCS Products." "JV K1 BiCS Products" are K1 BiCS Products allocated to a JV under the applicable JV's JV Master Agreement. "K1 Unilateral BiCS Products" are K1 BiCS Products allocated to [***]

(c) For the avoidance of doubt, [***]

3.2 Rights to Cleanroom Space.

(a) K1 JV Space. The JVs shall have the right to invest in and secure production capacity and/or cleanroom space in the K1 Facility as follows:

(i) K1 JV BiCS Space. Subject to Section 1.3, the Parties acknowledge that each of the JVs has the right to invest in and secure production capacity and/or cleanroom space in the K1 Facility for the production of JV BiCS Products (the cleanroom space actually so utilized for production of BiCS Products at any time, such JV's "K1 JV BiCS Space"). In the event of an expiration or dissolution of a JV or termination of a JV Master Agreement for any reason, without any limitation on TMC's use or disposal of the facilities or assets of such JV, each Parent Party shall consider in good faith potential negative impacts on the remaining JVs' respective production capacities in the K1 Facility and utilization of their respective K1 JV BiCS Space.

(ii) K1 JMD Space. [***]

(b) K1 Non-JV Space. The Parent Parties have the right to invest in and secure production capacity and/or cleanroom space as follows:

(i) [***]

(ii) Unilateral Space. [***]

3.3 Tool Acquisition, Usage and Layout.

(a) JV Tools. Acquisitions of JV BiCS Tools shall be made in accordance with the terms for NAND Flash Memory Products tool acquisitions in the applicable JV Master Agreement, and JV BiCS Tools may be installed in the K1 Facility as mutually agreed by the Parent Parties. [***]

(b) JMD Tools. [***]

(c) Toshiba R&D Tools. [***]

(d) Unilateral Tools. [***]

(e) Tool Layout. [***]

3.4 NAND Flash Memory Products. Notwithstanding anything to the contrary in this Agreement, but subject toSection 1.3, the Parties acknowledge that NAND Flash Memory Products may be manufactured using tools installed in the K1 Facility cleanroom space if and to

the extent agreed in a JV Business Plan or by the applicable JV Operating Committee. Any such manufacture of NAND Flash Memory Products (including as to expansion or technology transition) shall be conducted pursuant to the terms of the applicable JV's JV Agreements as if such JV Agreements contemplated the manufacture of NAND Flash Memory Products in the K1 Facility. Any NAND Flash Memory Products manufactured at the Kitakami Facility and that are [***] as K1 lots are referred to as "K1 NAND Flash Memory Products." "JV K1 NAND Flash Memory Products" are K1 NAND Flash Memory Products allocated to a JV under the applicable JV's JV Master Agreement. Allocation of monthly lot output of NAND Flash Memory Products under the JV Master Agreements is hereby amended to include the following: the actual monthly lot output of K1 NAND Flash Memory Products will be allocated between the Parent Parties in the manner set forth in this Agreement as if all of such output were BiCS Product output from the K1 Facility; provided, that during any month in which the planned production of NAND Flash Memory Products is [***] output will be allocated between the Parent Parties [***]

4. RAMP-UP PROCESS

4.1 K1 Minimum Commitment.

(a) Unless otherwise agreed in writing between the Parent Parties, the Parent Parties shall, through FFL, make the investments necessary for [***] L/M in aggregate FFL production capacity using the K1 Facility for BiCS Products [***], which investment shall be divided equally between the Parent Parties (the foregoing, as further described below, the "K1 Minimum Commitment").

(b) [***]

(c) [***]

(d) [***]

4.2 Existing Facility BiCS Expansion. [***]

4.3 Other Facility Expansions. [***]

4.4 BiCS Conversions and BiCS Technology Transitions. Without limiting TMC's implementation of BiCS Conversions or BiCS Technology Transitions as part of the Phase I Implementation, the JVs shall be given priority for any BiCS Conversion or BiCS Technology Transition. Should any of FPL, FAL or FFL not accept any proposal for a BiCS Conversion or BiCS Technology Transition, the non-rejecting Parent Party may implement such BiCS Conversion or BiCS Technology Transition on its capacity, and [***]. Subject to the foregoing priority granted to the JVs, nothing in this Agreement shall in any way limit TMC's ability to

implement BiCS Conversions or BiCS Technology Transitions within the Toshiba Capacity, which shall be made in TMC's sole discretion. For the avoidance of doubt, any BiCS Conversion or BiCS Technology Transition involving the use of the New Y2 Facility, the Y6 Facility or the K1 Facility shall be managed as a technology transition by the Operating Committees in accordance with the JV Agreements and past practices at the Yokkaichi Facility.

4.5 Failure to Invest.

(a) K1 Minimum Commitment. If WD fails for any reason to make (or authorize the JVs to make) the investment necessary to implement its 50% share of the K1 Minimum Commitment [***], then [***]

(b) Ramp-Up Commitment. If a Parent Party fails for any reason to make (or authorize the JVs to make) the investment necessary to implement its [***] of a Ramp-Up Commitment, then the other Parent Party (so long as it has made and authorized the investment necessary to implement its 50% share of the K1 Minimum Commitment) may, [***]

(c) [***]

4.6 Prior Agreement. Sections 4.2, 4.3 and 4.4 hereof supersede and replace Sections 4.2, 4.3 and 4.4 of the Y6 Agreement, respectively, from the date hereof.

4.7 Adjustment Payment. Solely with respect to the K1 Facility, [***] if either Parent Party's Threshold Capacity Ratio falls below [***] for [***], then [***] will pay [***] an Adjustment Payment [***] For the avoidance of doubt, other than the Adjustment Payment, the cost per unit of the same product and same technology node shall be the same for both Toshiba Memory, on the one hand, and WD and SanDisk, on the other hand. The term "Adjustment Payment" shall mean [***]

4.8 [***] and K1 Capacity Transfers.

(a) [***] Proposals [***].

(b) [***]

(c) K1 Capacity Transfer Proposal [***].

(d) [***]

(e) [***]

(f) [***]

(g) [***]

5. BiCS PRODUCTS PRIORITY

5.1 [***]

5.2 [***]

5.3 JV Manufacturing Source. Notwithstanding anything to the contrary in this Agreement or any other Master Operative Document, the Yokkaichi Facility and the Kitakami Facility shall be the JVs' exclusive manufacturing sources for output of BiCS Products, except upon mutual agreement by the Parent Parties.

5.4 Prior Agreement. This Article 5 supersedes and replaces Article 5 of the Y6 Agreement from the date hereof. The references to "Section 5.1(a)," "Section 5.1(b)," "Section 5.1(a)(iv)," and "Section 5.1(b)(v)" in Section 5.2 of the New Y2 Agreement shall refer to Section 5.1, Section 5.2, Section 5.1(b)(ii) and Section 5.2(b)(ii), respectively, of this Agreement.

6. K1 OPERATING COMMITTEE

6.1 Committee Purpose and Authority. There will be an Operating Committee for K1 Facility operations (the "K1 Operating Committee") consisting of a senior executive designated by each of WD and TMC (each such individual, the "WD Representative" and the "TMC Representative," respectively), each of whom shall have an engineering background and represent the designating Party on a day-to-day basis at the K1 Facility. The K1 Operating Committee shall work together and endeavor to make the K1 Facility the most advanced and competitive memory fabrication facility in the world. The K1 Operating Committee will have the authority to determine all JV-related matters concerning the day-to-day operations of the K1 Facility (including staffing matters as provided in Article 7), subject to the requirements of this Agreement and consistent with past practice at the Yokkaichi Facility.

6.2 Parent Party Representatives.

(a) Replacement. Each Parent Party shall notify the other Parent Party in advance of any replacement of its representative on the K1 Operating Committee. If a Parent Party requests in good faith that the other Parent Party's representative be replaced with another person from the other Parent Party's organization, the other Party shall consider and discuss in good faith with the requesting Parent Party such request, provided, that such replacement, if any, may be determined solely by such other Parent Party.

(b) [***]

6.3 Committee Meetings. The K1 Operating Committee shall communicate on a day-to-day basis with respect to the status of K1 Facility operations and any other issues that may arise and shall meet in person no less than one time per week, or such other times and frequency as mutually agreed by all members of such committee. The K1 Operating Committee shall hold a monthly review meeting in English at the Yokkaichi Facility, the K1 Facility or other location (as mutually agreed between the K1 Operating Committee members) on [***] of each calendar month, unless otherwise agreed by the K1 Operating Committee. The K1 Operating Committee shall prepare and distribute to the Parent Parties (at least three Business Days in advance of the K1 Operating Committee's monthly review meetings) monthly reports in English with respect to the engineering activities, operations and cost information of the K1 Facility.

6.4 Dispute Resolution. If the members of the K1 Operating Committee are unable to agree on any issue after [***] (by agreement of its two members), they shall submit such matter together with their respective recommendations to the applicable Board of Directors or Board of Executive Officers of the applicable JV(s), which shall endeavor to immediately resolve the issue or escalate such issue, as applicable in the manner set forth in the applicable JV Master Agreement.

7. ENGINEERS AND HEADCOUNT PLAN

7.1 K1 JV Engineers; Personnel. As used in this Agreement:

(a) "K1 JV Engineers" means [***];

(b) "TMC Personnel" means [***];

(c) "WD Personnel" means [***];

(d) "Personnel" means [***]; and

(e) "WD Team" means [***].

7.2 K1 JV Headcount Plan. [***]

7.3 Staffing. [***]

7.4 Integration; Headcount Working Group. Integration of the WD Team into the K1 Facility organization, organization structure, updates on the hiring of K1 JV Engineers by WD or TMC (or their respective Affiliates), access to the K1 Operating Committee, WD Team member communications with WD, [***] and related matters will be discussed by the Headcount Working Group (as defined in the FFL Master Agreement), as applicable, and, subject to and without any limitation on the effect of the Information Security Agreement as applicable,

provided for and resolved in the manner set forth in the FFL Master Agreement with respect to personnel at the Y5 Facility, except that matters to be handled by the Y5 Operating Committee will be handled instead by the K1 Operating Committee.

7.5 WD Team. With respect to the WD Team, subject to and without any limitation on the effect of the Information Security Agreement, the Parties agree as follows:

(a) Language Skills. Recognizing that Japanese language skills will be necessary for personnel working at the K1 Facility, WD shall seek to minimize the number of K1 JV Engineers seconded by WD or any of its Affiliates to the K1 Facility who are not highly proficient in Japanese, and WD shall ensure that those members of the WD Team who are not Japanese speakers receive some language training in Japanese at WD's cost before being sent to work at the K1 Facility and WD shall use commercially reasonable efforts to ensure that such language training is appropriate to such WD Team member's position at the K1 Facility.

(b) Reimbursement; Conditions. WD's and its Affiliates' K1 JV Engineers shall be integrated by TMC at the Kitakami Facility and shall work together with TMC's and its Affiliates' K1 JV Engineers to seek to ensure the optimal operation of the K1 Facility from a cost and technology perspective. [***]

(c) WD Personnel. [***]

(d) [***]

(e) [***]

(f) [***]

(g) Employment Relationship. All members of the WD Team will remain employees of WD (or the WD Affiliate, as applicable).

7.6 Indemnification. Each Parent Party will indemnify the other Parties from any claim by any of such Parent Party's or its Affiliate's employees, consultants or agents (such Parent Party being the "Employer") (a) based on other than willful misconduct of such Employer or its Affiliate, its or its Affiliate's employees, consultants or agents or (b) that he or she has rights, or is owed obligations, as an employee of the Party that is not the Employer or its Affiliate.

7.7 Other Personnel. [***]

8. MANUFACTURING COSTS

8.1 K1 Manufacturing Costs. "K1 Manufacturing Costs" [***]

(a) [***]

(b) [***]

(c) [***]

(d) Manufacturing Cost Reconciliation. Within [***] after the end of each JV fiscal quarter, TMC shall perform the manufacturing cost reconciliations of [***] Charges and [***] Charges, in each case as described above (together, the "Quarterly Manufacturing Cost Reconciliation"). TMC personnel at the K1 Facility shall provide a forecast of the Quarterly Manufacturing Cost Reconciliation to the JVs and WD every month.

8.2 K1 Manufacturing Cost Allocation Framework. K1 Manufacturing Costs shall be shared by the Parties and shall be either K1 Fixed Manufacturing Costs or K1 Variable Manufacturing Costs, in each case as determined in the manner set forth in this Article 8. [***]

8.3 K1 Manufacturing Cost Allocation Methodology.

(a) [***]

(b) K1 Manufacturing Costs allocated to K1 Products will be further allocated as set forth in Section 8.4(b).

(c) Within [***] after the end of each JV fiscal quarter, TMC shall provide to WD a reconciliation of the allocation of K1 Manufacturing Costs that reflects [***] during the fiscal quarter. TMC personnel at the K1 Facility will provide a forecast of such quarterly reconciliation to the JVs and WD every month.

(d) In the event that there is [***] warrant a deviation from the allocation methodology set forth in Sections 8.3(a) through 8.3(c), then the Parent Parties shall [***]

8.4 K1 Product Manufacturing Costs.

(a) "K1 Product Manufacturing Costs" means [***]

(b) All K1 Product Manufacturing Costs will be either K1 Product Fixed Manufacturing Costs or K1 Product Variable Manufacturing Costs.

(i) K1 Product Fixed Manufacturing Costs. "K1 Product Fixed Manufacturing Costs" means [***]

(ii) K1 Product Variable Manufacturing Costs. "K1 Product Variable Manufacturing Costs" means [***]

8.5 Accounting and Cost Methodology. K1 Manufacturing Costs methodology will in principle be in accordance with the existing accounting and cost methodology used by the JVs in the Yokkaichi Facility. [***]

8.6 No Duplication of Costs or Expenses. It is the intent of the Parties that any payments made by the Parties under or pursuant to any Master Operative Document shall not be duplicative and that the Parties shall in no event be required to pay or contribute more than once for any service, product or development work provided under the Master Operative Documents, if such service, product or development work is provided under more than one Master Operative Document. In addition, to the extent that a Party makes a direct payment for any service, product or development work under a Master Operative Document, the cost incurred by TMC (from the Kitakami Facility) or the JVs, as the case may be, in connection with the provision of such service, product or development work shall not be included in the applicable wafer price charged to such Party.

8.7 Masks and Probe Cards. For masks and probe cards for the K1 Facility related to jointly manufactured products, the applicable JV shall be solely responsible for the purchase of any masks and probe cards for JV Capacity at the K1 Facility, consistent with current practice at the Yokkaichi Facility. Toshiba Memory shall be solely responsible for the purchase of any masks and probe cards for Toshiba Capacity at the K1 Facility, consistent with current practice at the Yokkaichi Facility. Each Party (as between Toshiba Memory, on the one hand, and WD and SanDisk, on the other hand) shall be solely responsible for the purchase of any masks and probe cards for the K1 Facility related to its own proprietary products, consistent with current practice at the Yokkaichi Facility.

9. FOUNDRY AND PURCHASE AND SUPPLY ARRANGEMENTS

9.1 K1 Foundry Arrangements.

(a) Die Sort, Equipment and Raw Materials. Die sorting facilities for JV K1 Products will be located at [***] or such other place mutually agreed by the Parent Parties. Toshiba Memory's use of any of FPL's, FAL's and FFL's manufacturing equipment located in the K1 Facility in the manufacture of BiCS Products will be governed by the FPL Lease Agreement, the FAL Lease Agreement and the FFL Lease

Agreement, respectively. Toshiba Memory shall be responsible for obtaining the raw materials and services to be used in the manufacture of JV K1 Products.

(b) Foundry Production. Toshiba Memory shall manufacture BiCS Products at the K1 Facility for the JVs as ordered by the JVs pursuant to the Foundry Agreements. Toshiba Memory and the JVs shall use their best efforts to achieve the manufacturing capacity for the K1 Facility set forth in the JV Business Plans, which will include any plans for JV use of cleanroom space in the K1 Facility. Wafers produced in the K1 Facility will be sorted between the Parent Parties such that aggregate yield losses will be shared on an equal basis.

(c) Operating Relationship. The Parent Parties shall provide personnel necessary for the manufacture of BiCS Products for and on behalf of the JVs as described in Article 7.

(d) Consideration to be Paid to Toshiba Memory. Toshiba Memory shall be compensated by the JVs as provided in the Foundry Agreements, [***]

(e) K1 Purchase Orders. POs (as defined in each Foundry Agreement) for JV K1 Products shall be issued by each JV to [***] (as instructed by TMC in writing from time to time, provided, that TMC will provide WD with written notice of any change to the issuing party [***]

9.2 Purchase and Supply Agreements. For the avoidance of doubt, the rights, obligations and procedures for the purchase by the Parent Parties from FPL, FAL and FFL of JV BiCS Products manufactured in whole or in part at the K1 Facility shall be as set forth in the FPL Purchase and Supply Agreements, the FAL Purchase and Supply Agreements and the FFL Purchase and Supply Agreements, respectively, of Toshiba Memory (in the case of Toshiba Memory) and the applicable SanDisk party (in the case of WD). Toshiba Memory may place POs for Products (each as defined in each Purchase and Supply Agreement between TMC and each JV), including JV BiCS Products, pursuant to such Purchase and Supply Agreement.

9.3 Equal Right to JV Production. For the avoidance of doubt, Toshiba Memory, on one hand, and WD and SanDisk, on the other hand, shall have the right and obligation, through the JVs, to utilize 50% of the manufacturing capacity for JV BiCS Products manufactured in whole or in part at the K1 Facility, on an Equivalent Lot basis, as provided in the JV Master Agreements.

9.4 Forecasts/Production Planning. The Parent Parties shall submit forecasts to the applicable JV(s) for K1 Products, [***] as further provided in the applicable Purchase and Supply Agreement, [***]

9.5 K1 Product Output Allocation. The actual monthly lot output of K1 Products shall be allocated among the JVs, Toshiba Memory and WD, as applicable, based on the K1 Capacity Ratio; provided, that during any month in which the planned production capacity of K1 Products is [***], Toshiba Memory and WD will be allocated output of such K1 Products [***]

9.6 Alternative Use of Allocated Capacity. For the avoidance of doubt, any alternative use of a Party's allotted manufacturing capacity for JV BiCS Products within the K1 Facility will be as permitted in, and subject to and governed by the terms of, the applicable JV's JV Master Agreement.

## 10. RESEARCH AND DEVELOPMENT

10.1 [***]

10.2 [***]

10.3 [***]

10.4 [***]

10.5 No Change to Common R&D. Except as set forth in this Article 10, or as may be otherwise agreed in writing between the Parties, the Common R&D Agreement shall continue in full force and effect in accordance with its terms, and the agreements regarding equipment, materials and development provided for in the Common R&D Agreement shall continue to be part of the Common R&D Agreement.

## 11. K1 INFORMATION AND DATA SHARING

11.1 Management and Operating Reports. Upon the request of either TMC or WD, the K1 Operating Committee shall provide TMC and WD with, simultaneously in Japanese and English, those management and operating reports identified on Schedule 11.1 and as mutually agreed upon from time to time by the Parent Parties. Upon reasonable request from WD, Toshiba Memory employees shall explain such reports to employees of WD and its Subsidiaries and respond to questions from employees of WD and its Subsidiaries; provided, however, that WD acknowledges and agrees that Toshiba Memory will not be responsible for WD's or any of its Subsidiaries' failure to understand any such reports. The K1 Operating Committee and the Y5 Operating Committee (as defined in the FFL Master Agreement) will cooperate to obtain any

information relating to K1 Facility management or operations necessary for the reports to be provided by the Y5 Operating Committee under Section 8.1(d) of the FFL Master Agreement.

11.2 Production Control; Access to K1 Data. From the start of production of JV Products in the K1 Facility, Toshiba Memory shall provide, consistent with past practice, employees of WD and its Subsidiaries [***]; provided, that the cost necessary for making such system available to such employees will be borne by [***]. Each Party will be provided the same real-time access to K1 data relating to JV Products.

11.3 Engineering Wafers. Each of the Parent Parties will have full access to all operational and engineering data and reports related to engineering wafers manufactured for JV Products manufactured at the K1 Facility.

11.4 Unilateral Capacity Data. For any Toshiba Capacity in the K1 Facility, Toshiba Memory shall provide to the JVs all data necessary to determine whether the Toshiba Capacity is being operated [***], including but not limited to [***].

11.5 [***]

## 12. OTHER MODIFICATIONS TO CERTAIN MASTER OPERATIVE DOCUMENTS

To update their agreement as expressed in certain of the Master Operative Documents to, among other things, take into account the K1 Facility, to provide for the installation of tools and utilization of clean room space by each of the JVs within the K1 Facility and to provide for TMI's performance of certain activities at the K1 Facility, the Parties agree that the Master Operative Documents are hereby amended as set forth below, and as necessary to give effect to the purpose and intent of this Article 12 whether or not expressly set forth below.

12.1 JV Master Agreements.

(a) External Manufacturing Source. For the avoidance of doubt, the K1 Facility is not an "external manufacturing source," as such term is used in the JV Master Agreements.

(b) Embedded NAND Products. The rights of each Parent Party under the JV Agreements to use a portion of its total allocated capacity in the JV Space (as defined in the Y6 Agreement) to cause to be manufactured Embedded NAND Products, subject to the conditions and limitations set forth in the JV Agreements, are hereby extended to the K1 JV Space.

(c) Proprietary Flash Products. The rights of each Parent Party under the JV Agreements to use a portion of its total allocated capacity in the Y3 Facility, the Y4 Facility and from the JV Space (as defined in the Y6 Agreement) in the Y5 Facility, the New Y2 Facility and the Y6 Facility to cause to be manufactured Proprietary Flash Products, subject to the conditions and limitations set forth in the JV Agreements, are hereby extended to the K1 JV Space, and TMC's rights to cause to be manufactured Proprietary Flash Products, subject to the conditions and limitations set forth in the JV Agreements, are hereby extended to TMI. Each of WD (together with SanDisk) and Toshiba Memory may use a portion of its total allocated capacity from the K1 JV Space to cause to be manufactured Proprietary Flash Products, subject to each of the limitations, conditions and Parent Party undertakings in respect of Proprietary Flash Products provided under the applicable JV Master Agreement, as amended by the New Y2 Agreement and the Y6 Agreement, for the manufacture of Proprietary Flash Products in the Yokkaichi Facility. If a Parent Party requests a modification to the limitations, conditions and undertakings for the manufacture of Proprietary Flash Products, the Parent Parties will discuss such requested modification.

(d) Engineering Wafers. The rights of the Parent Parties to receive Evaluation Wafers and Qualification Wafers (each as defined in the JV Master Agreements) under the JV Master Agreements apply to Evaluation Wafers and Qualification Wafers manufactured in the K1 Facility, and TMC's rights to receive Evaluation Wafers and Qualification Wafers under the JV Agreements are hereby extended to TMI. For the avoidance of doubt, WD may ship its share of Evaluation Wafers and Qualification Wafers to any location in its sole discretion subject to any terms and conditions of the Master Operative Documents that relate or apply to the shipment of Evaluation Wafers or Qualification Wafers by SanDisk, including applicable export control requirements; provided, that any such shipment by WD shall comply with applicable shipping procedures at the Yokkaichi Facility consistent with past practice with reasonable adjustments based on attributes specific to the K1 Facility or as otherwise required due to the K1 Facility's being situated at the Kitakami Facility, and not at the Yokkaichi Facility.

(e) Financing. The terms and conditions with respect to the financing necessary to enable committed or agreed capacity expansions or other investment in any JV for JV Capacity at the K1 Facility shall be as follows: (i) in the case of FFL, as set forth in Section 6.12 of the FFL Master Agreement as if such investment were in the Y5 Facility; (ii) in the case of FAL, as set forth in Section 6.12 of the FAL Master Agreement

as if such investment were in the Y4 Facility; and (iii) in the case of FPL, as set forth in Section 6.10 of the FPL Master Agreement as if such investment were in the Y3 Facility.

(f) Y3, Y4, Y5, New Y2, Y6 and K1 Capacity Ratios. The capacity ratios used to calculate output and cost allocation for the Y3 Facility, the Y4 Facility, the Y5 Facility, the New Y2 Facility and the Y6 Facility as set forth in Schedule 12.2(d) to the New Y2 Facility Agreement and Schedule 12.1(c) to the Y6 Facility Agreement are hereby replaced with the capacity ratios initially set forth on Schedule 12.1(f) to this Agreement and updated from time to time by the Parent Parties as mutually agreed.

(g) [***]

(h) Ramp Down; Termination Capacity. For the avoidance of doubt, with respect to the obligations of the Parent Parties under (i) Sections 8.1(d)(i) and 8.1(e)(i) of the FAL Master Agreement, (ii) Sections 8.1(d)(i) and 8.1(e)(i) of the FPL Master Agreement and (iii) Section 9.1(d)(i) of the FFL Master Agreement to continue to manufacture NAND Flash Memory Products and BiCS Products in the event of a termination of such JV Master Agreement under the circumstances described therein, the Termination Capacity for NAND Flash Memory Products and the Termination Capacity for BiCS Products shall take into account the Requesting Party's (as defined in the applicable JV Master Agreement) NAND Flash Memory Products capacity allocation and BiCS Products capacity allocation, respectively, available from the applicable JV in the K1 Facility.

(i) License Grant and Know-How Access at Termination. Any reference to "the Yokkaichi Facility" in:

(i) Sections 9.1(c)(ii), 9.1(d)(iv), 9.1(g)(ii), 9.1(h)(i) and 9.1(i)(i) of the FFL Master Agreement is hereby amended to refer to "the Yokkaichi Facility and the Kitakami Facility";

(ii) Sections 8.1(c)(ii), 8.1(d)(iv), 8.1(g)(ii), 8.1(h)(i) and 8.1(i)(i) of the FPL Master Agreement is hereby amended to refer to "the Yokkaichi Facility and [***]; and

(iii) Sections 8.1(c)(ii), 8.1(d)(iv), 8.1(g)(ii), 8.1(h)(i) and 8.1(i)(i) of the FAL Master Agreement is hereby amended to refer to "the Yokkaichi Facility and [***]

12.2 JV Operating Agreements.

(a) Management and Operating Reports. The management and operating reports identified on Schedule 5.3 to each JV Operating Agreement will take into account any utilization by FPL, FAL and FFL, as applicable, of the K1 JV Space.

(b) Capital Reductions. If necessary, the Board of Directors or Board of Executive Officers, as applicable, of the JVs shall consider capital reductions to the extent that any such capital reduction will not adversely affect the Yokkaichi Facility's or the Kitakami Facility's operations. This Section 12.2(b) supersedes and replaces the last sentence of Section 6.2(b) of each JV Operating Agreement from the date hereof.

12.3 JV Foundry Agreements.

(a) TMI hereby is added as a party to each of the Foundry Agreements and fully bound by, and subject to, all of the covenants, conditions and agreements thereunder that are required to be performed, observed or satisfied by TMC with respect to the K1 Facility, and may exercise all of TMC's rights thereunder, in each case, as though an original party thereto in the same manner and to the same extent as if TMI were TMC itself.

(b) The reference to JV Y5 NAND Flash Memory Products in Article 5 of the FFL Foundry Agreement is hereby revised to include JV K1 BiCS Products manufactured for FFL.

(c) Subject to Section 1.3, purchases from Toshiba Memory by:

(i) FPL of JV K1 BiCS Products manufactured for FPL shall be made in accordance with the terms of the FPL Foundry Agreement for purchases of Products (as defined therein), provided, that the purchase prices and manufacturing costs for JV K1 BiCS Products manufactured for FPL shall be calculated and allocated in accordance with Article 8 hereof;

(ii) FAL of JV K1 BiCS Products manufactured for FAL shall be made in accordance with the terms of the FAL Foundry Agreement for purchases of Products (as defined therein), provided, that the purchase prices and manufacturing costs for JV K1 BiCS Products manufactured for FAL shall be calculated and allocated in accordance with Article 8 hereof; and

(iii) FFL of JV K1 BiCS Products manufactured for FFL shall be made in accordance with the terms of the FFL Foundry Agreement for purchases of Products (as defined therein), provided, that the purchase prices and

manufacturing costs for JV K1 BiCS Products manufactured for FFL shall be calculated and allocated in accordance with Article 8 hereof.

(d) [***]

(e) The definition of "Kitakami Facility" set forth herein is hereby incorporated by reference into each Foundry Agreement. The references to "Yokkaichi Facility" in:

(i) Articles 2 and 3 of each of the Foundry Agreements are hereby replaced with "the Yokkaichi Facility or the Kitakami Facility, as applicable";

(ii) Article 6 of the FFL Foundry Agreement are hereby replaced with "Yokkaichi Facility or Kitakami Facility (as set forth in the applicable PO)";

(iii) Section 10(b)(i) of the FPL Foundry Agreement and Section 11(b)(i) of each of the FAL Foundry Agreement and FFL Foundry Agreement are hereby replaced with "the facility from which the products were shipped by Toshiba;" and

(iv) Section I of Exhibit A to each of the Foundry Agreements are hereby replaced with "Yokkaichi Facility and the Kitakami Facility."

(f) [***]

(g) Delivery of Products (as defined in the FPL Foundry Agreement and FAL Foundry Agreement) pursuant to the FPL Foundry Agreement and FAL Foundry Agreement shall be made [***].

(h) [***]

12.4 JV Purchase and Supply Agreements.

(a) TMI hereby is added as a party to each of the Purchase and Supply Agreements to which TMC is a party and fully bound by, and subject to, all of the covenants, conditions and agreements thereunder that are required to be performed, observed or satisfied by TMC with respect to the K1 Facility, and may exercise all of TMC's rights thereunder, in each case, as though an original party thereto in the same manner and to the same extent as if TMI were TMC itself.

(b) The capitalized term "Products" in the FFL Purchase and Supply Agreements is hereby revised to include JV K1 BiCS Products manufactured for FFL in accordance with the Purchase Specification as thereinafter defined.

(c) Subject to Section 1.3, purchases by Toshiba Memory or WD from:

(i) FPL of JV K1 BiCS Products manufactured for FPL shall be made in accordance with the terms of TMC's (in the case of Toshiba Memory) and SanDisk Cayman's (in the case of WD, as if WD were SanDisk Cayman) FPL Purchase and Supply Agreement for purchases of Products (as defined therein), provided, that with respect to such purchases of JV K1 BiCS Products manufactured for FPL, any price or charge that is calculated or determined under Article 4 ("Purchase Prices of Products; Title Transfer") of the FPL Purchase and Supply Agreement based on Article 4 of the FPL Foundry Agreement shall instead be based on Article 8 hereof;

(ii) FAL of JV K1 BiCS Products manufactured for FAL shall be made in accordance with the terms of TMC's (in the case of Toshiba Memory) and SanDisk Ireland's (in the case of WD, as if WD were SanDisk Ireland) FAL Purchase and Supply Agreement for purchases of Products (as defined therein), provided, that with respect to such purchases of JV K1 BiCS Products manufactured for FAL, any price or charge that is calculated or determined under Article 4 ("Purchase Prices of Products; Title Transfer") of the FAL Purchase and Supply Agreement based on Article 4 of the FAL Foundry Agreement shall instead be based on Article 8 hereof; and

(iii) FFL of JV K1 BiCS Products manufactured for FFL shall be made in accordance with the terms of TMC's (in the case of Toshiba Memory) and SanDisk Flash's (in the case of WD, as if WD were SanDisk Flash) FFL Purchase and Supply Agreement for purchases of Products (as defined therein) provided, that with respect to such purchases of JV K1 BiCS Products manufactured for FFL, any price or charge that is calculated or determined under Article 4 ("Purchase Prices of Products; Title Transfer") of the FFL Purchase and Supply Agreement based on Article 4 of the FFL Foundry Agreement shall instead be based on Article 8 hereof.

(d) [***]

(e) [***]

(f) Delivery of Products (as defined in the FPL Purchase and Supply Agreements and FAL Purchase and Supply Agreements Agreement) pursuant to the FPL Purchase and Supply Agreements and FAL Purchase and Supply Agreements shall be made [***].

(g) [***]

12.5 JV Lease Agreements.

(a) All references to Y3 NAND Flash Memory Products in the FPL Lease Agreement are hereby revised to include JV K1 BiCS Products manufactured for FPL. All references to Y4 NAND Flash Memory Products in the FAL Lease Agreement are hereby revised to include JV K1 BiCS Products manufactured for FAL. All references to Y5 NAND Flash Memory Products, JV Y5 BiCS Products, JV New Y2 BiCS Products or JV Y6 BiCS Products in the FFL Lease Agreement are hereby revised to include JV K1 BiCS Products manufactured for FFL.

(b) [***]

(c) The definition of "Kitakami Facility" set forth herein is hereby incorporated by reference into each JV Lease Agreement.

(d) [***]

(e) [***]

(f) [***]

12.6 Information Security Agreement. From the date hereof, the Kitakami Facility shall constitute a "Toshiba Facility" for purposes of the Information Security Agreement.

12.7 Undertaking. From the date hereof, the New Agreements shall each constitute an "Underlying Agreement" for purposes of the Undertaking.

12.8 Settlement Agreement. From the date hereof, the New Agreements shall each constitute a "Collaboration Agreement" for purposes of the Settlement Agreement.

12.9 ISCO Supplement. From the date hereof, this Agreement shall constitute a "Core Agreement" for purposes of the ISCO Supplement.

13. CONFIDENTIALITY AND DISCLOSURE

13.1 Public Announcements. Neither Parent Party shall, nor shall it permit any of its Affiliates to, without the prior written consent of the other Parent Party:

(a) issue any public release, announcement or other document, or otherwise publicly disclose any information or make any public statement, concerning the operations of the K1 Facility that refers to the other Parent Party or any of its Affiliates in connection therewith (other than a general reference to affiliation with the JVs) and (i) concerns the financial condition or results of operations of the JVs, other than as required by any applicable Law or accounting standard with respect to the financial disclosure obligations of either Parent Party, or (ii) (A) disparages either Parent Party or the JVs' performance or (B) reflects negatively on either Parent Party's commitment to the K1 Facility; or

(b) publicly file all or any part of any New Agreement or any description thereof, or issue or otherwise make publicly available any press release, announcement or other document that contains Confidential Information belonging to the other Parent Party (or its Affiliates) or the JVs, except as may be required by applicable Law (in which case such Parent Party shall (or shall cause the Person required to make such filing to) cooperate with the other Parent Party, to the extent reasonable and practicable, in obtaining any confidential treatment for such filing requested by the other Parent Party).

(c) Each Parent Party shall use commercially reasonable efforts to grant or deny any approval required under this Section 13.1 within five Business Days of receipt of written request by the other Parent Party; provided, however, that a Parent Party's failure to respond within said time period shall not be deemed to constitute such Parent Party's approval or consent.

13.2 Non-Disclosure Obligations.

(a) For a period of [***] from the date of receipt of each item of Confidential Information disclosed by one Party (the "Disclosing Party") under this Agreement or the K1 MCEIA, the other Party (the "Receiving Party") shall safeguard such item of Confidential Information, shall keep it in confidence, and shall use reasonable efforts, consistent with those used in the protection of its own confidential information, to prevent its disclosure of such Confidential Information to third parties.

(b) Notwithstanding the foregoing Section 13.2(a), the Receiving Party shall not be obligated by this Section 13.2 with respect to information that: (i) is already known to the Receiving Party at the time of its receipt from the Disclosing Party as

reasonably evidenced by its written records; (ii) is or becomes publicly available without breach of this Agreement by the Receiving Party; (iii) is made available to a third party by the Disclosing Party without restriction on disclosure; (iv) is rightfully received by the Receiving Party from a third party without restriction and without breach of this Agreement; (v) is independently developed by the Receiving Party as reasonably evidenced by its written records contemporaneous with such development; (vi) is disclosed with the prior written consent of the Disclosing Party, provided, that each recipient from the Receiving Party shall execute a confidentiality agreement prohibiting further disclosure of the Confidential Information, under terms no less restrictive that those provided in this Agreement; (vii) is required to be disclosed by the order of a Governmental Authority, provided, that the Receiving Party shall give the Disclosing Party prompt notice of such request so that the Disclosing Party has an opportunity to defend, limit or protect such disclosure; or (viii) is required to be disclosed by applicable securities or other Laws, provided, that the Receiving Party shall, prior to any such disclosure required by the applicable Governmental Authority, provide the Disclosing Party with notice which includes a copy of the proposed disclosure and consider in good faith the Disclosing Party's timely input with respect to such disclosure.

(c) The Receiving Party shall use its reasonable best efforts to limit dissemination of the Disclosing Party's Confidential Information to such of its employees who have a need to know such information for the purpose for which such information was disclosed. The Receiving Party understands that disclosure or dissemination of the Disclosing Party's Confidential Information not expressly authorized hereunder would cause irreparable injury to the Receiving Party, for which monetary damages would not be an adequate remedy and would entitle the Disclosing Party to equitable relief in addition to any remedies the Disclosing Party may have hereunder or at law.

(d) For purposes of the confidentiality obligations in the Existing Agreements and the New Agreements, information shall not be considered to have been made available to a third party by the Disclosing Party without restriction on disclosure if such information was only made available to such third party as a result of an inadvertent or unintentional disclosure of such information by the Disclosing Party. In the event that the Disclosing Party's disclosure of Confidential Information to the Receiving Party is inadvertent or unintended and the Disclosing Party, upon becoming aware of such inadvertent or unintended disclosure, promptly notifies the Receiving Party in writing that such disclosure was inadvertent or unintended, the Receiving Party shall promptly (and in any event in less than [***] destroy all such Confidential Information. In addition, if the Receiving Party reasonably believes that the Disclosing Party's disclosure of Confidential

Information to the Receiving Party was inadvertent or unintended, the Receiving Party shall promptly notify the Disclosing Party of such belief and, if requested by the Disclosing Party, promptly (and in any event in less than [***] destroy all such Confidential Information. If requested by the Disclosing Party, the Receiving Party shall certify in writing that all such Confidential Information has been destroyed.

(e) Nothing in this Agreement shall be construed as granting or conferring any rights, licenses or relationships by the transmission of the Confidential Information.

13.3 Ownership and Return of Information. All Confidential Information disclosed hereunder shall remain the property of the Disclosing Party. Upon request by the Disclosing Party, the Receiving Party shall return all Confidential Information of the Disclosing Party, including any and all copies thereof, or certify in writing that all such Confidential Information had been destroyed.

14. TERM AND TERMINATION

14.1 Term. This Agreement shall continue in full force and effect until the latest of the termination of (a) the FPL Master Agreement (if [***]), (b) the FAL Master Agreement (if [***]), and (c) the FFL Master Agreement, unless earlier terminated as hereinafter provided. The term of this Agreement may be extended by mutual agreement of both Parent Parties.

14.2 Termination. Notwithstanding the foregoing Section 14.1, this Agreement may be terminated:

(a) by the mutual written agreement of the Parties, in which case this Agreement will terminate on the date mutually agreed by the Parties;

(b) by either Parent Party upon [***] written notice to the other Parent Party, if (i) (A) the other Parent Party has failed to make (or authorize the JVs to make) the investment necessary to implement its share of the K1 Minimum Commitment [***] or (B) has failed to pay [***], and (ii) TMC (in the case of termination by TMC), or WD or SanDisk (in the case of termination by WD) is not in material breach of any material Master Operative Document; or

(c) by either Parent Party, upon written notice to the other Parent Party, if the other Parent Party (i) makes an assignment of all or substantially all its assets for the benefit of creditors, (ii) has filed a voluntary petition in bankruptcy or insolvency or any other legal action or document seeking reorganization, readjustment or arrangement of its business under any Law relating to bankruptcy or insolvency, or (iii) is adjudicated to be

bankrupt or insolvent under any such Law, or has a receiver appointed over all or substantially all of its property, by a competent Governmental Authority; in which case of (i), (ii) or (iii), this Agreement will terminate on the 30th day after such notice of termination is given.

14.3 Termination for Material Breach. The Parent Parties agree and acknowledge that in the event of a final determination by an arbitral tribunal under Section 16.4 that a Parent Party has committed or is committing a continuing material breach of any ofSections [***] of this Agreement or Sections [***] of the New Y2 Agreement (by TMC, in the case of TMC, or by SanDisk, in the case of WD) that [***] (any such breach, a "Material Breach"), and the breaching Parent Party fails to cure such breach within [***] after such determination, then the non-breaching Parent Party shall have as a remedy for Material Breach the termination of this Agreement, in addition to all other legal and equitable remedies available to such Parent Party. In the event that a Parent Party expressly asserts in writing a Material Breach, the dispute shall proceed as specified in Section 16.4, provided, however, that:

(a) no matters other than the existence of such Material Breach (and counterclaims and defenses directly related to the conduct or circumstances underlying the asserted Material Breach) shall be submitted to or determined by the arbitral tribunal;

(b) the Parent Parties shall use their respective reasonable best efforts to complete and finalize the Terms of Reference within [***] following such assertion of Material Breach; and

(c) the Parent Parties shall instruct the arbitral tribunal, with the full assistance and cooperation of the Parent Parties, to endeavor to submit its draft award on the existence of the Material Breach to the Court of Arbitration of the International Chamber of Commerce for approval within [***] following the effective date of the Terms of Reference, provided, that any failure to issue an award in such time period shall not be considered a defense or objection to the enforcement of such an award.

The Parent Parties agree to attempt in good faith to resolve any potential claim for Material Breach. Notwithstanding anything to the contrary in the New Y2 Agreement or the Y6 Agreement, the Parent Parties and SanDisk acknowledge and agree that in the event of a final determination by an arbitral tribunal in accordance with this Section 14.3 that a Parent Party has committed or is committing a continuing material breach of [***] of this Agreement that would reasonably be expected to cause material damage to the JVs or the non-breaching Parent Party, such breach shall be deemed a "Material Breach" of the New Y2 Agreement (by SanDisk, in the case of such a material breach of this Agreement by WD) and the Y6 Agreement and, if the breaching Parent Party fails to cure such breach within [***] after such determination, the non-breaching Parent Party shall have the right to immediately exercise the remedies set forth in

Section 14.3 of the New Y2 Agreement and Section 15.3 of the Y6 Agreement without the necessity for further arbitration.

14.4 Termination in Good Faith. Termination of any Master Operative Document by any party thereto may be done only in good faith.

14.5 Survival.

(a) The provisions of Sections 4.5(c), 7.6, and 12.1(h), Article 13 (except Section 13.1(a)(ii)(B)), this Article 14, Article 16 and Exhibit A shall survive any termination or expiration of this Agreement.

(b) So long as (and only for so long as) the Parent Parties have BiCS Products manufacturing capacity in the JVs, the provisions of Sections 3.2 (except with respect to the K1 Facility), 3.3(d), 4.2 (except with respect to the K1 Facility), 4.3 (except with respect to the K1 Facility), 4.4 (except with respect to the K1 Facility), Article 5 (except with respect to the K1 Facility), Sections 10.3 (except with respect to the K1 Facility) and 10.5, and Article 15 shall also survive any termination or expiration of this Agreement.

(c) Section 1.4 shall survive any termination or expiration of this Agreement until the expiration or termination of the last-to-expire or last-to-terminate of the JV Master Agreements.

14.6 Effect on Other Collaborations. Unless otherwise expressly provided herein, termination of this Agreement shall not affect any surviving rights or obligations set forth in the Joint Operative Documents. For the avoidance of doubt, the BiCS LDA and the WD-TMC PCLA (in each case, including the licenses provided thereunder) shall be unaffected by the termination of this Agreement, and the BiCS LDA and the WD-TMC PCLA shall terminate or expire in accordance with each of such agreement's terms.

## 15. REPRESENTATIONS AND WARRANTIES

Each Parent Party hereby represents and warrants to the other Parent Party as follows:

15.1 Organization and Standing. It is duly organized and validly existing and, where applicable, in good standing under the laws of the jurisdiction in which it is organized.

15.2 Authority; Enforceability. It has the requisite power and authority to enter into the New Agreements, to execute any certificates or other instruments to be executed by it in connection therewith and otherwise carry out the transactions contemplated by the New

Agreements. All proceedings required to be taken by it to authorize the execution, delivery and performance of the New Agreements, and any such certificates and instruments, have been properly taken. This Agreement has been duly and validly executed and delivered by it and constitutes a valid and binding obligation of it, enforceable against it in accordance with its terms except as enforceability may be limited by bankruptcy, insolvency, fraudulent conveyance or similar laws affecting the enforcement of creditors' rights generally or the availability of equitable remedies (regardless of whether enforceability is considered in a proceeding at law or in equity).

15.3 No Conflict. The execution, delivery and performance of the New Agreements and the BiCS LDA by it and its Affiliates do not and will not (a) breach, violate or conflict with any provision of its charter documents as amended to date, or (b) conflict with or violate any Law applicable to it. No consent, approval or authorization of, or filing with, any Governmental Authority, or any other Person, is required to be made or obtained by it in connection with the execution, delivery and performance by it of any New Agreement or the consummation by it of the transactions contemplated thereby.

15.4 Proceedings. Except for any action, claim, investigation or proceeding (i) threatened, asserted, or pending between or among WD and/or any of its Affiliates, on the one hand, and TMC and/or Toshiba, and/or any of its or their Affiliates, on the other hand or (ii) that falls within the scope of any release, waiver, dismissal, or covenant not to sue set forth in the Settlement Agreement, there are no actions, claims, investigations or proceedings pending, or to its knowledge threatened, by or before any Governmental Authority that, if adversely determined, would have a material adverse effect on it or on the conduct of the business of any of the JVs as contemplated in the Master Operative Documents or on its ability to perform any material obligation under any Master Operative Document.

15.5 Litigation; Decrees. Except for any Action threatened, asserted, or pending (i) between or among WD and/or any of its Affiliates, on the one hand, and TMC and/or Toshiba, and/or any of its or their Affiliates, on the other hand or (ii) that falls within the scope of any release, waiver, dismissal, or covenant not to sue set forth in the Settlement Agreement, there are no Actions pending, or, to its knowledge, threatened that (a) are reasonably likely, based on information known to it as of the date hereof, to have a material adverse effect on the conduct of the business of any of the JVs as contemplated by the Master Operative Documents or BiCS LDA or (b) relate to any of the transactions contemplated by the Master Operative Documents or BiCS LDA in a manner which is material to its, any of its Affiliates' or any of the JVs' ability to carry out the transactions contemplated hereby and thereby or which could have a material adverse effect on the conduct of the business of any of the JVs as contemplated in the Master Operative Documents or BiCS LDA. Except for any judgment, order, writ, or decree in

connection with any Action (i) between or among WD and/or any of its Affiliates, on the one hand, and TMC and/or Toshiba, and/or any of its or their Affiliates, on the other hand or (ii) that falls within the scope of any release, waiver, dismissal, or covenant not to sue set forth in the Settlement Agreement, there is no judgment, order, writ or decree that substantially restrains its ability to consummate the transactions contemplated by the New Agreements or the BiCS LDA.

15.6 Compliance with Other Instruments. Except (i) as may have been asserted by WD and/or any of its Affiliates, on the one hand, and TMC and/or Toshiba, and/or any of its or their Affiliates, on the other hand or (ii) any default asserted in connection with any Action, claim, investigation or proceeding that falls within the scope of any release, waiver, dismissal, or covenant not to sue set forth in the Settlement Agreement, neither it nor any of its Affiliates that is party to any New Agreement is in default in any material respect in the performance of any material obligation, agreement, instrument or undertaking to which such Person is a party or by which such Person or any of its properties is bound. Except for any obligation, agreement, instrument or undertaking between or among (i) WD and/or any of its Affiliates, (ii) TMC and/or Toshiba, and/or any of its or their Affiliates, and/or (iii) any of the JVs, there is no such obligation, agreement, instrument or undertaking to which it or any of its Affiliates is a party or by which any of its Affiliates or any of its or their properties is bound, in each case that is reasonably likely to have a material adverse effect on the Parties' use of the K1 Facility as contemplated by the New Agreements.

15.7 Patents and Proprietary Rights. To its knowledge, it owns or possesses sufficient legal rights to all patents, utility models, trademarks, service marks, trade names, copyrights, applications for any of the foregoing, mask works, software, trade secrets, licenses, information and proprietary rights and processes (collectively, "Intellectual Property") necessary (a) to carry out its or any of its Affiliates' obligations under the Master Operative Documents and (b) for the conduct of the business of any of the JVs as contemplated in the Master Operative Documents, without any conflict with or infringement of the rights of others, except as will not have a material adverse effect on either (a) or (b) above. Except for any communications (i) between or among WD and/or any of its Affiliates, on the one hand, and TMC and/or Toshiba, and/or any of its or their Affiliates, on the other hand, or (ii) in connection with any Action, claim, investigation or proceeding that falls within the scope of any release, waiver, dismissal, or covenant not to sue set forth in the Settlement Agreement, including any communications referenced in Schedule 2.1 of the Settlement Agreement, it has not received any communications alleging that its Intellectual Property violates, or by its or any of its Affiliates entering into the transactions contemplated by the Master Operative Documents, would violate the Intellectual Property of any other Person or entity, which violation could reasonably be expected to have a material adverse effect on either (a) or (b) above.

15.8 Compliance with Laws. It and each of its Affiliates has complied and is complying in all material respects with all Laws, except where the failure to so comply would not have a material adverse effect on its or any of its Affiliates ability to perform its or their obligations under the Master Operative Documents or on the production of BiCS Products as contemplated by the Master Operative Documents.

15.9 Patent Cross Licenses. [***]

16. MISCELLANEOUS

16.1 Entire Agreement. This Agreement, together with the exhibit(s) and schedules hereto and the other Master Operative Documents, constitute the entire agreement of the Parties to this Agreement with respect to the subject matter hereof and supersedes all prior written and oral agreements and understandings with respect to such subject matter.

16.2 Undertaking as to Affiliate Obligations. Each Parent Party shall cause all covenants, conditions and agreements to be performed, observed or satisfied by any of its Affiliates that are parties to any New Agreement to be fully and faithfully observed, performed and satisfied by such Affiliate, and shall not cause or permit to exist any breach or default of such covenants, conditions or agreements arising from such Affiliate's action or inaction. Nothing in this Section 16.2 shall be construed to create any right in any Person other than the Parties. In the case of an affirmative covenant or other action required of WD or permitted to be taken by WD hereunder or under any other New Agreement, WD may perform or satisfy such affirmative covenant or other action directly or indirectly by causing one or more of its Subsidiaries to fully perform or satisfy such affirmative covenant or other action. Notwithstanding anything to the contrary in any Master Operative Document, if WD consents or agrees to TMC's or any of its Affiliate's taking an action or inaction that is subject to SanDisk's consent or agreement under a Master Operative Document, WD's providing such consent or agreement shall satisfy such requirement for SanDisk's consent.

16.3 Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of California applicable to agreements made and to be performed entirely within such state without regard to the conflict of laws principles of such state, except where application of Japanese law is mandatory. Each New Agreement shall be governed in accordance with its governing law provision and, in the absence of any such provision, by the first sentence of this Section 16.3.

16.4 Dispute Resolution; Arbitration. Any dispute concerning this Agreement shall be referred to the applicable JV's Management Representatives and handled by them in accordance with the applicable JV Master Agreement. If the Management Representatives cannot resolve

such dispute in accordance with the terms of the applicable JV Master Agreement, then such dispute will be settled by binding arbitration in San Francisco, California. The dispute shall be heard by a panel of three arbitrators pursuant to the rules of the International Chamber of Commerce. The awards of such arbitration shall be final and binding upon the parties thereto. Each party will bear its own fees and expenses associated with the arbitration. Filing fees and arbitrator fees charged by the International Chamber of Commerce shall be borne equally by the Parent Parties.

16.5 Remedies.

(a) Except as may otherwise be specifically provided in the New Agreements, the rights and remedies of the parties under this Agreement are cumulative and are not exclusive of any rights or remedies which the parties hereto would otherwise have.

(b) Equitable relief, including the remedies of specific performance and injunction, shall be available with respect to any actual or attempted breach of this Agreement; provided, however, in the absence of exigent circumstances, the Parties shall refrain from commencing any lawsuit or seeking judicial relief in connection with such actual or attempted breach that is contemplated to be addressed by the dispute resolution process set forth in this Agreement until the Parties have attempted to resolve the subject dispute by following said dispute resolution process to its conclusion.

(c) If the due date for any amount required to be paid under any New Agreement is not a Business Day, such amount shall be payable on the next succeeding Business Day; provided, that if payment cannot be made due to the existence of a banking crisis or international payment embargo, such amount may be paid within the following 30 days.

(d) IN THE ABSENCE OF ACTUAL FRAUD, IN NO EVENT SHALL ANY PARTY BE LIABLE TO OR BE REQUIRED TO INDEMNIFY ANY OTHER PARTY OR ANY OF THEIR RESPECTIVE AFFILIATES UNDER THIS AGREEMENT (OR ANY AGREEMENT INTO WHICH THIS PROVISION IS INCORPORATED) FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL OR INDIRECT DAMAGE OF ANY KIND, (INCLUDING WITHOUT LIMITATION LOSS OF PROFIT OR DATA), WHETHER OR NOT ADVISED OF THE POSSIBILITY OF SUCH LOSS.

16.6 Relationship of the Parties. The Parties are independent contractors and no provision of or action pursuant to any New Agreement shall constitute any Party acting as the

direct or indirect agent or partner of the other Party for any purpose or in any sense whatsoever. Nothing contained in this Agreement is intended to, or shall be deemed to, create a partnership or fiduciary relationship between WD and TMC for any purpose. No Party shall take a position contrary to this Section 16.6.

16.7 Official Language. The official language of this Agreement is the English language only, which language shall be controlling in all respects, and all versions of this Agreement in any other language shall not be binding on the parties hereto or nor shall such other versions be admissible in any legal proceeding, including arbitration, brought under this Agreement. All communications and notices to be made or given pursuant to this Agreement shall be in the English language.

16.8 No Implied Licenses. All rights not expressly granted hereunder or under other agreements between or among the Parties are hereby retained in their entirety by such Party. Moreover, there are no implied grants or licenses hereunder and the only rights or licenses granted to any Party hereunder are limited to those rights and licenses expressly set forth herein.

16.9 Export Laws. No Party shall export or re-export, directly or indirectly, any technical information disclosed hereunder or direct product thereof to any destination prohibited or restricted by the export control regulations of Japan or the United States, including the U.S. Export Administration Regulations, without the prior authorization from the appropriate Governmental Authorities. No Party shall use technical information supplied by any other Party hereunder for any purpose to develop or manufacture nuclear, chemical, biological weapons or missiles (hereafter "weapons of mass destruction"). No Party shall knowingly sell any products manufactured using any other Party's technical information to any third party if it knows that the end-user of the products will use them for the development and/or manufacture of the weapons of mass destruction.

16.10 Definitions; Interpretation.

(a) Certain Definitions. Capitalized terms used but not defined in the main body of this Agreement shall have the meanings assigned to them in Exhibit A. Capitalized terms used but not defined in either of the main body of this Agreement or in Exhibit A shall have the meaning ascribed to such terms in the Y6 Agreement or, if not defined therein, in the FFL Master Agreement.

(b) Treatment of Ambiguities. The Parties acknowledge that each Party has participated in the drafting of this Agreement, and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in the construction or interpretation of this Agreement.

(c) References; Construction. Unless otherwise indicated herein, with respect to any reference made in this Agreement to a Section, Article, Schedule or Exhibit, such reference shall be to a section or article of, or a schedule or exhibit to, this Agreement. The article and section headings contained in this Agreement and the recitals at the beginning of this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement or any other agreement. Any reference made in this Agreement to a statute or statutory provision shall mean such statute or statutory provision as it has been amended through the date as of which the particular portion of the Agreement is to take effect, or to any successor statute or statutory provision relating to the same subject as the statutory provision so referred to in this Agreement, and to any then applicable rules or regulations promulgated thereunder. Whenever the words "include," "includes" or "including" are used in this Agreement, they shall be deemed, unless the context clearly indicates to the contrary, to be followed by the words "but (is/are) not limited to." The words "herein," "hereof," "hereunder" and words of like import shall refer to this Agreement as a whole (including its Schedules and Exhibits), unless the context clearly indicates to the contrary. Words used herein, regardless of the number and gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine or neuter, as the context indicates is appropriate. Any reference made in this Agreement to another Master Operative Document shall be deemed, unless the context clearly indicates to the contrary, to refer to such Master Operative Document as such Master Operative Document may be amended or supplemented from time to time.

(d) Order of Precedence. To the extent that a provision in this Agreement expressly conflicts with another Master Operative Document, then the provisions of this Agreement will control as to such conflict; provided, however, that unless otherwise provided herein, the provisions of the Master Operative Documents remain in effect.

(e) Other Clarifications. Unless the context clearly indicates the contrary, any reference in this Agreement to (i) actions by, or events relating to, TMC and occurring prior to April 1, 2017 shall refer to actions by, or events relating to, Toshiba, and (ii) rights, obligations, or allocations ascribed to WD hereby, but which are set forth in a Master Operative Document to which WD is not a party, shall refer to the corresponding rights, obligations, or allocations of the applicable SanDisk party to such Master Operative Document, as if WD were named *in lieu* of such applicable SanDisk party. For the avoidance of doubt, (A) nothing herein shall be deemed an assignment or transfer to WD of any rights or allocations ascribed to a SanDisk party in any Master

Operative Document and (B) subclause (A) does not alter any rights or obligations of any Party pursuant to the Undertaking.

16.11 Notices and Contact Information. All notices, reports and other communications to be given or made under this Agreement shall be in writing and shall be deemed received (X) if delivered by hand, courier or overnight delivery service, when delivered, or (Y) if delivered by e-mail, the earlier of: (I) when the recipient, by an email sent to the email address for the sending Party stated in this Section 16.11 or by a notice delivered by another method in accordance with this Section 16.11, acknowledges having received that email (provided, however, that an automatic "read receipt" will not constitute acknowledgment of an email for purposes of this Section 16.11(Y)(I)) or (II) when the email is delivered, if followed within two Business Days by delivery of a copy by hand, courier or overnight delivery service, or (Z) if delivered by mail, five days after being mailed by certified or registered mail, return receipt requested, with appropriate postage prepaid, and, in each case, shall be directed to the address of such Party specified below (or at such other address as such Party shall designate by like notice):

(a) If to WD or SanDisk:

Western Digital Corporation
951 SanDisk Drive
Milpitas, CA 95035 USA
Telephone: (408) 801-1000
E-mail: [***]
Attention: Executive Vice President, Silicon Technology

With a copy to:

Western Digital Corporation
5601 Great Oaks Parkway
San Jose, CA 95119
Telephone: (408) 717-6000
E-mail: [***]
Attention: Chief Legal Officer

(b) If to TMC :

Toshiba Memory Corporation
1-21, Shibaura 3-Chome,
Minato-ku, Tokyo 108-0023 Japan
Telephone: [***]
E-mail: [***]
Attention: Executive Vice President
and Chief Operating Officer

With a copy to:

Toshiba Memory Corporation
1-21, Shibaura 3-Chome,
Minato-ku, Tokyo 108-0023 Japan
Telephone: [***]
E-mail: [***]
Attention: Executive Officer, General Manager, Legal Affairs Division

(c) If to TMI :

Toshiba Memory Iwate Corporation
6-6, Kita-kogyodanchi, Kitakami-shi,
Iwate 024-8510 Japan
Telephone: [***]
E-mail: [***]
Attention: President and Chief Executive Officer

With a copy to:

Toshiba Memory Corporation
1-21, Shibaura 3-Chome,
Minato-ku, Tokyo 108-0023 Japan
Telephone: [***]
E-mail: [***]
Attention: Executive Officer, General Manager, Legal Affairs Division

(d) If to any of the JVs, then to each of the addressees at (a) and (b) above.

16.12 Assignment. Except as separately agreed by the Parties in writing, none of the Parties may transfer this Agreement or any of its rights hereunder (except for any transfer to an Affiliate or in connection with a merger, consolidation or sale of all or substantially all the assets or the outstanding securities of such Party, which transfer will not require any consent of the other Parties hereunder) without the prior written consent of the each of the other Parties (which consent may be withheld by each such other Party in such other Party's sole discretion), and any such purported transfer without such consents will be void.

16.13 Amendment and Waiver. This Agreement may not be amended, modified or supplemented except by a written instrument executed by each Party. No waiver of any provision of this Agreement shall be effective unless set forth in a written instrument signed by the Party waiving such provision. No failure or delay by a Party in exercising any right, power or remedy under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of the same preclude any further exercise thereof or the exercise of any other right, power or remedy. Without limiting the foregoing, no waiver by a Party of any breach by any other Party of any provision hereof shall be deemed to be a waiver of any subsequent breach of that or any other provision hereof.

16.14 Severability. If a term of any New Agreement or the application of any such term is or becomes illegal, invalid or unenforceable in any respect under any jurisdiction, that will not affect (a) the legality, validity or enforceability in that jurisdiction of any other term of the New Agreements or (b) the legality, validity or enforceability in any other jurisdictions of that or any other term of the New Agreements. To the extent permitted by applicable law, the Parties waive any provision of Law that renders any provision of this Agreement invalid, illegal or unenforceable in any respect. Such term shall be replaced by a mutually acceptable provision, which being valid, legal and enforceable comes closest to the intention of the Parties underlying such illegal, invalid or unenforceable provision.

16.15 Counterparts; Effectiveness. This Agreement may be executed in counterparts, each of which shall be binding as of the date first written above, and all of which shall constitute one and the same instrument. Each such counterpart shall be deemed an original, and it shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart. The exchange of copies of this Agreement and of signature pages by facsimile transmission, portable document format (.pdf) or other electronic format shall be deemed to be their original signatures for all purposes. This Agreement shall not become effective until one or more counterparts have been executed by each Party and delivered to the other Parties.

16.16 No Admission. Nothing in this Agreement shall constitute or be used as an admission, acquiescence, acknowledgement, or agreement by anyone as to the merit of any

claims or defenses, whether or not asserted in any arbitration or other litigation, except to enforce the provisions of this Agreement or any part of any other agreement expressly amended herein. In addition, nothing in this Agreement shall constitute or be used as an admission in any arbitration, litigation, or other proceeding regarding the interpretation of any other agreement.

**[**The remainder of this page is intentionally left blank.**]**

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective duly authorized representatives as of the date first written above.

**WESTERN DIGITAL CORPORATION**

By: /s/ Siva Sivaram
Name: Siva Sivaram
Title: Executive Vice President, Silicon Technology

**SANDISK LLC**

By: /s/ Siva Sivaram
Name: Siva Sivaram
Title: Chief Executive Officer

**SANDISK (CAYMAN) LIMITED**

By: /s/ Stephanie Wells
Name: Stephanie Wells
Title: Director

**SANDISK (IRELAND) LIMITED**

By: /s/ Stephanie Wells
Name: Stephanie Wells
Title: Director

**SANDISK FLASH B.V.**

By /s/ Stephanie Wells
Name: Stephanie Wells
Title: Director

**TOSHIBA MEMORY CORPORATION**

By: /s/ Yasuo Naruke
Name: Yasuo Naruke
Title: President and Chief Executive Officer

**TOSHIBA MEMORY IWATE CORPORATION**

By: /s/ Akimichi Yonekura
Name: Akimichi Yonekura
Title: President and Chief Executive Officer

**FLASH PARTNERS, LTD.**

By: /s/ Shinichi Nitta
Name: Shinichi Nitta
Title: President and Chief Executive Officer

**FLASH ALLIANCE, LTD.**

By /s/ Shinichi Nitta
Name: Shinichi Nitta
Title: President and Chief Executive Officer

**FLASH FORWARD, LTD.**

By: /s/ Shinichi Nitta
Name: Shinichi Nitta
Title: President and Chief Executive Officer

*[Signature Page to K1 Facility Agreement]*

**EXHIBIT A**

**DEFINITIONS**

"3D Collaboration Agreement" means the 3D Collaboration Agreement, dated as of June 13, 2008, between SanDisk LLC and TMC.

"3D Memory" has the meaning set forth in the 3D Collaboration Agreement.

"Action" means a lawsuit, arbitration or other legal proceeding pending by or against or affecting a Party or any of its Affiliates or any of their respective properties.

"Adjustment Payment" has the meaning set forth in Section 4.7.

"Affiliate" means, with respect to any specified Person, any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with, the Person specified, and "control", when used with respect to any Person, means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities or otherwise, and the terms "controlling" and "controlled" have meanings correlative to the foregoing; provided, however, that the term Affiliate (a) when used in relation to any JV or Subsidiary thereof, shall not include the Parent Parties or any Affiliate of either of them, and (b) when used in relation to WD or TMC or their respective Affiliates, shall not include any JV or Subsidiary thereof.

"Agreement" has the meaning set forth in the preamble to this Agreement.

[***]

"Amended FFL Services Agreement" means that certain Amended and Restated Services Agreement, dated as of even date herewith, by and among TMC, TMI and FFL.

"Amended JMD Agreement" means that certain Amended and Restated Joint Memory Development Agreement, dated as of even date herewith, by and between TMC and SanDisk LLC.

"Amended SanDisk Services Agreement" means that certain Amended and Restated SanDisk Services Agreement, dated as of even date herewith, by and among TMC, TMI and SanDisk.

"Amendment to WD-TMC PCLA" means that certain Amendment to Patent Cross License Agreement Between Western Digital Corporation and Toshiba Memory Corporation, dated as of even date herewith, among WD, SanDisk [***] and TMC.

[***]

"BiCS Conversion" has the meaning set forth in Section 2.1.

[***]

"BiCS Expansions" means [***]

"BiCS LDA" means that certain BiCS License & Development Agreement, dated as of March 1, 2011, by and between TMC and SanDisk LLC.

[***]

"BiCS Products" has the meaning set forth for the term "BiCS Memory Products" in the BiCS LDA.

"BiCS Technology" has the meaning set forth in the BiCS LDA.

"BiCS Technology Transitions" has the meaning set forth in Section 2.1.

"Board of Directors" has the meaning set forth in the FPL Operating Agreement or FAL Operating Agreement, as applicable.

"Board of Executive Officers" has the meaning set forth in the FFL Operating Agreement.

"Building Depreciation Prepayment" has the meaning set forth in Section 2.5(a).

"Business Day" means any day (other than a day which is a Saturday, Sunday or legal holiday in the State of California or Japan) on which commercial banks are open for business in the State of California or Tokyo, Japan.

[***]

"Common R&D Agreement" means that certain Fifth Amended and Restated Common R&D and Participation Agreement, by and between TMC and SanDisk LLC, dated as of March 1, 2011.

"Confidential Information" means information disclosed in written, recorded, graphical or other tangible form which is marked as "Confidential", "Proprietary" or in some other manner to indicate its confidential nature, and/or orally or in other intangible form, identified as confidential at the time of disclosure and confirmed as confidential information in writing within thirty (30) days of its initial disclosure.

[***]

[***]

[***]

[***]

"Disclosing Party" has the meaning set forth in Section 13.2(a).

"Employer" has the meaning set forth in Section 7.6.

"Equivalent Lot" means [***]

[***]

"Existing Agreements" means the JV Agreements and the Joint Operative Documents.

"Existing Facility BiCS Expansion" has the meaning set forth in Section 4.2(a).

[***]

[***]

"FAL" has the meaning set forth in the preamble to this Agreement.

"FAL Commitment and Extension Agreement" means the FAL Commitment and Extension Agreement, dated December 12, 2017, by and among TMC, WD, SanDisk LLC and SanDisk Ireland.

"FAL Foundry Agreement" has the meaning set forth for the term "FA Foundry Agreement" in the FAL Master Agreement.

"FAL Lease Agreement" means that certain Equipment Lease Agreement, dated as of July 7, 2006, by and between FAL and TMC.

"FAL Master Agreement" means that certain Flash Alliance Master Agreement, dated as of July 7, 2006, by and among TMC, SanDisk LLC and SanDisk Ireland.

"FAL MCEIA" means that certain Flash Alliance Mutual Contribution and Environmental Indemnification Agreement, dated as of July 7, 2006, by and among TMC, SanDisk LLC and SanDisk Ireland.

"FAL Operating Agreement" means that certain Operating Agreement of Flash Alliance, Ltd. dated as of July 7, 2006 between TMC and SanDisk Ireland.

"FAL Purchase and Supply Agreement" means (i) with respect to TMC, that certain Purchase and Supply Agreement, dated as of July 7, 2006, by and between FAL and TMC, or (ii) with respect to SanDisk Ireland, that certain Purchase and Supply Agreement dated as of July 7, 2006, by and between FAL and SanDisk Ireland.

"FFL" has the meaning set forth in the preamble to this Agreement.

"FFL Commitment and Extension Agreement" means the FFL Commitment and Extension Agreement, dated December 12, 2017, by and among TMC, WD, SanDisk LLC and SanDisk Flash.

"FFL Foundry Agreement" has the meaning set forth for the term "FF Foundry Agreement" in the FFL Master Agreement.

"FFL Lease Agreement" means that certain Equipment Lease Agreement, dated as of October 20, 2015, by and between FFL and TMC.

"FFL Master Agreement" means that certain Flash Forward Master Agreement, dated as of July 13, 2010, by and among TMC, SanDisk LLC and SanDisk Flash.

"FFL MCEIA" means that certain Flash Forward Mutual Contribution and Environmental Indemnification Agreement, dated as of July 13, 2010, by and among TMC, SanDisk LLC and SanDisk Flash.

"FFL Operating Agreement" means that certain Operating Agreement of Flash Forward, Ltd., dated as of March 1, 2011 between TMC and SanDisk Flash.

"FFL Purchase and Supply Agreement" means (i) with respect to TMC, that certain Purchase and Supply Agreement, dated as of March 1, 2011, by and between FFL and TMC, or (ii) with respect to SanDisk Flash, that certain Purchase and Supply Agreement dated as of March 1, 2011, by and between FFL and SanDisk Flash.

"FFL Second Extension Agreement" has the meaning set forth in the recitals.

"First JV Wafer Out Date" means the date on which the first production of wafers utilizing capacity at the K1 Facility resulting from the implementation of the K1 Minimum Commitment for a portion of such production's manufacturing process is completed.

"Former JV Capacity" has the meaning set forth in Section 1.4(a).

"Foundry Agreements" means the FAL Foundry Agreement, FFL Foundry Agreement and FPL Foundry Agreement.

"FPL" has the meaning set forth in the preamble to this Agreement.

"FPL Commitment and Extension Agreement" means that certain FPL Commitment and Extension Agreement, dated as of October 20, 2015, by and between TMC and SanDisk LLC.

"FPL Foundry Agreement" has the meaning set forth for the term "FP Foundry Agreement" in the FPL Master Agreement.

"FPL Lease Agreement" means that certain Equipment Lease Agreement, dated as of September 10, 2004, by and between FPL and TMC.

"FPL Master Agreement" means that certain Flash Partners Master Agreement, dated as of September 10, 2004, by and among TMC, SanDisk LLC and SanDisk Cayman.

"FPL MCEIA" means that certain Mutual Contribution and Environmental Indemnification Agreement, dated as of September 10, 2004, by and among TMC, SanDisk LLC and SanDisk Cayman.

"FPL Operating Agreement" means that certain Operating Agreement of Flash Partners, Ltd. dated as of September 10, 2004 between TMC and SanDisk Cayman.

"FPL Purchase and Supply Agreement" means (i) with respect to TMC, that certain Purchase and Supply Agreement, dated as of September 10, 2004, by and between FPL and TMC, or (ii) with respect to SanDisk Cayman, that certain Purchase and Supply Agreement dated as of September 10, 2004, by and between FPL and SanDisk Cayman.

"Governmental Authority" means any (a) nation, principality, state, commonwealth, province, territory, county, municipality, district or other jurisdiction of any nature; (b) federal, state, local, municipal, foreign or other government; (c) governmental or quasi-governmental authority of any nature (including any governmental division, subdivision, department, agency, bureau, branch, office, commission, council, board, instrumentality, officer, official, representative, organization, unit, body or Person and any court or other tribunal); or (d) individual, Person or body (including any stock exchange) exercising, or entitled to exercise, any executive, legislative, judicial, administrative, regulatory, police, military or taxing authority or power of any nature.

"Information Security Agreement" means that certain Information Security Agreement, dated as of October 20, 2015, by and between TMC and SanDisk LLC.

[***]

"Intellectual Property" has the meaning set forth in Section 15.7.

"ISCO Supplement" means the Supplement to Information Security and Confidentiality Obligations, dated as of December 12, 2018, by and among TMC, WD, SanDisk and the JVs.

"JMD Project" means the joint development project established to cooperate on the development of the pilot line at the Yokkaichi Facility and/or the K1 Facility pursuant to the Amended JMD Agreement.

"Joint Operative Documents" means the Common R&D Agreement, the Product Development Agreement, the 3D Collaboration Agreement, the Amended JMD Agreement, the JVRA, [***], the Information Security Agreement, the BiCS LDA, the Settlement Agreement, the Undertaking, and the WD-TMC PCLA.

[***]

"JV" has the meaning set forth in the Recitals.

"JV Agreements" means the FAL Master Agreement, the FFL Master Agreement, the FPL Master Agreement, the JV Operating Agreements, the Foundry Agreements, the Purchase and Supply Agreements, the JV Lease Agreements, the JV MCEIAs, the FPL Commitment and Extension Agreement, the FAL Commitment and Extension Agreement, the FFL Commitment and Extension Agreement, the New Y2 Agreement, the New Y2 MCEIA, the Y6 Agreement, and the Y6 MCEIA.

"JV BiCS Products" means JV Y3 BiCS Products, JV Y4 BiCS Products, JV Y5 BiCS Products, JV New Y2 BiCS Products, JV Y6 BiCS Products and JV K1 BiCS Products.

"JV BiCS Tools" means tools used in the JV BiCS Space of the New Y2 Facility, the Y3 Facility, the Y4 Facility, the Y5 Facility, the Y6 Facility or the K1 Facility.

"JV Business Plan" has, with respect to a JV, the meaning given to the term "Business Plan" in the respective JV's JV Master Agreement.

"JV Capacity" has the meaning set forth in Section 4.8(a)(i).

"JV K1 BiCS Products" has the meaning set forth in Section 3.1(b).

"JV K1 Products" means the JV K1 BiCS Products plus any other products manufactured using K1 Facility cleanroom space in accordance with Article 3 that are identified [***] as K1 lots and allocated to a JV under the applicable JV's JV Master Agreement.

"JV Lease Agreements" means the FPL Lease Agreement, the FAL Lease Agreement and FFL Lease Agreement.

"JV Master Agreements" means the FAL Master Agreement, the FFL Master Agreement and the FPL Master Agreement.

"JV MCEIAs" means the FPL MCEIA, the FAL MCEIA and the FFL MCEIA.

"JV New Y2 BiCS Products" has the meaning set forth in the New Y2 Agreement.

"JV Operating Agreements" means the FPL Operating Agreement, the FAL Operating Agreement and the FFL Operating Agreement.

"JV Products" means NAND Flash Memory Products and BiCS Products, in each case manufactured for the JVs.

"JV K1 BiCS Products" has the meaning set forth in Section 3.1(b).

"JV K1 NAND Flash Memory Products" has the meaning set forth in Section 3.4.

"JV Y3 BiCS Products" has the meaning set forth in the New Y2 Agreement.

"JV Y4 BiCS Products" has the meaning set forth in the New Y2 Agreement.

"JV Y5 BiCS Products" has the meaning set forth in the New Y2 Agreement.

"JV Y6 BiCS Products" has the meaning set forth in the Y6 Agreement.

"JVRA" means that certain Joint Venture Restructure Agreement, dated as of January 29, 2009, by and among the Parties, the JVs and certain of their respective Affiliates.

"K1 BiCS Products" has the meaning set forth in Section 3.1(b).

"K1 Capacity Ratio" for either WD or TMC means [***]

"K1 Capacity Transfer" has the meaning set forth in Section 4.8(f)(iv).

[***]

[***]

"K1 Facility" means the production facility currently under construction in Iwate, Japan owned by TMC and forming part of the Kitakami Facility, including a building shell, cleanroom, and all culverts, piping, ducting and associated infrastructure connecting thereto.

"K1 Fixed Manufacturing Costs" means the K1 Manufacturing Costs described on Schedule 8.4(b)(i).

"K1 JV BiCS Space" has the meaning set forth in Section 3.2(a)(i).

"K1 JV Engineers" has the meaning set forth in Section 7.1(a).

"K1 JV Headcount Plan" has the meaning set forth in Section 7.2.

"K1 JV Space" means the K1 JV BiCS Space plus any cleanroom space used for the production of NAND Flash Memory Products by the JVs in the K1 Facility.

"K1 Manufacturing Costs" has the meaning set forth in Section 8.1.

"K1 MCEIA" means that certain K1 Mutual Contribution and Environmental Indemnification Agreement, dated as of even date herewith, by and among Toshiba Memory, SanDisk Cayman, SanDisk Ireland and SanDisk Flash.

"K1 Minimum Commitment" has the meaning set forth in Section 4.1(a).

"K1 NAND Flash Memory Products" has the meaning set forth in Section 3.4.

"K1 Operating Committee" has the meaning set forth in Section 6.1.

"K1 Product Fixed Manufacturing Costs" has the meaning set forth in Section 8.4(b)(i).

"K1 Product Manufacturing Costs" has the meaning set forth in Section 8.4(a).

"K1 Product Variable Manufacturing Costs" has the meaning set forth in Section 8.4(b)(ii).

"K1 Products" means K1 BiCS Products plus any other products manufactured using K1 Facility cleanroom space in accordance with Article 3 that are identified [***] as K1 lots.

[***]

"K1 Unilateral BiCS Expansion" means a Unilateral BiCS Expansion made within the K1 Facility.

[***]

"K1 Unilateral BiCS Products" has the meaning set forth in Section 3.1(b).

[***]

"K1 Unilateral Space" means [***]

"K1 Variable Manufacturing Costs" means the K1 Manufacturing Costs described on Schedule 8.4(b)(ii).

"Kitakami Facility" means TMC's facilities in Iwate, Japan, including the K1 Facility.

"L/M" means either lots per month or Equivalent Lots per month, in each case as mutually agreed by the Parties.

"Law" means all applicable provisions of all (a) constitutions, treaties, statutes, laws (including common law), rules, regulations, ordinances or codes; (b) orders, decisions, judgments, awards or decrees; and (c) requests, guidelines or directives (whether or not having the force of law), in each case of any Governmental Authority of any applicable jurisdiction.

"Management Representatives" has the meaning set forth in the JV Agreements.

"Master Operative Documents" means the Existing Agreements and the New Agreements.

"Material Breach" has the meaning set forth in Section 14.3.

[***]

[***]

"NAND Flash Memory Products" has the meaning set forth in the JV Agreements.

"New Agreements" has the meaning set forth in the Recitals.

"New Y2 Agreement" means that certain New Y2 Facility Agreement, dated as of October 20, 2015, by and among TMC, SanDisk LLC, SanDisk Cayman, SanDisk Ireland, SanDisk Flash, FPL, FAL and FFL.

[***]

"New Y2 Facility" means the production facility within the Yokkaichi Facility described in the New Y2 Agreement.

"New Y2 Unilateral BiCS Expansion" means a Unilateral BiCS Expansion made within the New Y2 Facility.

"Non-NAND Products" means any technology or product other than NAND Flash Memory Products.

"Operating Committees" means the Y3 Operating Committee, Y4 Operating Committee, Y5 Operating Committee (each as defined in the JV Agreements), the New Y2 Operating Committee (as defined in the New Y2 Agreement), the Y6 Operating Committee (as defined in the Y6 Agreement) and the K1 Operating Committee (as defined in this Agreement).

[***]

[***]

"Parent Parties" has the meaning set forth in the preamble to this Agreement.

"Parties" has the meaning set forth in the preamble to this Agreement.

"Person" means any individual or entity, including any private or public real estate operating company or real estate investment trust, exempted company, exempted limited partnership, private limited company, corporation, partnership, limited partnership, limited liability company, trust, charitable trust or other legal entity, wherever organized, or any unincorporated association or Governmental Authority.

"Personnel" has the meaning set forth in Section 7.1(d).

[***]

[***]

"Process Technology" means [***]

"Product Development Agreement" means the Third Amended and Restated Product Development Agreement, dated as of March 1, 2011, between SanDisk LLC and TMC.

[***]

"Proprietary BiCS Products" means BiCS Products that are proprietary to a Parent Party.

"Proprietary Flash Products" means Proprietary NAND Flash Memory Products and Proprietary BiCS Products.

"Proprietary NAND Flash Memory Products" means NAND Flash Memory Products which are proprietary to a Parent Party.

"Purchase and Supply Agreements" means the FPL Purchase and Supply Agreements, the FAL Purchase and Supply Agreements, and the FFL Purchase and Supply Agreements.

"Quarterly Manufacturing Cost Reconciliation" has the meaning set forth in Section 8.1(d).

"Ramp Down Provisions" means: (i) Sections 8.1(d)(i) and 8.1(e)(i) of the FAL Master Agreement, (ii) Sections 8.1(d)(i) and 8.1(e)(i) of the FPL Master Agreement, (iii) Section 9.1(d)(i) of the FFL Master Agreement, (iv) Section 1.5(a)(iv) of the New Y2 Agreement, (v) Section 12.1(e) of the Y6 Agreement, and (vi) Section 12.1(h) of this Agreement.

"Ramp-Up Commitment" means the investment necessary to implement an agreed BiCS Expansion, BiCS Technology Transition, BiCS Conversion, or K1 Capacity Transfer, in each case using the K1 Facility, as set forth in a JV's Investment Plan (as defined in the JV Agreements), after the K1 Minimum Commitment has been fulfilled.

"Receiving Party" has the meaning set forth in Section 13.2(a).

[***]

"SanDisk" has the meaning set forth in the preamble to this Agreement.

"SanDisk Cayman" has the meaning set forth in the preamble to this Agreement.

"SanDisk Flash" has the meaning set forth in the preamble to this Agreement.

"SanDisk Ireland" has the meaning set forth in the preamble to this Agreement.

"SanDisk LLC" has the meaning set forth in the preamble to this Agreement.

"SEC" means the Securities and Exchange Commission of the United States.

[***]

[***]

[***]

"Settlement Agreement" means the Confidential Settlement and Mutual Release Agreement, dated December 12, 2017, among Toshiba, TMC, WD and SanDisk.

[***]

"Start-Up Costs" has the meaning set forth in Section 2.5(b).

"Subsidiary" of any Person means any other Person:

i. more than 50% of whose outstanding shares or securities (representing the right to vote for the election of directors or other managing authority) are, or

ii. which does not have outstanding shares or securities (as may be the case in a partnership, joint venture or unincorporated association), but more than 50% of whose ownership interest representing the right to make decisions (equivalent to those generally reserved for the board of directors of a corporation) for such other Person is,

now or hereafter owned or controlled, directly or indirectly, by such Person, but such other Person shall be deemed to be a Subsidiary only so long as such ownership or control exists; provided, however, that the term Subsidiary, when used in relation to a Party or any of its Affiliates, shall not include any JV or any of the JVs' Subsidiaries (except that, when used in relation to a Party that is a JV, the term Subsidiary shall include such JV's own Subsidiaries).

[***]

"Threshold Capacity Ratio" means [***]

"TMC" has the meaning set forth in the preamble to this Agreement.

"TMC Personnel" has the meaning set forth in Section 7.1(b).

"TMC Representative" has the meaning set forth in Section 6.1.

[***]

"TMI" has the meaning set forth in the preamble to this Agreement.

[***]

"Toshiba" has the meaning set forth in the Recitals.

"Toshiba Capacity" has the meaning ascribed to such term in the JVRA and includes, for the avoidance of doubt, any Toshiba Unilateral Expansion Space (as defined in the FFL Master Agreement), Yokkaichi Unilateral BiCS Expansion Space (as defined in each of the New Y2 Agreement and the Y6 Agreement), and any K1 Unilateral Production Space (as defined in this Agreement).

"Toshiba Memory" has the meaning set forth in the preamble to this Agreement.

[***]

[***]

"Toshiba R&D Tools" has the meaning set forth in Section 3.3(c).

[***]

[***]

"Undertaking" means the Parent Guarantee and Undertaking as to Collaboration, dated December 12, 2017, entered into by and among WD, Toshiba and TMC, and acknowledged and agreed by SanDisk and the JVs.

"Unilateral BiCS Expansion" has the meaning set forth in Section 4.2(d)(i).

"WD" has the meaning set forth in the preamble to this Agreement.

"WD Personnel" has the meaning set forth in Section 7.1(c).

"WD Representative" has the meaning set forth in Section 6.1.

"WD Team" has the meaning set forth in Section 7.1(e).

"WD-TMC PCLA" means the Patent Cross License Agreement Between Western Digital Corporation and Toshiba Memory Corporation, dated December 12, 2017, among WD, SanDisk [***] and TMC.

[***]

"Y3 Facility" means the production facility within the Yokkaichi Facility described in the FPL Master Agreement.

[***]

"Y4 Facility" means the production facility within the Yokkaichi Facility described in the FAL Master Agreement.

[***]

"Y5 Facility" means the production facility within the Yokkaichi Facility described in the FFL Master Agreement.

"Y6 Agreement" means that certain Y6 Facility Agreement, dated as of December 12, 2017, by and among TMC, WD, SanDisk LLC, SanDisk Cayman, SanDisk Ireland, SanDisk Flash, FPL, FAL and FFL.

"Y6 Capacity Ratio" has the meaning set forth in the Y6 Agreement.

[***]

"Y6 Facility" means the production facility within the Yokkaichi Facility described in the Y6 Agreement.

"Y6 MCEIA" means that certain Y6 Mutual Contribution and Environmental Indemnification Agreement, dated as of December 12, 2017, by and among TMC, SanDisk Cayman, SanDisk Ireland and SanDisk Flash.

"Y6 Unilateral BiCS Expansion" means a Unilateral BiCS Expansion made within the Y6 Facility.

[***]

[***]

[***]

[***]

"Yokkaichi Facility" means TMC's facilities in Yokkaichi Japan, including the New Y2 Facility, the Y3 Facility, the Y4 Facility, the Y5 Facility, the Y6 Facility and TMC's Asahi facility

**Exhibit 10.14**

CERTAIN CONFIDENTIAL PORTIONS HAVE BEEN REDACTED FROM THIS EXHIBIT BECAUSE THEY ARE BOTH (i) NOT MATERIAL AND (ii) A TYPE THAT THE REGISTRANT TREATS AS PRIVATE OR CONFIDENTIAL. INFORMATION THAT HAS BEEN OMITTED HAD BEEN IDENTIFIED IN THIS DOCUMENT WITH A PLACEHOLDER IDENTIFIED BY THE MARK "[***]".

**Execution Version**

**CONFIDENTIAL SETTLEMENT AND MUTUAL RELEASE AGREEMENT**

This CONFIDENTIAL SETTLEMENT AND MUTUAL RELEASE AGREEMENT (this "Agreement") is made as of December 12, 2017 (the "Effective Date") by and among Toshiba Corporation ("TSB"), Toshiba Memory Corporation ("TMC"), Western Digital Corporation ("WD"), SanDisk LLC, SanDisk (Cayman) Limited ("SanDisk Cayman"), SanDisk (Ireland) Limited ("SanDisk Ireland"), SanDisk Flash B.V. ("SanDisk Flash," and together with SanDisk LLC, SanDisk Cayman, and SanDisk Ireland, "SanDisk"). TSB, TMC, WD, SanDisk LLC, SanDisk Cayman, SanDisk Ireland and SanDisk Flash, shall each be referred to, individually, as a "Party" and, collectively, as the "Parties." Certain capitalized terms used herein are defined herein and in Exhibit A of this Agreement.

RECITALS:

WHEREAS, between 2004 and 2011, TSB and SanDisk Corporation (which has since become SanDisk LLC), SanDisk Cayman, SanDisk Ireland, and SanDisk Flash formed the following three joint venture companies: Flash Partners, Ltd., ("FPL"), Flash Alliance, Ltd., ("FAL"), and Flash Forward, Ltd., ("FFL" and together with FPL and FAL, the "JVs");

WHEREAS, TSB, SanDisk and the JVs, as applicable, entered into various agreements (the "Existing Agreements") set forth in Exhibit B hereto;

WHEREAS, TSB and TMC claim that, effective on or about April 1, 2017, TSB transferred substantially all of the assets, rights and obligations of its memory business (the "Memory Business"), and its JV Shares, to TMC (such transfer is referenced herein as the "TMC Transfer");

WHEREAS, TSB engaged in an auction process soliciting bids for a sale of all or a part of TMC, which process ended on September 28, 2017 (the "Auction");

WHEREAS, TSB and TMC claim that, on or about June 3, 2017, TMC transferred the JV Shares which it had acquired via the TMC Transfer back to TSB (such transfer is referenced herein as the "TSB Transfer");

WHEREAS, WD and SanDisk claim that, on or about June 28, 2017, TSB and TMC (i) restricted WD and certain of its Subsidiaries, including Western Digital Technologies, Inc., (and its or their employees) from accessing facilities, databases, and information relating to the JVs, and (ii) refused to ship engineering wafers and samples to locations designated by SanDisk, including in Milpitas, California (such restrictions, the "Access Restrictions");

WHEREAS, on or about August 3, 2017, TMC decided and announced that it will unilaterally invest in manufacturing equipment for the Fab 6 cleanroom at Yokkaichi (the "Fab 6 Unilateral Investment");

WHEREAS, on September 28, 2017, TSB entered into the Share Purchase Agreement (the "SPA") with K.K. Pangea ("Pangea"), a Japanese company that will be owned as of the closing of the TMC Sale by certain members of the Bain Consortium, for the sale of all of the shares of TMC, which sale is expected to be consummated by March 31, 2018 (such sale, together with the other transactions contemplated by and on the terms set forth in the SPA and related agreements and instruments, the "TMC Sale");

WHEREAS, following consummation of the TMC Sale, Pangea and TMC may merge (the "TMC Merger");

WHEREAS, SanDisk has objected to the TMC Transfer, the Auction, the TMC Sale, and the Fab 6 Unilateral Investment;

WHEREAS, the Parties have commenced the litigation and arbitration proceedings set forth onExhibit C (together with any motion for a temporary restraining order, preliminary injunction, or other form of injunctive relief, pending or existing, between or among any of the parties to the cases identified in Exhibit C, individually and collectively, the "Proceedings");

WHEREAS, the Parties have agreed to settle the Proceedings; and

NOW THEREFORE, in consideration of the promises, mutual covenants and agreements contained herein and in the Transaction Documents (as defined below), and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

**1. Withdrawal and Dismissal of the Proceedings.** Within three (3) Business Days after the Effective Date, each Party shall (a) withdraw and seek dismissal of the Proceedings and all claims asserted therein and (b) cooperate in the preparation and filing of appropriate pleadings in the forms attached as Exhibit D to effectuate the withdrawal and dismissal of the Proceedings with prejudice and without costs, with each Party to bear its own attorneys' fees.

**2. Releases and Covenants Not to Sue.**

2.1 WD and SanDisk Release. WD and SanDisk, in each case on behalf of itself and its Affiliates, and its and their respective successors, predecessors, assignees, officers, directors, shareholders, employees, representatives and agents (the "WD Releasors") each hereby releases and forever discharges each of TSB, TMC, their respective Affiliates, and its and their respective successors, assignees, predecessors, officers, directors, shareholders, employees, representatives, attorneys and agents, but, in each case, excluding Bain Capital, any Bain Consortium Member, any Auction Participant and any bank or financial institution (the "TSB Releasees"), from all Claims (i) relating to, arising out of, or in connection with the TMC Transfer, the TSB Transfer, the Auction (including TSB's and TMC's disclosure of confidential information regarding the Memory Business to bidders in the Auction, or their attorneys or consortium partners, for due diligence purposes), acts, omissions, attempts, or efforts to sell or dispose of any or all shares of or interest in TMC, the Access Restrictions, the Fab 6 Unilateral Investment or the TMC Sale, (ii) that were or could have been asserted in the Proceedings, and/or (iii) that were asserted or threatened to be asserted in any of the correspondence set forth in Schedule 2.1. WD and SanDisk, in each case on behalf of itself and the other WD Releasors, covenants not to (and to cause its respective Affiliates, and its and their respective successors, predecessors, assignees, officers, directors, shareholders (in their capacity as such), employees, representatives and agents, not to) sue or assert any Claims released in this Section 2.1 against the TSB Releasees in any forum.

2.2 Covenant Not To Sue.

(a) Subject to Section 2.2(c), WD and SanDisk, in each case on behalf of itself and the other WD Releasors, each covenants not to sue or assert any Claims (whether known or unknown) in any forum against any Bain Consortium Member, any Auction Participant, or any bank or other financial institution relating to, arising out of, or in connection with (i) the TMC Transfer, the TSB Transfer, the Auction (including any receipt of confidential information regarding the Memory Business or the JV Shares for due diligence purposes provided such receipt was covered by a confidentiality obligation), acts, omissions, attempts, or efforts to acquire any or all shares of or interest in TMC, or the TMC Sale, the Access Restrictions, or the Fab 6 Unilateral Investment, and/or (ii) any Claims that were asserted or threatened to be asserted in any correspondence regarding or relating to Toshiba, TMC or the Memory Business, sent by or on behalf of WD, SanDisk, or any of their respective Affiliates, in each case to the extent based on any activities, communications or other matters occurring from January 1, 2017 to the Effective Date.

(b) Subject to Section 2.2(c), WD and SanDisk, in each case on behalf of itself and the other WD Releasors, each covenants not to sue or assert any Claims (whether known or unknown) in any forum against any Bain Consortium Member, any Auction Participant or any bank or other financial institution relating to or arising out of or in connection with ordinary course activities occurring after the Effective Date until the earlier of the closing of the TMC Sale and the termination of the SPA and that are reasonable to effect any matter within the scope of the consents set forth in Section 3, including without limitation the TMC Sale; provided that, for the avoidance of doubt, the covenant set forth in this Section 2.2(b) does not apply to Claims brought against a Bain Consortium Member, any Auction Participant, or any bank or other financial institution, for any acts, omissions, attempts, or efforts thereof, after the Effective Date until the earlier of the closing of the TMC Sale and the termination of the SPA, that constitutes or results in disclosure in breach of an Existing Agreement, or misappropriation by any third party, including any Bain Consortium Member, any Auction Participant or any bank or other financial institution, of trade secrets or other non-public Intellectual Property owned or rightfully possessed by SanDisk or its Affiliates. For the avoidance of doubt, the covenant not to sue herein shall continue in effect after the closing of the TMC Sale or the termination of the SPA but shall not apply with respect to any acts, omissions, attempts, or efforts after the earlier of the closing of the TMC Sale and the termination of the SPA.

(c) Notwithstanding anything to the contrary herein, the preceding covenants not to sue or assert shall not apply and shall be of no force and effect as to any Bain Consortium Member, any Auction Participant or any bank or other financial institution if such Bain Consortium Member, Auction Participant, or bank or other financial institution (or any Person to whom such Bain Consortium Member, Auction Participant, or bank or other financial institution has assigned any of the following Claims) sues or asserts any Claim (whether known or unknown) in any forum against any WD Releasor relating to, arising out of, or in connection with (i) the TMC Transfer, the TSB Transfer, the Auction, the TMC Sale, the Access Restrictions, or the Fab 6 Unilateral Investment and/or (ii) any Claims that were asserted or threatened to be asserted in any correspondence regarding or relating to Toshiba, TMC or the Memory Business, sent by or on behalf of WD, SanDisk, or any of their respective Affiliates, in each case to the

extent based on any activities, communications or other matters occurring prior to the Effective Date, subject, however, to Section 2.2(f) of this Agreement.

(d) WD and SanDisk, in each case on behalf of itself and the other WD Releasors, shall each execute a mutual release in the form set forth in Exhibit E (with no substantive changes) with any Bain Consortium Member or bank or other financial institution that elects to enter into such mutual release by delivering an executed counterpart not later than the forty-fifth (45th) day after the Effective Date. Each such mutual release shall, upon execution in full, supersede this Section 2.2 with respect to such Bain Consortium Member or such bank or other financial institution, as the case may be.

(e) Any Bain Consortium Member, Auction Participant or bank or other financial institution referenced in Section 2.2 shall be a third party beneficiary under this Agreement, but solely with respect to this Section 2.2 and not any other provision hereunder, and shall be entitled to enforce this Section 2.2 in its entirety in accordance with its terms.

(f) For the avoidance of doubt, none of the foregoing provisions of this Section 2.2 shall apply with respect to any Claim brought to enforce the terms of this Section 2.2.

2.3 TSB and TMC Release. TSB and TMC, in each case on behalf of itself and its Affiliates, and its and their respective successors, predecessors, assignees, officers, directors, shareholders, employees, representatives and agents (the "TSB Releasors") each hereby releases and forever discharges each of WD, SanDisk, their respective Affiliates, and its and their respective successors, assignees, predecessors, officers, directors, shareholders, employees, representatives, attorneys and agents (the "WD Releasees"), from all Claims (i) relating to, arising out of, or in connection with the TMC Transfer, the TSB Transfer, the Auction, acts, omissions, attempts, or efforts to acquire any or all shares of or interest in TMC, the Access Restrictions, the Fab 6 Unilateral Investment or the TMC Sale, (ii) that were or could have been asserted in the Proceedings and/or (iii) that were asserted or threatened to be asserted in any of the correspondence in Schedule 2.1. TSB and TMC, in each case on behalf of itself and the other TSB Releasors, covenants not to (and to cause its respective Affiliates, and its and their respective successors, predecessors, assignees, officers, directors, shareholders (in their capacity as such), employees, representatives and agents, not to) sue or assert any Claims released in this Section 2.3 against the WD Releasees in any forum.

2.4 Concurrent Releases with Bain Capital. Concurrent with this Agreement, WD and SanDisk, in each case on behalf of itself and the other WD Releasors, shall each execute the Confidential Settlement and Mutual Release Agreement in the form set forth in Exhibit F (the "Bain Settlement Agreement") with Bain Capital Private Equity, L.P.; BCPE Pangea Cayman, L.P.; BCPE Pangea Cayman2, Ltd.; Bain Capital Fund XII, L.P.; Bain Capital Asia Fund III, L.P.; and Pangea (together, "Bain Capital"), the execution of which shall be a condition precedent to the effectiveness of this Agreement. Bain Capital shall be a third party beneficiary under this Section 2.4 and shall be entitled to enforce this Section 2.4 in its entirety in accordance with its terms.

2.5 Effect of Dismissals and Releases. The Parties intend that the withdrawals and dismissals contemplated by Section 1, together with the releases contemplated by Sections 2.1 and 2.3, will effect, without limitation, a dismissal and release with prejudice of all Proceedings (including counterclaims)

pending or threatened between any WD Releasor (as defined above) and any TSB Releasee (as defined above), or between any TSB Releasor (as defined above) and any WD Releasee (as defined above).

2.6 Waiver. Each of WD and SanDisk, on behalf of itself and the other WD Releasors, and each of TSB and TMC, on behalf of itself and the other TSB Releasors, hereby irrevocably and forever waives all rights it may have arising under California Civil Code Section 1542, or any analogous requirement of Law, with respect to the Proceedings and the releases set forth in Sections 2.1 and 2.3. In addition, each of WD and SanDisk, on behalf of itself and the other WD Releasors, and each of TSB and TMC, on behalf of itself and the other TSB Releasors, hereby confirm that they understand that Section 1542 provides that the releases contemplated by Sections 2.1 and 2.3 are intended to and do operate as full and final releases of all claims within the scope of the releases, including all unknown, unsuspected, or unanticipated claims, rights, demands, actions, obligations, liabilities, and causes of action of every kind and character, and specifically and expressly waives and releases all rights under the provisions of Section 1542 and any like or similar statute or common law doctrine in any jurisdiction. Each of WD and SanDisk, on behalf of itself and the other WD Releasors, and each of TSB and TMC, on behalf of itself and the other TSB Releasors, hereby confirms that it understands that Section 1542 provides that:

> "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

Each Party acknowledges that it has been fully informed by its counsel concerning the effect and import of this Agreement under California Civil Code Section 1542 and other analogous requirements of Law. Each Party acknowledges that the releases in Sections 2.1 and 2.3 are intended to include in their respective effects, without limitation, claims which they do not know of or suspect exist in their favor and that such releases extinguishes all claims within the scope of the releases. The Parties acknowledge that they are aware that they may hereafter discover facts in addition to or different from those which they now know or believe to be true with respect to the releases set forth in Sections 2.1 and 2.3, but that they intend to, and do hereby, fully, finally and forever settle, release and discharge all Proceedings, and all Claims within the scope of such releases, without regard to the subsequent discovery or existence of different or additional facts.

2.7 No Admission. This Agreement is entered into in order to compromise and settle disputed Claims, without any acquiescence, acknowledgement, or agreement by any Party as to the merit of any Claims or defenses. Neither this Agreement nor any part thereof shall be, or be used as, an admission by anyone, at any time, for any purpose. In addition, without limitation or modification of the provisions set forth in Sections 3.2(a) and 3.2(b) hereof, the inclusion in this Agreement of any consent or approval, or of any requirement to provide consent or approval, by any Party shall not be, or be used as, an admission by anyone that any such consent or approval is required under any Existing Agreement or otherwise.

2.8 Attorneys' Fees and Costs. Each Party shall be responsible for its own costs and attorneys' fees, if any, in connection with this Agreement, including, without limitation, in connection with preparing and filing the dismissals set forth in Section 1.

**3. Consents.**

3.1 WD and SanDisk Consents.

(a) Subject to Sections 3.2(a) and 3.2(b), WD and SanDisk each hereby irrevocably consents to, and shall cause its Subsidiaries to irrevocably consent to:

(i) the Transfer of TSB's JV Rights to TMC,

(ii) for the avoidance of doubt and without imposing or implying any additional obligations under any Existing Agreement or any Transaction Document, any future issuances of Equity Interests in TSB, TMC or Pangea or any entity Controlling TMC or Pangea, including in an initial public offering of TMC or Pangea or such Controlling entity on a Qualified Exchange, and any subsequent primary or secondary offering and secondary trading of such Equity Interests in TSB, TMC or Pangea or such Controlling entity,

(iii) any subsequent Change of Control of TMC or Pangea in accordance with Section 3.7, including for purposes of Sections 4.1(a)(ix) and 9.1(a) of each Operating Agreement and Section 5.1(b) of each Master Agreement,

(iv) any Transfer of Equity Interests in TMC or Pangea (or any entity Controlling TMC or Pangea) to any Person, including to members of the Bain Consortium, by TSB or any subsequent transferee of such Equity Interests,

(v) the TMC Sale,

(vi) the TMC Merger,

(vii) the assignment or Transfer to TMC by TSB (or any of its Affiliates) of the Existing Agreements,

(viii) the assignment or Transfer to TMC by TSB of any Intellectual Property owned by TSB (whether solely or jointly) pursuant to any Existing Agreement or the Undertaking and/or any rights and licenses under any Intellectual Property set forth in any Existing Agreement or the Undertaking,

(ix) notwithstanding anything in this Section 3.1 to the contrary, at any time other than the Lien Restricted Period (as defined below), the granting of any first priority Lien to a third party senior lender to secure indebtedness covering or securing (a) any assets of TSB (other than JV Shares), (b) any Equity Interests in or any assets of TMC or any of its Subsidiaries (other than JV Shares), regardless of whether TMC or such Subsidiaries owns any JV Shares or is a party to any Existing Agreement and (c) solely in connection with a pledge of a material portion of those assets of TMC and its Subsidiaries that are not Collaboration Assets, if any, the JV Shares; provided, that no such lender may enforce any Lien securing such indebtedness that would result in a direct or indirect Transfer of JV Shares unless, after giving effect to such enforcement action, a single Person, together with such Person's Subsidiaries, holds or owns all Collaboration Assets held or owned by TMC and its Subsidiaries, as of

immediately prior to such enforcement; provided further, that no such Lien may be granted on or with respect to JV Rights (other than the JV Shares (pursuant to this Section 3.1(a)(ix)) held by TMC or its Subsidiaries) or the assets, property or rights of the JVs, and

(x) during the period beginning on the Effective Date and ending on the earlier of (x) the termination of the SPA, (y) repayment or refinancing in full of all Pangea Financing Arrangements, and (z) the termination of all Pangea Financing Arrangements prior to any drawdown thereof (the "Lien Restricted Period"), the granting of any first priority Lien to a third party senior lender to secure indebtedness that is a Pangea Financing Arrangement covering or securing (a) any Equity Interests in or assets of Pangea, TMC or any of their respective Subsidiaries (in each case, other than the JV Shares), regardless of whether Pangea, TMC or any of their respective Subsidiaries owns any JV Shares or is a party to any Existing Agreement and (b) JV Shares held directly or indirectly by TMC or its Subsidiaries; provided, that, in connection with the TMC Sale, consent under this Section 3.1(a)(x)(b) shall not be deemed given unless and until Bain Capital provides WD with written notice that it is satisfied, in Bain Capital's sole discretion, with the terms of the senior financing being provided to finance the TMC Sale, and provided further, that no such Lien may be granted on or with respect to JV Rights (other than the JV Shares (pursuant to this Section 3.1(a)(x)) held by TMC or its Subsidiaries) or the assets, property or rights of the JVs. Bain Capital shall be a third party beneficiary under this Section 3.1(a)(x) and shall be entitled to enforce this Section 3.1(a)(x) in its entirety in accordance with its terms.

(b) For clarity, (i) subject to Sections 3.2(a) and 3.2(b), the consents set forth in Section 3.1(a) satisfy any requirement to obtain the consent of SanDisk or any of its Affiliates pursuant to any Existing Agreement with respect to the matters set forth in Section 3.1(a) and (ii) the consents set forth in Section 3.1(a), subject to Sections 3.2(a) and 3.2(b), with respect to a Transfer or issuance of Equity Interests in TMC, Pangea or any entity Controlling TMC or Pangea shall include consent with respect to any resulting indirect Transfer of TMC's JV Rights.

3.2 Transfer Restrictions. Notwithstanding anything to the contrary in Section 3.1(a), solely during the Initial Restricted Period and any Subsequent Restricted Period, but not during any other period:

(a) WD's separate prior written consent shall be required for each of the following unless and until there is a closing of a WD Competitor CoC:

(i) any issuance or granting by TMC, Pangea or an Investment Vehicle of Equity Interests in, or the power to direct the voting or Control of, TMC, Pangea or any of their respective Subsidiaries, in either case to a Competitor, other than (A) an issuance of passive Equity Interests (including limited partnership economic rights) in an Investment Vehicle, or Equity Interests in TMC or Pangea to [***] with the proceeds of any such issuance ultimately being used solely in the business or operations of TMC (following a bona fide good faith determination by the board of directors of Pangea that such issuance helps to satisfy TMC's liquidity needs and is otherwise in the best interests of TMC as compared to other sources of financing reasonably available to TMC or Pangea); provided, that, after giving effect to any such issuance, [***] does not (y) hold or own, directly or indirectly, (other than through a passive investment in an Investment Vehicle) Equity Interests in TMC or Pangea in excess of an

amount equal to [***] of, plus an amount equal to the [***] of, the total Equity Interests in TMC or Pangea on a fully diluted and as-converted basis or (z) hold or own, directly or indirectly, or have the right to acquire, any voting or Control rights in, TMC, Pangea or any of their respective Subsidiaries in excess of an amount equal to [***] of, plus an amount equal to the [***] of, the total voting rights in TMC or Pangea on an as-converted basis, (B) an issuance of Equity Interests in TMC, Pangea or any Investment Vehicle or any of their respective Subsidiaries to TSB or any of its wholly-owned Subsidiaries, in each case, acting solely for its own account and not on behalf of, or for the account of, any other Competitor, with the proceeds of any such issuance ultimately being used solely in the business or operations of TMC; provided that none of TSB nor its Affiliates has any agreement providing any Competitor with the right to vote or acquire such Equity Interests; provided, further that, after giving effect to any such issuance, TSB and its Affiliates collectively do not hold or own, or have the right to acquire, Equity Interests or voting rights in TMC or Pangea in an amount that would constitute, or result in, a Change of Control of TMC, Pangea or any of their respective Subsidiaries or (C) following the third (3rd) anniversary of the closing of the TMC Sale (in the case of the Initial Restricted Period) or a Subsequent Bain Transaction (in the case of a Subsequent Restricted Period), an issuance of Equity Interests in TMC or Pangea, to [***] or any of its Affiliates in amount up to [***], in the aggregate, of the total Equity Interests in TMC or Pangea on a fully diluted and as-converted basis solely in connection and simultaneous with a bona fide primary sale of Equity Interests in TMC or Pangea to multiple purchasers in addition to [***] or its Affiliates, with the proceeds of any such issuance ultimately being used solely in the business or operations of TMC (following a bona fide good faith determination by the board of directors of Pangea that such issuance helps to satisfy TMC's liquidity needs and is otherwise in the best interests of TMC as compared to other sources of financing reasonably available to TMC or Pangea);

(ii) any repurchase of direct or indirect Equity Interests by TMC or Pangea, or any recapitalization or similar transaction involving a member of the TMC Group, to the extent that any such repurchase, recapitalization or similar transaction, together with all previous repurchases, recapitalizations, or similar transactions, would result in [***] (y) holding or owning, directly or indirectly, (other than through a passive investment in an Investment Vehicle) Equity Interests in TMC, Pangea or any of their respective Subsidiaries, other than Equity Interests in TMC or Pangea not in excess of an amount equal to [***] of, plus an amount equal to the [***] of, the total Equity Interests in TMC or Pangea on a fully diluted and as-converted basis or (z) holding or owning, directly or indirectly, or having the right to acquire, any voting rights in TMC or any of its Subsidiaries, other than voting rights in TMC or Pangea not in excess of an amount equal to [***] of, plus an amount equal to the [***] of, the total voting rights in TMC or Pangea on an as-converted basis, in each case, unless [***] holds or owns, directly or indirectly, or has the right to acquire, voting rights or Equity Interests in TMC or Pangea in an amount in excess of such threshold at the time of the repurchase, recapitalization or similar transaction, in which case such transaction shall not be permitted unless it does not result in any increase in the percentage of voting rights or Equity Interests of [***] and its Affiliates collectively in TMC or Pangea, as applicable; or

(iii) any Transfer by TSB, Bain Capital or any of their respective Affiliates, or any consent by TSB, Bain Capital or any of their respective Affiliates, to the Transfer (whether by amendment, waiver, consent, modification or other action, with respect to or under the Pangea

Shareholders Agreement (or any shareholder agreement in respect of a Subsequent Bain Transaction), the governance documents of any Bain Capital entity, or otherwise), by any other Person of, any Equity Interests or voting rights in TMC, Pangea or any of their respective Subsidiaries to a Competitor, other than (A) a Transfer by Bain Capital of Equity Interests or voting rights in Pangea or TMC to [***] only to the extent such Transfer is made simultaneously with (1) a bona fide primary sale of securities by TMC or Pangea to [***] permitted under Section 3.2(a)(i), as determined by the board of directors of Pangea in good faith, or (2) the initial public offering of TMC, Pangea or any entity Controlling TMC or Pangea; provided that (y) in no event may Bain Capital Transfer to [***] pursuant to this Section 3.2(a)(iii) Equity Interests or voting rights that exceed [***] of the Equity Interests or voting rights in TMC or Pangea, as applicable, in the aggregate (taken together with all Transfers by Bain Capital to [***]); and (z) after giving effect to any such primary sale and Transfer, [***] does not (1) hold or own, directly or indirectly, (other than through a passive investment in an Investment Vehicle) Equity Interests in TMC or Pangea in excess of an amount equal to [***] (in the case of a Transfer to [***] pursuant to Section 3.2(a)(iii)(A)(1)) of, and [***] (in the case of a Transfer to [***] pursuant to Section 3.2(a)(iii)(A)(2)) of, in either case, plus an amount equal to the [***] of, the total Equity Interests in TMC or Pangea on a fully diluted and as-converted basis or (2) hold or own, directly or indirectly, or have the right to acquire, any voting or Control rights in TMC or any of its Subsidiaries in excess of an amount equal to [***] of, plus an amount equal to the [***] of, the total voting rights in TMC or Pangea on an as-converted basis; and (B) following the third (3rd) anniversary of the closing of the TMC Sale (in the case of the Initial Restricted Period) or a Subsequent Bain Transaction (in the case of the Subsequent Restricted Period), a Transfer of Equity Interests or voting rights in Pangea, TMC, or any entity Controlling TMC or Pangea by Bain Capital to [***] or any of its Affiliates in an amount up to the [***], in the aggregate, of the total Equity Interests in TMC or Pangea on a fully diluted and as converted basis; or

(iv) a transaction constituting a Change of Control of TMC, Pangea or any of their respective Subsidiaries that results in Control of TMC, Pangea or any of their Subsidiaries by a Competitor.

(b) (i) Notwithstanding anything herein to the contrary, in no event shall the Parties permit (A) any of [***], [***] or [***] to own or hold, or have the right to acquire, any Equity Interests or voting rights in TMC if any of [***], [***] or [***] own or hold, or have the right to acquire, any Equity Interests or voting rights in Pangea and (B) any of [***], [***] or [***] be permitted to own or hold, or have the right to acquire, any Equity Interests or voting rights in Pangea if any of [***], [***] or [***] own or hold, or have the right to acquire, any Equity Interests or voting rights in TMC.

(ii) As a condition to any Transfer or issuance of Equity Interests or voting rights in TMC, Pangea or an Investment Vehicle, the transferor (or issuer) shall, and TMC shall cause any Subsidiary that is a transferor or issuer to, cause any Transferee to enter into an agreement with TMC or Pangea, as applicable, that requires such Transferee, subject to the other provisions of Section 3.1, to comply with the restrictions on Transfer set forth herein, and other provisions provided in Sections 3.2(a) and 3.2(b) (the "Transfer Restrictions"), which agreement shall provide that WD and SanDisk are intended third-party beneficiaries of the Transferee's obligation to abide by the Transfer Restrictions with direct rights of enforcement against such Transferee, provided that after the Transferee enters into an agreement with TMC to accede to the Transfer Restrictions, the transferring shareholder will not have any

obligation or liability relating to, arising out of, or in connection with a Transferee's failure to comply with the Transfer Restrictions and TMC or Pangea, as applicable, shall provide WD a copy of such agreement upon execution thereof.

(c) For purposes of Section 3.2, any reference to a "Subsidiary" shall only include a Subsidiary that, directly or indirectly, holds, owns or Controls JV Rights.

(d) Upon the consummation of an initial public offering of TMC or Pangea or any entity Controlling TMC or Pangea or, if required by the applicable Qualified Exchange, not more than thirty (30) days prior to the anticipated consummation of such initial public offering on a Qualified Exchange, the Parties agree that the terms of this Section 3.2 will be deemed amended to the limited extent necessary for the issuer to comply with the listing requirements imposed by such Qualified Exchange on such issuer and in a manner that preserves the Transfer Restrictions hereunder to the maximum extent permissible; provided, that if an initial public offering is not consummated within forty five (45) days following the date on which the Transfer Restrictions were deemed modified, the Transfer Restrictions shall be deemed reinstated retroactively to the date of such deemed modification.

(e) Notwithstanding anything to the contrary set forth in this Agreement, the restrictions set forth in this Section 3.2 shall have no force or effect following the termination of the SPA; provided, however, that if a Subsequent Bain Transaction is consummated, the restrictions set forth in this Section 3.2 shall apply during the Subsequent Restricted Period applicable to such Subsequent Bain Transaction.

3.3 TSB and TMC Consents. TSB and TMC each hereby irrevocably consents to, and shall cause its Subsidiaries to irrevocably consent to:

(a) the granting of any first priority Lien to a third party senior lender to secure indebtedness covering or securing (i) any assets of WD (other than the JV Shares), (ii) any Equity Interests in or any assets of any of its Subsidiaries (other than the JV Shares), regardless of whether WD or such Subsidiaries owns any JV Shares or is a party to any Existing Agreement and (iii) solely in connection with a pledge of a material portion of those assets of WD and its Subsidiaries that are not Collaboration Assets, if any, the JV Shares; provided, that no such lender may enforce any Lien securing such indebtedness that would result in a direct or indirect Transfer of JV Shares unless, after giving effect to such enforcement action, a single Person, together with such Person's Subsidiaries, holds or owns all Collaboration Assets held or owned by WD and its Subsidiaries, as of immediately prior to such enforcement; provided further, that no such Lien may be granted on or with respect to JV Rights (other than the JV Shares (pursuant to this Section 3.3(a)) held by WD or its Subsidiaries) or the assets, property or rights of the JVs; and

(b) for the avoidance of doubt and without imposing or implying any additional obligations under any Existing Agreement or any Transaction Document, any issuance of Equity Interests in WD or an entity Controlling WD and any primary or secondary offering or trading of such Equity Interests.

3.4 Immediate Effectiveness. Concurrent with the execution of this Agreement, the applicable Parties will execute or cause to be executed the Y6 Facility Agreement in the form of Exhibit G (the "Y6 Facility Agreement"), the FAL Commitment and Extension Agreement in the form of Exhibit H (the "FAL

Extension"), the FFL Commitment and Extension Agreement in the form ofExhibit I (the "FFL Extension"), the Amendment to FPL Commitment and Extension Agreement in the form of Exhibit J (the "FPL Extension Amendment"), the Parent Guarantee and Undertaking as to Collaboration in the form of Exhibit K (the "Undertaking"), the Termination Agreement in the form ofExhibit L (the "Termination Agreement"), the Patent Cross License Agreement between WD and TMC in the form of Exhibit M ("[***]"), the Patent Cross License Agreement between WD and TSB in the form ofExhibit N ("[***]"), the Amended and Restated Joint Memory Development Yokkaichi Agreement in the form of Exhibit O (the "Amended JMDY Agreement") and the Y6 Mutual Contribution and Environmental Indemnification Agreement in the form of Exhibit P (the "Y6 MCEIA", and together with the Y6 Facility Agreement, the FAL Extension, the FFL Extension, the FPL Extension Amendment, the Undertaking, the Termination Agreement, [***] and the Amended JMDY Agreement, the "Transaction Documents"), and the Transaction Documents shall each become effective immediately upon such execution.

3.5 Termination of FFL Transition Agreement. The Transition Agreement, by and among TMC, on one side, and SanDisk Flash and SanDisk LLC, on the other side, dated as of July 13, 2010, is hereby terminated in its entirety without any liability, obligation, cost or expense owing to either party and shall be of no further force or effect.

3.6 Effect of Transfer. Except as otherwise set forth in this Agreement, the conditions for Transfer, admission and/or withdrawal, to the extent applicable, set out in any Existing Agreement, including for the avoidance of doubt, Article 9 and Section 4.1(a)(ix) of the applicable JV's Operating Agreement and Section 5.1(b) of the applicable JV's Master Agreement, shall continue to apply.

3.7 Change of Control.

(a) The Parties acknowledge and agree, that notwithstanding anything to the contrary in this Agreement or the Existing Agreements, from and after the date hereof, for purposes of Sections 4.1(a)(ix) and 9.1(a) of each Operating Agreement and Section 5.1(b) of each Master Agreement, a "Change of Control" for which consent is not required shall be deemed to refer only to a Change of Control of any Memory Business Owner.

(b) WD and each of its Subsidiaries may Transfer without consent any Collaboration Assets or Collaboration Liabilities of WD or any of its Subsidiaries (other than [***] and the Undertaking) to WD or one or more of WD's wholly-owned Subsidiaries; provided, that WD shall provide TMC with reasonable prior notice of any such Transfer by WD or any such Subsidiaries.

(c) TMC and each of their respective Subsidiaries may Transfer without consent any Collaboration Assets or Collaboration Liabilities of TMC or any of its Subsidiaries (other than [***]) to TMC or one or more of TMC's wholly-owned Subsidiaries; provided, that TMC shall provide WD with reasonable prior notice of any such Transfer by TMC or any such Subsidiaries.

(d) A Memory Business Owner and each of its Subsidiaries may Transfer without consent any Collaboration Assets or Collaboration Liabilities of such Memory Business Owner or any of its Subsidiaries (other than [***]) to such Memory Business Owner or one or more of such Memory Business Owner's wholly-owned Subsidiaries; provided, that such Memory Business Owner shall provide the other

Memory Business Owner with reasonable prior notice of any such Transfer by such Memory Business Owner or any such Subsidiaries.

(e) Subject to Sections 3.1 and 3.3, notwithstanding anything in this Agreement or any Collaboration Agreement to the contrary:

(i) no Collaboration Assets of any Person or its Affiliates may be sold, disposed of or otherwise transferred, by any means, to any unaffiliated third party, unless all Collaboration Assets (which need not include [***] and the Undertaking, but subject to Section 3.7(f) with respect to [***]) of such Person and its Affiliates are sold, disposed of or otherwise transferred to a Person pursuant to a Change of Control permitted by Section 3.7(a); provided, that the foregoing shall not limit any Person's right to sell, dispose of or otherwise transfer any assets (other than its JV Rights and Collaboration Agreements), in the ordinary course of business consistent with past practice, so long as such Person and its Affiliates remain able to satisfy and discharge such Person's and its Affiliates' Collaboration Liabilities;

(ii) a Person that acquires Control of a Memory Business Owner (a "Memory Business Acquiror") shall not itself have any rights or obligations under any Collaboration Agreement to which such Memory Business Owner or any of its Subsidiaries is a party unless (A) such Memory Business Owner is a wholly-owned Subsidiary of such Memory Business Acquiror, (B) such Memory Business Acquiror has agreed in writing to be bound to the terms of *both* (1) this Section 3.7 for the benefit of all counterparties to such Collaboration Agreements and (2) Sections 2.2 and 3.6 of the Undertaking for the benefit of all counterparties to the Undertaking (notwithstanding any termination of the Undertaking due to such acquisition of Control, for the period during which such Sections shall remain in effect in accordance with the term thereof, notwithstanding such termination), *and* (C) either (1) such Collaboration Agreement is assigned to and assumed by such Memory Business Acquiror in accordance with such Collaboration Agreement's terms or as otherwise agreed by the counterparty(ies) to such Collaboration Agreement or (2) such Memory Business Acquiror has agreed with the counterparty(ies) to such Collaboration Agreement to an undertaking or other arrangement governing such Memory Business Acquiror's participation in such Collaboration Agreement; and

(iii) no Person shall be required to give notice hereunder in connection with the transfer or termination of any employee of such Person.

(f) [***] shall be assigned to a Memory Business Owner upon and effective as of the closing of a Change of Control of such Memory Business Owner in accordance with Section 3.7(a).

(g) From and after the Effective Date, TSB will not Transfer any of its Collaboration Assets except: (i) for the actions described in Section 4.1, (ii) for direct Transfers of its Collaboration Assets as permitted by Sections 3.1(a)(i), 3.1(a)(vii), or 3.1(a)(viii), (iii) for indirect Transfers of its Collaboration Assets as permitted by Sections 3.1(a)(ii), 3.1(a)(iii), 3.1(a)(iv), or 3.1(a)(v) (to the extent TMC is a Memory Business Owner in the case of Section 3.1(a)(v)), (iv) for the granting of any Lien by TSB as permitted by Sections 3.1(a)(ix) or 3.1(a)(x), (v) as permitted by Section 3.7, and (vi) for any Transfer of assets (other than JV Rights and Collaboration Agreements) made in the ordinary course of business, consistent with past practice.

(h) TMC represents and warrants to WD that, as of the completion of the actions described in Section 4.1 hereof, and as of immediately following the closing of the TMC Sale, TMC, or a wholly-owned Subsidiary of TMC, will (i) hold or own all Collaboration Assets that, prior to the completion of such actions, or, immediately prior to the closing of the TMC Sale, were held or owned by TSB and its Affiliates and (ii) be a Memory Business Owner.

(i) The Parties agree that, other than as expressly set forth in subsections (b), (c) and (d) of this Section 3.7, nothing in subsections (b), (c) and (d) of this Section 3.7 shall eliminate, alter or limit in any way (i) the Transfer Restrictions or (ii) any of the obligations under the Existing Agreements or Transaction Documents to obtain consent prior to making any Transfers.

(j) For purposes of clarity and the avoidance of doubt, and without limiting any portion of the other subsections of this Section 3.7, the Parties hereby agree (i) that each party to the Master Agreement of a JV, the Operating Agreement of a JV, the New Y2 Facility Agreement and the Y6 Facility Agreement, must at all times be an Affiliate of a party or parties that owns Equity Interests of each JV; and (ii) no JV Shares of a JV may be owned by any party that is not a party to the Operating Agreement and Master Agreement pertaining to such JV; provided, that (x) each party to any Operating Agreement may assign such Operating Agreement to a wholly-owned Subsidiary of a Memory Business Owner that Controls such party so long as such party also assigns all its JV Shares in the applicable JV to such wholly-owned Subsidiary and (y) in connection with the actions permitted by this Section 3.7, upon the request of any party to any Master Agreement, the other party(ies) to such Master Agreement shall consent to the joinder as a party to such Master Agreement (with all the same rights and obligations of the requesting party) of a wholly-owned Subsidiary of such requesting party to which such requesting party assigns its JV Shares in the JV to which such Master Agreement pertains; and provided, further, that giving effect to the foregoing assignments and joinders, neither Memory Business Owner shall have more than two parties to any given Master Agreement (whether as a party itself or through its Subsidiary).

**4. Further Assurances.**

4.1 JV Share Transfers.

(a) TSB and TMC covenant to WD and SanDisk that, within thirty (30) days after the Effective Date, TSB will have completed the (i) transfer to TMC of all of TSB's right, title and interest in, to and under the JV Shares and (ii) assignment of all of TSB's right, title and interest in, to and under the Existing Agreements to TMC and the assumption by TMC of all of TSB's obligations and liabilities under the Existing Agreements.

(b) Each of TSB, TMC, WD and SanDisk shall, and shall cause its Subsidiaries and the JVs to, cooperate with each Party (and its Subsidiaries and the JVs), take such further actions, execute, deliver and file or cause to be executed, delivered and filed such further documents and instruments, and obtain such further approvals and grant or obtain such further consents, as may be reasonably required or requested by any Party, whether pursuant to the Existing Agreements, the JV Articles of Incorporation, or applicable Law, to effectuate any matter within the scope and to the extent of the consents set forth in Section 3, including the transfer of TSB's JV Rights to TMC.

4.2 Acknowledgement. Notwithstanding anything to the contrary in any Collaboration Agreement (including Section 9.1(a) of each Operating Agreement), except to the extent such Collaboration Agreement by express reference to this Section 4.2 expressly provides otherwise, but subject to the terms of the Undertaking, the Parties acknowledge and agree that:

(a) once TMC is no longer a Subsidiary of TSB, TSB and its Subsidiaries (other than TMC and its Subsidiaries) shall no longer be responsible for any obligations under any Collaboration Agreement to which TMC (or a directly or indirectly wholly owned Subsidiary of TMC) is a party; provided, however: (i) the foregoing shall not relieve TSB and its Subsidiaries from any liability for any breach of any agreement prior to the time at which TMC ceases to be a Subsidiary of TSB and (ii) TSB and its Subsidiaries shall remain bound by any obligations of TMC or any of its Subsidiaries under the Collaboration Agreements to protect and maintain the confidentiality of confidential information;

(b) once a WD Memory Business Owner is no longer a Subsidiary of WD as a result of a Change of Control permitted under Section 3.7(a), WD and its Subsidiaries (other than such WD Memory Business Owner and its Subsidiaries) shall no longer be responsible for any obligations under any Collaboration Agreement which such WD Memory Business Owner (or a directly or indirectly wholly owned Subsidiary of such WD Memory Business Owner) is a party; provided, however: (i) the foregoing shall not relieve WD and its Subsidiaries from any liability for any breach of any agreement prior to such Change of Control and (ii) WD and its Subsidiaries shall remain bound by any obligations of such WD Memory Business Owner or any of its Subsidiaries under the Collaboration Agreements to protect and maintain the confidentiality of confidential information;

(c) once a TMC Memory Business Owner is no longer a Subsidiary of TMC as a result of a Change of Control permitted under Section 3.7(a), TMC and its Subsidiaries (other than such Memory Business Owner and its Subsidiaries) shall no longer be responsible for any obligations under any Collaboration Agreement to which such TMC Memory Business Owner (or a directly or indirectly wholly owned Subsidiary of such TMC Memory Business Owner) is a party; provided, however: (i) the foregoing shall not relieve TMC and its Subsidiaries from any liability for any breach of any agreement prior to such Change of Control and (ii) TMC and its Subsidiaries shall remain bound by any obligations of such TMC Memory Business Owner or any of its Subsidiaries under the Collaboration Agreements to protect and maintain the confidentiality of confidential information; and

(d) once a Memory Business Owner is no longer a Subsidiary of a Person that, immediately prior to a Change of Control permitted under Section 3.7(a), Controlled such Memory Business Owner, such previously Controlling Person and its Subsidiaries (other than such Memory Business Owner and its Subsidiaries) shall no longer be responsible for any obligations under any Collaboration Agreement to which such Memory Business Owner (or a directly or indirectly wholly-owned Subsidiary of such Memory Business Owner) is a party; provided, however: (i) the foregoing shall not relieve any such previously Controlling Person and its Subsidiaries from any liability for any breach of any agreement occurring prior to such Change of Control and (ii) such previously Controlling Person and its Subsidiaries will remain bound by any obligations of such Memory Business Owner or any of its Subsidiaries under the Collaboration Agreements to protect and maintain the confidentiality of confidential information.

**5. End of Access Restrictions.** Commencing on the execution of the Undertaking, TSB and TMC shall cease the Access Restrictions. TSB and TMC each hereby acknowledges that upon the execution of the Undertaking, Section 1.8 of the Undertaking shall apply with respect to access by WD and its Subsidiaries (and its and their employees) to certain facilities, databases and information to which TMC restricted access by implementing the Access Restrictions. TSB and TMC each agrees to abide by Section 1.8 of the Undertaking from the execution of the Undertaking.

**6. Representations and Warranties.** Each Party represents and warrants to the other Parties that, as of the Effective Date:

6.1 Organization and Standing. It is duly organized and validly existing and in good standing under the Laws of the jurisdiction in which it is organized.

6.2 Authority; Enforceability. It has the requisite power and authority to enter into this Agreement and to perform its obligations hereunder. All proceedings required to be taken by it to authorize the execution, delivery and performance of this Agreement have been properly taken. This Agreement has been duly and validly executed and delivered by it and constitutes a valid and binding obligation of it, enforceable against it in accordance with its terms except as enforceability may be limited by bankruptcy, insolvency, fraudulent conveyance or similar laws affecting the enforcement of creditors' rights generally or the availability of equitable remedies (regardless of whether enforceability is considered in a proceeding at law or in equity).

6.3 No Conflict. The execution, delivery and performance of this Agreement by it do not and will not (a) breach, violate or conflict with any provision of its charter documents as amended to date or (b) conflict with or violate any Law applicable to it.

6.4 No Assigned Claims. It has not assigned to any third party any Claim that is otherwise within the scope of the release it is giving under this Agreement.

**7. Confidentiality.**

7.1 Confidentiality of Agreement. No Party shall, or shall permit any of its Affiliates to, without the prior written consent of the other Parties, issue any public statement, release, announcement or other document, or otherwise publicly disclose or file, all or any part of this Agreement or any description or terms or conditions hereof, except as may be required by applicable Law, including as required to be disclosed by applicable securities or other Laws, provided, that notwithstanding anything herein to the contrary, the Party required to make a disclosure shall, prior to any such disclosure required by the U.S. Securities and Exchange Commission or the Financial Services Authority of Japan, provide the other Parties with notice which includes a copy of the proposed disclosure and consider in good faith such other Parties' timely input with respect to such disclosure, and, in the case of disclosures or filings required pursuant to Laws other than the Laws and regulations of the U.S. Securities and Exchange Commission or Financial Services Authority of Japan, the Party required to make the applicable disclosure or filing shall cooperate with the other Parties, to the fullest extent practicable under applicable Law, in obtaining any confidential treatment for such disclosure or filing requested by the other Parties prior to making such disclosure or filing, to the extent practicable. Each Party shall use its commercially reasonable efforts to

grant or deny any consent required under this Section 7 with respect to the Laws, other than the Laws and regulations of the U.S. Securities and Exchange Commission and the Financial Services Authority of Japan, within five (5) Business Days of receipt of written request by any other Party; provided, however, that a Party's failure to respond within said time period shall not be deemed to constitute such Party's consent.

7.2 Public Announcements. Subject to Section 7.1, the contents and timing of the initial public announcement regarding this Agreement and/or the subject matter hereof shall be mutually agreed between the Parties prior to the public release of such announcement, and any further public announcements, by or on behalf of a Party shall not be inconsistent with public announcements previously agreed upon by the Parties; provided, however, notwithstanding the foregoing, each Party will be allowed to respond publicly to third party inquiries regarding this Agreement and the subject matter hereof in a manner consistent with any public filings pursuant to Section 7.1 made by such Party. Nothing in this Section 7.2 shall be construed as restricting any Party's confidential communications with third parties (including Governmental Authorities or regulators), and in no event shall any Party have any liability or obligation to any other Party with respect thereto.

**8. Additional Commitments and Representations.**

8.1 Disclosure of [***] and [***] Arrangements. Except for true, correct and complete copies of contracts disclosed to WD prior to the date hereof, there are no other contracts, whether written or oral, in effect or contemplated, as of the date hereof, to be in effect between TSB, TMC, or any of their Affiliates as of the date hereof, on the one hand and [***] or [***] on the other hand, relating to the ownership, voting, Transfer or Control of Equity Interests in any member of the TMC Group.

8.2 Pangea Shareholders Agreement. TSB has disclosed to WD a true, correct and complete copy of the term sheet for the Pangea Shareholders Agreement. From the closing of the TMC Sale or Subsequent Bain Transaction until the earlier of (a) [***] following the closing of the TMC Sale or Subsequent Bain Transaction and (b) an initial public offering of TMC or Pangea or any entity Controlling TMC or Pangea, TSB shall cause a shareholders' agreement to be executed by all holders of Equity Interests in TMC or a Person of whom TMC is a wholly-owned Subsidiary which shall be effective as of the closing of the TMC Sale or a Subsequent Bain Transaction, and which shall contain a prohibition on Transfer of Equity Interests in TMC or a Person of whom TMC is a wholly-owned Subsidiary by any holder thereof, which prohibition shall require the approval of both of TSB (for so long as TSB holds at least [***] of the Equity Interests or voting rights in Pangea) and Bain Capital to amend, waive, modify, or grant any consent with respect thereto.

8.3 [***]

**9. Term and Termination.**

9.1 Term. This Agreement shall be effective as of the Effective Date and shall remain in full force and effect until terminated by written agreement of all of the Parties.

9.2 Survival. Sections 1, 2, 3, 4, 7, 9.2, 10 shall survive any expiration or termination of this Agreement.

**10. Miscellaneous.**

10.1 Entire Agreement. This Agreement, together with the exhibit(s) and schedules hereto, constitute the entire agreement of the Parties to this Agreement with respect to the subject matter hereof and supersedes all prior written and oral agreements and understandings with respect to such subject matter.

10.2 Undertaking as to Affiliate Obligations. Each Party shall cause all covenants, conditions and agreements that are required to be performed, observed or satisfied by any of its Affiliates under this Agreement to be fully and faithfully observed, performed and satisfied by such Affiliate, and shall not cause or permit to exist any breach or default of such covenants, conditions or agreements arising from such Affiliate's action or inaction. Nothing expressed or implied in this Agreement shall be construed to create any right in any Person other than the Parties; provided, that (a) Bain Capital shall be a third party beneficiary under Sections 2.4 and 3.1(a)(x) and shall be entitled to rely upon and enforce such sections of this Agreement, but no other sections of this Agreement and (b) any Bain Consortium Member, Auction Participant or bank or other financial institution referenced in Section 2.2 shall be a third party beneficiary under Section 2.2 and shall be entitled to rely upon and enforce such section of this Agreement, but no other sections of this Agreement.

10.3 Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of California applicable to agreements made and to be performed entirely within such state without regard to the conflict of laws principles of such state, except where the application of Japanese law is mandatory.

10.4 Dispute Resolution; Arbitration. Any dispute concerning this Agreement shall be settled by confidential, binding arbitration in San Francisco, California. The dispute shall be heard by a panel of three arbitrators pursuant to the rules of the International Chamber of Commerce. Such arbitration shall be conducted in English. The awards of such arbitration shall be final and binding upon the parties thereto. Each Party will bear its own fees and expenses associated with the arbitration. Filing fees and arbitrator fees charged by the International Chamber of Commerce shall be borne equally by the claimant(s), on one hand, and the respondent(s), on the other hand, to such arbitration.

10.5 Equitable Relief. Equitable relief, including the remedies of specific performance and injunction, shall be available with respect to any actual or attempted breach or violation of, or failure to obtain consent when required under, this Agreement; provided, however, in the absence of exigent circumstances, the Parties shall refrain from commencing any lawsuit or seeking judicial relief in connection with such actual or attempted breach and resolve the subject dispute in accordance with the procedures set forth in Section 10.4.

10.6 Special Damages. IN THE ABSENCE OF ACTUAL FRAUD, IN NO EVENT SHALL ANY PARTY BE LIABLE TO OR BE REQUIRED TO INDEMNIFY ANY OTHER PARTY OR ANY OF THEIR RESPECTIVE AFFILIATES UNDER THIS AGREEMENT (OR ANY AGREEMENT INTO WHICH THIS PROVISION IS INCORPORATED) FOR ANY SPECIAL, CONSEQUENTIAL,

INCIDENTAL OR INDIRECT DAMAGE OF ANY KIND, (INCLUDING WITHOUT LIMITATION LOSS OF PROFIT OR DATA), WHETHER OR NOT ADVISED OF THE POSSIBILITY OF SUCH LOSS.

10.7 Relationship of the Parties. The Parties are independent contractors and no provision of or action pursuant to this Agreement shall constitute any Party acting as the direct or indirect agent or partner of any other Party for any purpose or in any sense whatsoever. Nothing contained in this Agreement is intended to, or shall be deemed to, create a partnership or fiduciary relationship between or among the Parties. No Party shall take a position contrary to this Section 10.7.

10.8 Official Language. The official language of this Agreement is the English language only, which language shall be controlling in all respects, and all versions of this Agreement in any other language shall not be binding on the Parties nor shall such other versions be admissible in any legal proceeding, including arbitration, brought under this Agreement. All communications and notices to be made or given pursuant to this Agreement shall be in the English language.

10.9 Interpretation.

(a) Treatment of Ambiguities. The Parties acknowledge that each Party has participated in the drafting of this Agreement, and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in the construction or interpretation of this Agreement.

(b) References; Construction. Unless otherwise indicated herein, with respect to any reference made in this Agreement to a Section, Exhibit or Schedule, such reference shall be to a section of, or an exhibit or a schedule to, this Agreement. The section headings contained in this Agreement and the recitals at the beginning of this Agreement are for reference purposes only and shall not, other than to define the capitalized terms defined therein, affect in any way the meaning or interpretation of this Agreement or any other agreement. The words “include,” “includes” and “including,” when used in this Agreement, shall be deemed to be followed by the phrase “without limitation.” The words “herein,” “hereof,” “hereunder” and words of like import shall refer to this Agreement as a whole (including its exhibits and schedules), unless the context clearly indicates to the contrary. Any reference made in this Agreement to any Existing Agreement shall be deemed, unless the context clearly indicates to the contrary, to refer to such Existing Agreement as such Existing Agreement may be amended or supplemented from time to time. As referred to herein, all references to “Pangea” or “TMC” shall be deemed to include the surviving entity in the TMC Merger.

(c) Order of Precedence. To the extent that a provision in this Agreement expressly conflicts with an Existing Agreement, then the provisions of this Agreement will control as to such conflict; provided, however, that unless otherwise provided herein, the provisions of the Existing Agreement remain in effect.

10.10 Notices and Contact Information. All notices and other communications to be given or made under this Agreement shall be in writing and shall be deemed received (a) if delivered by hand, courier or overnight delivery service, when delivered, (b) if delivered by email, the earlier of (i) when the recipient,

by an email sent to the email address for the sending party stated in this Section 10.10 or by a notice delivered by another method in accordance with this Section 10.10, acknowledges having received that email (provided, however, than an automatic "read receipt" will not constitute acknowledgement of an email for purposes of this Section 10.10(b)(i)) or (ii) when the email is delivered, if followed within two Business Days by delivery of a copy by hand, courier or overnight delivery service, or (c) five days after being mailed by certified or registered mail, return receipt requested, with appropriate postage prepaid and shall be directed to the address of such Party specified below (or at such other address as such Party shall designate by like notice):

(a) If to TSB:

Toshiba Corporation
1-1 Shibaura 1-chome
Minato-ku, Tokyo 105-8001
Telephone: [***]
Email: [***]
Attention: General Manager, Strategic Planning Div.

With a copy to:

Toshiba Corporation
1-1 Shibaura 1-chome
Minato-ku, Tokyo 105-8001 Japan
Telephone: [***]
Email: [***]
Attention: Group Manager, Group Relations Group
Group Manager, Corporate Development Group
General Manager, Legal Affairs Division

(b) If to TMC:

Toshiba Memory Corporation
1-1 Shibaura 1-chome
Minato-ku, Tokyo 105-0023 Japan
Telephone: [***]
Email: [***]
Attention: Executive Vice President, Chief Operating Officer

With a copy to:

Toshiba Memory Corporation
1-1 Shibaura 1-chome
Minato-ku, Tokyo 105-0023 Japan
Telephone: [***]
Email: [***]
Attention: General Manager, Legal Affairs Division

(c) If to WD:

Western Digital Corporation
5601 Great Oaks Parkway
San Jose, CA 95119
Telephone: (408) 717-6000
E-mail: [***]
Attention: Chief Legal Officer

(d) If to SanDisk:

SanDisk LLC
c/o Western Digital Corporation
5601 Great Oaks Parkway
San Jose, CA 95119
Telephone: (408) 717-6000
E-mail: [***]
Attention: Chief Legal Officer

10.11 Assignment. Except as expressly provided herein, no Party may Transfer this Agreement or any of its rights or obligations hereunder without the prior written consent of each of TSB, TMC, WD, and each of their respective successors (which consent may be withheld by such Party in such Party's sole discretion), and any such purported transfer without such consent will be void.

10.12 Amendment and Waiver. This Agreement may not be amended, modified or supplemented except by a written instrument executed by each Party. No waiver of any provision of this Agreement shall be effective unless set forth in a written instrument signed by the Party waiving such provision. No failure or delay by a Party in exercising any right, power or remedy under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of the same preclude any further exercise thereof or the exercise of any other right, power or remedy. Without limiting the foregoing, no waiver by a Party of any breach by any other Party of any provision hereof shall be deemed to be a waiver of any subsequent breach of that or any other provision hereof.

10.13 Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and permitted assignees.

10.14 Severability. If a provision of this Agreement or the application of any such provision is or becomes illegal, invalid or unenforceable in any respect under any jurisdiction, that will not affect (a) the legality, validity or enforceability in that jurisdiction of any other provision of this Agreement or (b) the legality, validity or enforceability in any other jurisdictions of that or any other provision of this Agreement. To the extent permitted by applicable Law, the Parties waive any provision of Law that renders any provision of this Agreement invalid, illegal or unenforceable in any respect. Such provision shall be replaced by a mutually acceptable provision, which being valid, legal and enforceable comes closest to the intention of the Parties underlying such illegal, invalid or unenforceable provision.

10.15 Counterparts; Effectiveness. This Agreement may be executed in counterparts, each of which shall be binding as of the date first written above, and all of which shall constitute one and the same

instrument. Each such counterpart shall be deemed an original, and it shall not be necessary in making proof of this Agreement to produce or account for more than one of each such counterpart. The exchange of copies of this Agreement and of signature pages by portable document format (.pdf) or other electronic format shall be deemed to be their original signatures for all purposes. This Agreement shall not become effective until one or more counterparts have been executed by each Party and delivered to the other Party.

*[Remainder of Page Left Blank Intentionally]*

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective duly authorized representatives as of the date first written above.

**TOSHIBA CORPORATION**

By: /s/ Satoshi Tsunakawa
Name: Satoshi Tsunakawa
Title: Representative Executive Officer
President and Chief Executive Officer

**TOSHIBA MEMORY CORPORATION**

By: /s/ Yasuo Naruke
Name: Yasuo Naruke
Title: President and Chief Executive Officer

**WESTERN DIGITAL CORPORATION**

By: /s/ Michael C. Ray
Name: Michael C. Ray
Title: Executive Vice President, Chief Legal Officer and Secretary

**SANDISK LLC**

By: /s/ Michael C. Ray
Name: Michael C. Ray
Title: Sole Manager

**SANDISK (CAYMAN) LIMITED**

By: /s/ Michael C. Ray
Name: Michael C. Ray
Title: Director

**SANDISK (IRELAND) LIMITED**

By: /s/ Michael C. Ray
Name: Michael C. Ray
Title: Director

**SANDISK FLASH B.V.**

By: /s/ Michael C. Ray
Name: Michael C. Ray
Title: Director

**Exhibit A**
**Certain Definitions**

Any capitalized term used, but not defined, in this Agreement shall have the meaning ascribed to such term in the New Y2 Facility Agreement (as defined below). As used in this Agreement:

"Affiliates" means, with respect to any specified Person, any other Person that directly or indirectly, through one or more intermediaries, Controls, is Controlled by or is under common Control with, the Person specified, and "Control", when used with respect to any Person, means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities or otherwise, and the terms "Controlling" and "Controlled" have meanings correlative to the foregoing; provided, however, that the term Affiliate (a) when used in relation to any JV or Subsidiary thereof, shall not include any Party or its Affiliates, and (b) when used in relation to a Party or its Affiliates, shall not include any JV or Subsidiary thereof.

"Auction Participants" means all bidders in the Auction and their attorneys and consortium partners, excluding Bain Capital and any Bain Consortium Member.

"Bain Consortium" means the consortium formed in connection with the TMC Sale, consisting of Bain Capital; Hoya Corporation; Apple, Inc.; Kingston Technology Company, Inc.; Seagate; Dell Technology Inc.; and SK.

"Bain Consortium Member" means any person or entity comprising part of the Bain Consortium, including each person's or entity's respective Affiliates, and its and their respective successors, assignees, predecessors, funds, officers, directors, managers, partners, shareholders, employees, representatives, attorneys, advisors and agents, except Bain Capital.

"Business Day" means any day (other than a day which is a Saturday, Sunday or legal holiday in the State of California or Japan) on which commercial banks are open for business in the State of California or Tokyo, Japan.

"Change of Control" with respect to a Person means (i) a transaction or series of related transactions as a result of which more than 50% of the beneficial ownership of the outstanding common stock or other ownership interests of such Person (representing the right to vote for the board of directors or similar organization of such Person) is acquired by another Person or affiliated group of Persons, whether by reason of stock acquisition, merger, consolidation, reorganization or otherwise or (ii) the sale or disposition of all or substantially all of a Person's assets to another Person or affiliated group of Persons.

"Claims" means any and all claims, counterclaims, demands, losses, payments, Liens, expenses (including attorneys' fees), damages, liabilities, financial obligations, indemnification obligation, actions, causes of action, disputes, debts or obligations of every kind and nature, whether contractual, in law or in equity (including, without limitation, under the Japanese Civil Code, the laws of the State of California, the Uniform Commercial Code (as codified by each state of the United States of America), and/or the United Nations Convention on Contracts for the International Sale of Goods) past or present, direct or indirect, known or unknown, suspected or unsuspected, fixed or contingent, and whether several or otherwise.

"Collaboration" has the meaning set forth in the Undertaking.

"Collaboration Agreements" means the Existing Agreements, the Transaction Documents, and any other agreements entered into in connection with the Collaboration, including parent/JV loan agreements, in each case, other than [***].

"Collaboration Assets" means, [***].

"Competitor" means [***].

"Equity Interests" means, with respect to a Person, any common equity or common equity-equivalent interests or securities of such Person, including, any participating preferred securities, warrants, options or other rights to acquire any of the foregoing and debt securities that are or convertible into or exchangeable or exercisable for any of the foregoing.

"FAL Master Agreement" means that certain Flash Alliance Master Agreement, entered into by and among TSB, SanDisk Corporation and SanDisk Ireland, dated as of July 7, 2006.

"FAL Operating Agreement" means that certain Operating Agreement of Flash Alliance, Ltd., entered into by and between TSB and SanDisk Ireland, dated as of July 7, 2006.

"FFL Master Agreement" means that certain Flash Forward Master Agreement, entered into by and among TSB, SanDisk Corporation and SanDisk Flash, dated as of July 13, 2010.

"FFL Operating Agreement" means that certain Operating Agreement of Flash Forward, Ltd., entered into by and between TSB and SanDisk Flash, dated as of March 1, 2011.

"FPL Master Agreement" means that certain Flash Partners Master Agreement, entered into by and among TSB, SanDisk Corporation and SanDisk International Limited, dated as of September 10, 2004.

"FPL Operating Agreement" means that certain Operating Agreement of Flash Partners, Ltd., entered into by and between TSB and SanDisk International Limited, dated as of September 10, 2004.

"Governmental Authority" means any (a) nation, principality, state, commonwealth, province, territory, county, municipality, district or other jurisdiction of any nature; (b) federal, state, local, municipal, foreign or other government; (c) governmental or quasi-governmental authority of any nature (including any governmental division, subdivision, department, agency, bureau, branch, office, commission, council, board, instrumentality, officer, official, representative, organization, unit, body or Person and any court or other tribunal); or (d) individual, Person or body (including any stock exchange) exercising, or entitled to exercise, any executive, legislative, judicial, administrative, regulatory, police, military or taxing authority or power of any nature.

"Initial Restricted Period" means, subject to Section 3.2(e), the period beginning as of the Effective Date and ending as of the earliest of (i) the termination of the SPA, (ii) the closing of a WD Competitor CoC, (iii) [***] (solely with respect to [***]) or the third (3rd) anniversary (with respect to [***]) of the closing of the TMC Sale, or (iv) [***] of the Effective Date.

"Investment Vehicle" means an entity, a principal purpose of which is investing in TMC or Pangea, including such an entity Controlled by Bain Capital.

"Intellectual Property" means, as applicable under each Existing Agreement or Transaction Document, any Patents, utility models, trademarks, service marks, trade names, copyrights, moral rights, applications for any of the foregoing, know-how, trade secrets, technology, mask work rights, software, technical, confidential or proprietary information, proprietary rights and processes, developments, ideas, inventions, test programs, test methods, configured and developed hardware, knowledge, research, invention disclosures, engineering notebooks, data, materials, licenses, and intellectual property or proprietary rights in or to any of the foregoing.

"JV Articles of Incorporation" means the Articles of Incorporation of FPL, FAL, and FFL, as may be amended from time to time.

"JV Rights", with respect to any Person, means (a) all rights and obligations of such Person under the Existing Agreements and (b) such Person's JV Shares.

"JV Shares" means any interest in FPL, FAL, or FFL as referenced in Section 9.1(a) of the FPL Operating Agreement, FAL Operating Agreement, and FFL Operating Agreement, respectively, including: (i) the equity interests in FPL described as "FP Units" in the FPL Master Agreement and "Units" in Appendix A to the FPL Master Agreement and in the FPL Operating Agreement, (ii) the equity interests in FAL described as "FA Shares" in the FAL Master Agreement and "Shares" in Appendix A to the FAL Master Agreement and in the FAL Operating Agreement, and (iii) the equity interests in FFL described as "FF Interests" in the FFL Master Agreement and "Interests" in Appendix A to the FFL Master Agreement and in the FFL Operating Agreement.

"Law" means all applicable provisions of all (a) constitutions, treaties, statutes, laws (including common law), rules, regulations, ordinances or codes, (b) orders, decisions, judgments, awards or decrees; and (c) requests, guidelines or directives (whether or not having the force of law), in each case of any Governmental Authority of any applicable jurisdiction.

"Lien" means, with respect to any asset, (a) any mortgage, deed of trust, lien, pledge, encumbrance, charge or security interest in or on such asset, (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement relating to such asset and (c) in the case of securities, any purchase option, call or similar right with respect to such securities.

"Master Agreements" means the FAL Master Agreement, the FFL Master Agreement and the FPL Master Agreement.

"Memory Business Owner" means a Person, to the extent that (i) such Person, together with its wholly-owned Subsidiaries, holds or owns all of its and its Affiliates' Collaboration Assets (which need not include [***] and the Undertaking, but subject to Section 3.7(f) with respect to [***]), (ii) such Person and/or one or more of its wholly-owned Subsidiaries is a party to all Collaboration Agreements (which need not include [***] and the Undertaking, but subject to Section 3.7(f) with respect to [***]) to which such Person or any of its Affiliates is a party, (iii) such Person, or one or more of its wholly-owned Subsidiaries, is responsible for, or has agreed to be responsible for, all liabilities and obligations of such Person and its Affiliates under the Collaboration Agreements (which need not include [***] and the Undertaking, but subject to Section 3.7(f) with respect to [***]) (such liabilities and obligations, "Collaboration Liabilities"), (iv) such Person or one or more of its wholly-owned Subsidiaries employs substantially all Persons employed by such Person or its Affiliates that are primarily engaged in performing any liabilities and obligations of such Person and its Affiliates under the Collaboration Agreements (which need not include [***] and the Undertaking) and (v) immediately following a Change of Control of such Person, such Person and its wholly-owned Subsidiaries continues to: (A) hold or own

all Collaboration Assets that such Person and its wholly-owned Subsidiaries held or owned immediately prior to such Change of Control, or alternative Collaboration Assets such that such Person and its wholly-owned Subsidiaries remain able to satisfy and discharge such Person's and its wholly-owned Subsidiaries' Collaboration Liabilities; (B) be a party to each Collaboration Agreement to which such Person or any of its wholly-owned Subsidiaries was a party immediately prior to such Change of Control, or in each case to an alternative Collaboration Agreement or Collaboration Agreements agreed with the counterparty(ies) to such Collaboration Agreement; (C) be responsible for all liabilities and obligations under each Collaboration Agreement for which such Person or any of its wholly-owned Subsidiaries was liable immediately prior to such Change of Control or under any alternative Collaboration Agreement(s) entered in accordance with clause (B) above; and (D) employ (or otherwise contractually engage) substantially all Persons that such Person and its wholly-owned Subsidiaries employed immediately prior to such Change of Control that were, at such time, primarily engaged in performing any liabilities and obligations of such Person and its wholly-owned Subsidiaries under the Collaboration Agreements, or employ (or otherwise contractually engage) alternative Persons such that such Person and its wholly-owned Subsidiaries remain able to satisfy and discharge such Person's and its wholly-owned Subsidiaries' Collaboration Liabilities.

"New Y2 Facility Agreement" means that certain New Y2 Facility Agreement, entered into by and among TSB, SanDisk, and the JVs, dated as of October 20, 2015.

"Operating Agreements" means the FAL Operating Agreement, the FFL Operating Agreement and the FPL Operating Agreement.

"Pangea Financing Arrangement" means any contract entered into or proposed to be entered into by TMC, Bain Capital or any of their respective Affiliates for the purpose of financing the TMC Sale or for the operations or activities of TMC and its Subsidiaries, in each case, at the closing of the TMC Sale.

"Pangea Shareholders Agreement" means the shareholders agreement to be executed by and among BCPE Pangea Cayman, L.P., BCPE Pangea Cayman2, Ltd., TSB and Hoya Corporation in connection with the proposed acquisition by Pangea of TMC.

"Patent" means any type of patent, utility model, or design patent (including without limitation, originals or divisions, continuations, continuations-in-part, reissues, counterparts, substitutions, re-examinations, and extensions) or applications therefor in any country of the world.

"Person" means any individual or entity, including any private or public real estate operating company or real estate investment trust, exempted company, exempted limited partnership, private limited company, corporation, partnership, limited partnership, limited liability company, trust, charitable trust or other legal entity, wherever organized, or any unincorporated association or Governmental Authority.

"Qualified Exchange" means any of the internationally recognized stock exchanges based in Tokyo, New York, London, Hong Kong or Singapore.

[***]

"SK" means SK hynix, Inc. and its Affiliates; [***]

[***]

"Subsequent Bain Transaction" means, if the SPA is terminated, any direct or indirect acquisition (whether by merger, consolidation or otherwise) or ownership by Bain Capital, any Affiliates (as defined herein or as the term "Affiliate" is used in and construed under Rule 144 under the U.S. Securities Act of 1933, as amended) of Bain Capital, or any group or consortium that includes Bain Capital or an Affiliate of Bain Capital as a member (collectively, a "Subsequent Bain Acquiror") of (i) any Equity Interests or voting rights in TMC or any of its Subsidiaries pursuant to a Transfer by TSB or any of its Affiliates to a Subsequent Bain Acquiror, (ii) any Equity Interests or voting rights in TMC or any of its Subsidiaries pursuant to an issuance by TMC or any of its Subsidiaries, (iii) any Equity Interests or voting rights in TMC or any of its Subsidiaries (including any Person that directly or indirectly holds or owns JV Rights), other than, in the case of this subclause (iii), any such acquisition or ownership by such Subsequent Bain Acquiror that does not result in or constitute TMC or any of its Subsidiaries being Controlled by such Subsequent Bain Acquiror, or (iv) substantially all of the assets of TMC or its Subsidiaries.

"Subsequent Restricted Period" means the period beginning as of the closing of a Subsequent Bain Transaction and ending as of the earliest of (i) the closing of a WD Competitor CoC, (ii) [***] (solely with respect to [***]) or the third (3rd) anniversary (with respect to [***]) of the closing of such Subsequent Bain Transaction, or (iii) [***] of the Effective Date.

"Subsidiary" of any Person means any other Person:

(i) more than 50% of whose outstanding shares or securities (representing the right to vote for the election of directors or other managing authority) are, or

(ii) which does not have outstanding shares or securities (as may be the case in a partnership, joint venture or unincorporated association), but more than 50% of whose ownership interest representing the right to make decisions (equivalent to those generally reserved for the board of directors of a corporation) for such other Person is, now or hereafter owned or Controlled, directly or indirectly, by such Person, but such other Person shall be deemed to be a Subsidiary only so long as such ownership or Control exists; provided, however, that the term Subsidiary, when used in relation to a Party or any of its Affiliates, shall not include any JV or any of the JVs' Subsidiaries or any new joint venture entity (or any Subsidiary of any such new joint venture entity) created as a result of a new agreement between WD or any of its Subsidiaries, on one side, and TMC or any of its Subsidiaries, on the other side, relating to the Collaboration.

"TMC Group" means TMC, Bain Capital and all of their respective Affiliates.

"TMC Memory Business Owner" means a Memory Business Owner that is, immediately prior to a Change of Control of such Memory Business Owner, Controlled by TMC or any of its Affiliates.

"Transfer" means any transfer, distribution in kind, sale, assignment, conveyance, creation of any Lien, or other disposal or delivery, including by dividend, distribution, merger, business combination, split-off, spin-off, consolidation or otherwise, whether made directly or indirectly, voluntarily or involuntarily, absolutely or conditionally, or by operation of law or otherwise.

"Transferee" means a transferee of Equity Interests in any Investment Vehicle, TMC, Pangea, any entity Controlling TMC or Pangea or any Subsidiary thereof, whether pursuant to an issuance, Transfer or otherwise.

"WD Competitor CoC" means a Change of Control of WD or any WD Memory Business Owner that results in WD or such WD Memory Business Owner being Controlled by a Competitor (other than WD).

"WD Memory Business Owner" means a Memory Business Owner that is, immediately prior to a Change of Control of such Memory Business Owner, Controlled by WD or any of its Affiliates

**Exhibit 10.15**

CERTAIN CONFIDENTIAL PORTIONS HAVE BEEN REDACTED FROM THIS EXHIBIT BECAUSE THEY ARE BOTH (i) NOT MATERIAL AND (ii) A TYPE THAT THE REGISTRANT TREATS AS PRIVATE OR CONFIDENTIAL. INFORMATION THAT HAS BEEN OMITTED HAS BEEN IDENTIFIED IN THIS DOCUMENT WITH A PLACEHOLDER IDENTIFIED BY THE MARK "[***]".

**Execution Version**

---

**FLASH FORWARD MASTER AGREEMENT**

**Dated as of July 13, 2010**

**by and among**

**TOSHIBA CORPORATION,**

**SANDISK CORPORATION**

**and**

**SANDISK FLASH B.V.**

---

**TABLE OF CONTENTS**

**TABLE OF CONTENTS**
(continued)

**Execution Version**

This **FLASH FORWARD MASTER AGREEMENT**, dated as of July 13, 2010, is entered into by and among, on one side, TOSHIBA CORPORATION, a Japanese corporation ("Toshiba"), and, on the other side, SANDISK CORPORATION, a Delaware corporation ("SanDisk Corporation"), and SANDISK FLASH B.V., a company organized under the laws of The Netherlands ("SanDisk Flash," and collectively with SanDisk Corporation, "SanDisk" and SanDisk together with Toshiba, the "Parties").

WHEREAS, pursuant to that certain Flash Partners Master Agreement by and among Toshiba, SanDisk Corporation and SanDisk (Cayman) Limited, dated as of September 10, 2004 (the "FP Master Agreement"), and the agreements referenced therein, as amended by the JVRA (as hereinafter defined), the Parties have had a collaboration for development and manufacture of Y3 NAND Flash Memory Products (as defined in the FP Master Agreement);

WHEREAS, pursuant to that certain Flash Alliance Master Agreement by and among Toshiba, SanDisk Corporation and SanDisk (Ireland) Limited, dated as of July 7, 2006 (the "FA Master Agreement"), and the agreements referenced therein, as amended by the JVRA, the Parties have had a collaboration for development and manufacture of Y4 NAND Flash Memory Products (as defined in the FA Master Agreement);

WHEREAS, the Parties desire to extend their collaboration to encompass (i) additional joint development and manufacture of Y5 NAND Flash Memory Products (as hereinafter defined) by a new joint venture company, (ii) possible joint production of R/W (as hereinafter defined) to be produced at the wafer fabrication facility known as "Y5" by the new joint venture company and (iii) the other matters discussed herein; and

WHEREAS, in order to realize these goals, the Parties desire to consummate or cause to be consummated the transactions described in this Agreement, and any other transactions which the Parties may from time to time consider necessary or appropriate to carry out the intent of the Parties as expressed herein.

NOW, THEREFORE, the Parties agree as follows:

## 1. Definitions and Interpretation

1.1 Certain Definitions.

(a) Capitalized terms used but not defined in this Agreement shall have the respective meanings assigned to them in Appendix A (Definitions, Rules of Construction and General Terms and Conditions).

(b) As used herein, the term "Agreement" means this Flash Forward Master Agreement together with any Exhibits, Schedules, Appendices and Attachments hereto.

1.2 Additional Definitions. The following capitalized terms used in this Agreement shall have the respective meanings assigned in this Agreement:

| Term | Defined In |
|---|---|
| 3D Collaboration Agreement | Section 2.1(c)(v) |
| 3D Memory | Section 3.2(b)(i) |
| 3D Memory Products | Section 3.2(b)(ii) |
| Acquiring Party | Section 9.1(d) |
| Adjustment Payment | Section 7.3 |
| Agreement | Section 1.1(b) |
| Alternative Use | Section 6.3(a)(iii) |
| AMC | Section 6.8(a)(i) |

| | |
|---|---|
| Amendment No. 5 to Patent Cross License Agreement | Section 2.1(c)(iii) |
| Building Depreciation Prepayment | Section 8.2(a)(iii)(A) |
| Business Plan | Section 5.1(a) |
| Capital Interests Purchase Agreement | Section 2.1(b)(i) |
| Catch-Up Space | Section 6.7(a)(iv) |
| Closing | Section 2.1(a) |
| Common R&D Agreement | Section 2.1(c)(i) |
| Common R&D Development Expenses | Section 6.8(a)(i) |
| Costs | Section 6.3(a)(iii) |
| Cross License Agreement | Section 2.1(c)(iii) |
| Defaulting Party | Section 6.12(d) |
| Designated Individuals | Section 6.3(b)(ii) |
| EC Compensation | Section 6.6(b)(i)(D) |
| EC Party or Excess Capacity Party | Section 6.6(b)(i) |
| Embedded NAND Product | Section 6.6(c) |
| Employer | Section 6.10(b)(vii) |
| Engineers | Section 6.10(a)(ii) |
| Environmental Indemnification Agreement | Section 2.1(b)(vii) |
| Equipment | Section 6.3(a)(iii) |
| Equivalent Lot | Section 7.4(e) |
| Evaluation Wafers | Section 6.8(a)(iv) |
| FA Master Agreement | Recitals |
| FF Foundry Agreement | Section 2.1(b)(iv) |
| FF Headcount Plan | Section 6.10(a)(i) |
| FF Interests | Section 4.2(a) |
| FF Operating Agreement | Section 2.1(b)(ii) |
| FF Operative Documents | Section 2.1(b) |
| FF Patent Indemnification Agreement | Section 2.1(b)(vi) |
| FF Purchase and Supply Agreements | Section 2.1(b)(v) |
| FF Termination Date | Section 9.1(b) |
| Financing | Section 6.12(b)(iii) |
| Fixed Manufacturing Costs | Section 7.4(a)(i) |
| Flash Forward | Section 2.1(b) |
| FP Master Agreement | Recitals |
| Headcount Working Group | Section 6.10(a)(iii) |
| ICs | Section 3.2(a)(i) |
| Intellectual Property | Section 4.7 |
| Investing Party | Section 6.3(a)(ii) |
| Investment Plan | Section 6.3(b)(i) |
| [***] | Section 2.1(c)(iv) |
| JMDY Development Expenses | Section 6.8(a)(iv) |
| Joint Operative Documents | Section 2.1(c) |
| Joint Tool Procurement Team | Section 6.1(a) |
| [***] | Section 3.3(a)(i) |

| | |
|---|---|
| [***] | Section 3.3(a)(ii) |
| JV Space | Section 3.3(a) |
| JV Y5 NAND Flash Memory Products | Section 3.2(a)(ii) |
| JV Y5 Wafer Sales Price | Section 8.4(c)(i) |
| JVRA | Section 2.1(c)(vi) |
| Leading Party | Section 6.7(a) |
| Lease Agreement | Section 2.1(b)(viii) |
| Management Representative | Section 6.9 |
| Master Operative Documents | Section 2.2 |
| NAND | Section 3.2(a)(i) |
| NAND Flash Memory Integrated Circuits | Section 6.13 |
| NAND Flash Memory Products | Section 3.2(a)(i) |
| Non-Defaulting Party | Section 6.12(d) |
| Non-Engineer SanDisk Team Members | Section 6.10(b)(ii) |
| Non-Investing Party | Section 6.3(a)(ii) |
| Non-JV Space | Section 3.3(b) |
| Non-NAND Products | Section 3.2(b)(iv) |
| Non-Originating Party | Section 6.6(e) |
| Originating Party | Section 6.6(e) |
| Parties | Heading |
| Phase I | Section 3.3 |
| [***] | Section 6.7(a)(i)(B) |
| Phase I Investing Party | Section 6.3(a)(i) |
| Phase I Minimum RUP Commitment | Section 6.3(a)(i) |
| [***] | Section 6.3(a)(i) |
| Phase II | Section 3.3 |
| [***] | Section 6.7(a)(ii) |
| Phase II Construction Plan Notice | Section 6.7(a)(i)(A) |
| Phase II Investing Party | Section 6.3(a)(ii) |
| Phase II Minimum RUP Commitment | Section 6.3(a)(ii) |
| Phase II Non-Investing Party | Section 6.3(a)(ii) |
| Process Technology | Section 6.2(a) |
| Product Development Agreement | Section 2.1(c)(ii) |
| Proposal | Section 6.3(c)(i) |
| Proprietary NAND Flash Memory Products | Section 6.6(d) |
| Purchased Capacity | Section 6.7(c) |
| Qualification Wafers | Section 6.8(a)(v) |
| R/W | Section 3.2(b)(iii) |
| Requesting Party | Section 9.1(d)(i) |
| Reservation Option | Section 6.7(a) |
| Reservation Payment | Section 6.7(b) |
| Restructuring Costs | Section 9.1(j)(ii)(B) |
| RMPA | Section 2.1(c)(x) |
| SanDisk | Heading |

| | |
|---|---|
| SanDisk Corporation | Heading |
| SanDisk Engineers | Section 6.10(a)(ii) |
| SanDisk Financing | Section 6.12(b)(iii) |
| SanDisk Flash | Heading |
| SanDisk Flash-Flash Forward Services Agreement | Section 2.1(b)(xi) |
| SanDisk Foundry Agreement | Section 2.1(c)(vii) |
| SanDisk Purchase and Supply Agreement | Section 2.1(b)(v) |
| [***] | Section 3.3(b)(ii) |
| [***] | Section 3.3(b)(ii) |
| SanDisk Share | Section 9.1(j)(ii)(A) |
| SanDisk Team | Section 6.10(b) |
| Selling Party | Section 9.1(d) |
| Shortfall Quarter | Section 7.3 |
| Start-Up Costs | Section 7.1 |
| [***] | Section 7.3 |
| Termination Capacity | Section 9.1(d)(i) |
| Third Party Sale | Section 6.3(a)(iii) |
| Threshold NAND Capacity Ratio | Section 7.4(b) |
| Toshiba | Heading |
| Toshiba Engineers | Section 6.10(a)(ii) |
| Toshiba Financing | Section 6.12(b)(iii) |
| [***] | Section 3.3(b)(i) |
| [***] | Section 3.3(b)(i) |
| Toshiba Purchase and Supply Agreement | Section 2.1(b)(v) |
| Toshiba's Cost of Debt | Section 8.2(b) |
| Toshiba-Flash Forward Services Agreement | Section 2.1(b)(x) |
| Toshiba-SanDisk Flash Services Agreement | Section 2.1(b)(ix) |
| Trailing Party | Section 6.7(a) |
| Unilateral Expansion | Section 3.3(b)(iii) |
| Unilateral Expansion Space | Section 3.3(b)(iii) |
| Variable Manufacturing Costs | Section 7.4(a)(ii) |
| Y3 NAND Flash Memory Products | Section 3.2(a)(iii) |
| Y3 Ramp-Up Plan | Section 6.5(a)(i)(E) |
| Y4 NAND Flash Memory Products | Section 3.2(a)(iii) |
| Y4 Ramp-Up Plan | Section 6.5(a)(i)(E) |
| Y5 Capacity Ratio | Section 7.4(c) |
| Y5 Direct R&D Development Products | Section 6.8(a)(iii) |
| Y5 Facility or Y5 | Section 3.1 |
| Y5 NAND Capacity Ratio | Section 7.4(d) |
| Y5 NAND Flash Memory Products | Section 3.2(a)(ii) |

1.3 Rules of Construction and Documentary Conventions. The rules of construction and documentary conventions and general terms and conditions set forth in Appendix A shall apply to this Agreement.

1.4 Precedence. The terms and provisions of this Agreement are binding on the Parties;*provided*, *however*, that to the extent that a description in this Agreement of another agreement (whether an FF Operative Document or otherwise) conflicts with or differs from the provisions of that agreement, then the provisions of that agreement shall control as to such conflict or difference unless this Agreement expressly amends such other agreement or provision, as the case may be.

**2. Closing and Post-Closing Transactions**

2.1 Closing Transactions.

(a) Closing. The Parties shall effect the transactions set forth in this Section 2.1, all of which shall occur as soon as practicable after the date hereof and upon the consummation of the transactions contemplated by the Capital Interests Purchase Agreement (as defined below) and subject to the terms and conditions set forth therein unless otherwise stipulated (the effecting of such transactions, collectively, the "Closing").

(b) Flash Forward Documents. Unless otherwise indicated in this Section 2.1(b), as of the Closing Date, the Parties shall enter into or cause to be entered into or otherwise become effective the following agreements and documents (collectively with this Agreement, the "FF Operative Documents") to apply to their joint development, manufacture and selling of Y5 NAND Flash Memory Products by and through Flash Forward, Ltd., a Japanese *godo kaisha* ("Flash Forward") (the description of each document below is for reference only and shall not be used in interpreting any such document):

(i) a Capital Interests Purchase Agreement between Toshiba and SanDisk Flash, substantially in the form ofExhibit Al (the "Capital Interests Purchase Agreement"), and which concerns the sale by Toshiba and purchase by SanDisk Flash at the Closing of 49.9% of the FF Interests;

(ii) an Operating Agreement between Toshiba and SanDisk Flash, substantially in the form ofExhibit A2 (the "FF Operating Agreement"), and which concerns governance of Flash Forward;

(iii) Articles of Incorporation of Flash Forward in the form of Exhibit A to the FF Operating Agreement;

(iv) a Foundry Agreement between Flash Forward and Toshiba, reflecting terms and conditions mutually agreed between the Parties (the 'FF Foundry Agreement");

(v) a Purchase and Supply Agreement, by and between Flash Forward and SanDisk Flash (the 'SanDisk Purchase and Supply Agreement") and a Purchase and Supply Agreement, between Flash Forward and Toshiba (the "Toshiba Purchase and Supply Agreement" and together with the SanDisk Purchase and Supply Agreement, the "FF Purchase and Supply Agreements"), which shall reflect terms and conditions mutually agreed between the Parties and which concern the forecasting and purchase commitments by SanDisk Flash and Toshiba, respectively, of Y5 NAND Flash Memory Products;

(vi) a Patent Indemnification Agreement among SanDisk Corporation, [***] and Toshiba, dated as of the date hereof, in the form ofExhibit A3 (the "FF Patent Indemnification Agreement"), and which concerns patent indemnification obligations of Toshiba in favor of SanDisk, and certain contribution obligations of SanDisk with respect to Y5 NAND Flash Memory Products and 3D Memory Products;

(vii) a Mutual Contribution and Environmental Indemnification Agreement between SanDisk Corporation and Toshiba, dated as of the date hereof, in the form of Exhibit A4 (the "Environmental Indemnification Agreement"), and which concerns indemnification obligations of the parties thereto in favor of one another with respect to Flash Forward and the Yokkaichi Facility (as defined in Appendix A);

(viii) a Lease Agreement between Flash Forward and Toshiba, as owner of the Yokkaichi Facility, substantially in the form of Exhibit A5 (the "Lease Agreement"), and which concerns the leasing of Flash Forward's equipment to Toshiba as owner of the Yokkaichi Facility;

(ix) a Services Agreement between SanDisk Flash and Toshiba, substantially in the form of Exhibit A6 ("Toshiba-SanDisk Flash Services Agreement"), and which concerns Toshiba's provision of certain services to SanDisk and SanDisk Flash's payment to Toshiba for such services;

(x) a Services Agreement between Flash Forward and Toshiba, as owner of the Yokkaichi Facility, substantially in the form of Exhibit A7 (the "Toshiba-Flash Forward Services Agreement"), and which concerns Toshiba's provision of certain services to Flash Forward and Flash Forward's payment to Toshiba for such services; and

(xi) a Services Agreement between Flash Forward and SanDisk Flash, substantially in the form of Exhibit A8 ("SanDisk Flash-Flash Forward Services Agreement"), and which concerns SanDisk Flash's provision of certain services to Flash Forward and Flash Forward's payment to SanDisk Flash for such services.

(c) Joint Operative Documents. The Parties acknowledge and agree that the following agreements shall remain in force or be amended or executed as indicated below and shall apply generally to the Parties' collaboration with respect to NAND Flash Memory Products, 3D Memory Products and related products (collectively, the "Joint Operative Documents"):

(i) the Fourth Amended and Restated Common R&D and Participation Agreement between the SanDisk Corporation and Toshiba (the "Common R&D Agreement"), which shall reflect terms and conditions mutually agreed between the Parties and which concerns collaboration between the Parties with respect to research and development activities;

(ii) the Third Amended and Restated Product Development Agreement between the SanDisk Corporation and Toshiba (the "Product Development Agreement"), which shall reflect terms and conditions mutually agreed between the Parties and which concerns collaboration between SanDisk Corporation and Toshiba with respect to product development activities;

(iii) an Amendment No. 5 to the Patent Cross License Agreement, dated as of the date hereof, between SanDisk Corporation and Toshiba (the "Amendment No. 5 to Patent Cross License Agreement"), a copy of which is Exhibit B, amending that certain Patent Cross License Agreement between SanDisk Corporation and Toshiba, dated as of July 30, 1997 (as previously amended, the "Cross License Agreement"), and which concerns certain patent licenses granted by SanDisk Corporation and Toshiba to one another;

(iv) the Amended and Restated Joint Memory Development Yokkaichi Agreement between SanDisk Corporation and Toshiba (the "JMDY Agreement"), which shall reflect terms and conditions mutually agreed between the Parties and

which concerns the Parties joint development project to cooperate on the development of a pilot line at the Y4 Facility;

(v) the 3D Collaboration Agreement, dated as of June 13, 2008, between SanDisk Corporation and Toshiba (the "3D Collaboration Agreement"), which concerns the Parties further expansion of their collaboration through a project for the joint development of and technical collaboration on 3D Memory;

(vi) the Joint Venture Restructure Agreement, dated as of January 29, 2009, among SanDisk Corporation and certain of its affiliates, Toshiba Corporation, Flash Alliance and Flash Partners (the "JVRA"), in which the Parties restructured Flash Partners and Flash Alliance and amended the FP Operative Documents and FA Operative Documents;

(vii) the SanDisk Foundry Agreement, dated as of January 29, 2009, between SanDisk Corporation and Toshiba Corporation (the "SanDisk Foundry Agreement"), in which Toshiba agreed to build certain products for SanDisk;

(viii) [***]

(ix) the FVCJ Wind-Down Agreement, dated as of June 16, 2008, by and between Toshiba Corporation and SanDisk Corporation; and

(x) an Amended and Restated Raw Materials Purchase Agreement by and among SanDisk Corporation and certain of its Affiliates and Toshiba Corporation (the "RMPA"), in which the Parties shall agree how to allocate the costs for certain raw materials.

2.2 Further Assurances. Following the Closing, each Party shall, and shall cause its Affiliates and Flash Forward to, take all reasonable actions necessary or appropriate to effectuate the transactions contemplated by this Agreement, the FF Operative Documents and the Joint Operative Documents (collectively, the "Master Operative Documents"), and to obtain (and cooperate with the other Party in obtaining) any Governmental Action or third party consent required to be obtained or made by it in connection with any of the transactions contemplated by the Master Operative Documents; *provided*, that no Burdensome Condition shall be made to exist with respect to such Party or any of its Affiliates in connection therewith.

2.3 Continuation of FP and FA Documents. The Parties agree that unless otherwise expressly stated herein (a) neither the FA Operative Documents nor the FP Operative Documents shall affect the interpretation of this Agreement, the governance or operation of Flash Forward or the Y5 Facility and (b) the FF Operative Documents shall not affect the interpretation of the FA Master Agreement and the FP Master Agreement (in each case as amended by the JVRA), the governance or operation of Flash Alliance or the governance or operation of Flash Partners.

**3. Purpose and Products of Flash Forward and Rights to Y5 Production Space**

3.1 Purpose. The Parties acknowledge and agree that the purpose of the Master Operative Documents and Flash Forward is the manufacture, including by subcontract to Toshiba pursuant to the FF Foundry Agreement, and sale to Toshiba and SanDisk Flash of NAND Flash Memory Products manufactured at the facility known by the Parties as "Y5" (the "Y5 Facility" or "Y5"), which is a part of the Yokkaichi Facility, as well as to set forth each of SanDisk's and Toshiba's rights to Y5 Facility production.

3.2 Products. The following types of products will be produced by Flash Forward at the Y5 Facility:

(a) NAND Flash Memory Products.

(i) "NAND Flash Memory Products" or "NAND," as used herein, are NAND (both binary and MLC Flash Memory) Flash Memory Integrated Circuits ("ICs"), excluding any products with process design rules generally greater than [***]. Embedded ICs incorporating NAND Flash Memory Products shall be considered to constitute "NAND Flash Memory Products" if the main function and value of such IC is flash memory, but shall not be considered to constitute "NAND Flash Memory Products" if the main function and value of such IC is logic. For the purpose of the foregoing, the "main function and value" of any product shall be considered to be flash memory if (x) the total NAND flash memory array area is greater than [***] of the total die area or (y) the product is a cut-down or derivative of a standard NAND Flash Memory Product.

(ii) NAND Flash Memory Products manufactured at the Y5 Facility are referred to as "Y5 NAND Flash Memory Products." "JV Y5 NAND Flash Memory Products" are Y5 NAND Flash Memory Products which will be produced in the JVSpace (under the FF Foundry Agreement between Flash Forward and Toshiba) for sale to Toshiba and SanDisk pursuant to the FF Purchase and Supply Agreements.

(iii) NAND Flash Memory Products manufactured at the Y3 Facility are referred to as "Y3 NAND Flash Memory Products;" and NAND Flash Memory Products manufactured at the Y4 Facility are referred to as "Y4 NAND Flash Memory Products".

(b) Other Products.

(i) "3D Memory" has the meaning given in the 3D Collaboration Agreement.

(ii) "3D Memory Products" has the meaning given in the 3D Collaboration Agreement.

(iii) "R/W" has the meaning given in the 3D Collaboration Agreement.

(iv) "Non-NAND Products" means any technology or product other than NAND Flash Memory Products.

(v) [***]

(c) Each Party shall be permitted to market and sell all NAND Flash Memory Products and R/W, subject to the limitations set forth in [***], to any third party in any form, including chips, packaged devices, wafers, die and cards.

3.3 Phases I and II; Rights to Y5 Facility Production Capacity Space The Y5 Facility shall consist of a first phase ("Phase I") with manufacturing capability for an estimated [***] Equivalent Lots per month, and, upon notice by Toshiba to SanDisk [***] a second phase ("Phase II") currently planned to be substantially similar in size and Equivalent Lot capacity. If Toshiba shall not have given notice of its approval of Phase II by [***] , or such other date as is agreed by the Parties, then, unless otherwise agreed between the Parties [***] disregarded and the costs associated with Phase II, such as, land acquisition costs, land preparation costs, foundation costs and infrastructure costs, in each case which would not have been incurred if not for Phase II, [***]. In each of Phase I and Phase II, the Parties shall have the rights to invest

and secure production capacity and clean room space as follows, subject to [***], the other provisions of this Agreement and subsequent written agreement between the Parties:

(a) JV Space. Flash Forward shall have the right to invest in and secure the production capacity and/or clean room space in each phase [***] as set forth below.

(i) Flash Forward shall have the right to invest in all production capacity of Phase I and Phase II that is not yet dedicated to [***] for the production of [***] with the amount of such investment subject to adjustments provided for in this Agreement or in a Business Plan or as otherwise agreed by the Parties in writing, to be manufactured by Flash Forward and purchased by either SanDisk or Toshiba pursuant to the applicable FF Purchase and Supply Agreement dated as of the date of this Agreement (the clean room space actually so utilized at any time, the [***].

(ii) Flash Forward shall have the right to invest in up to approximately [***] of the clean room space in Phase II for the production of [***], such amount subject to adjustments provided for in this Agreement or in a Business Plan or otherwise agreed by the Parties in writing (the space actually so utilized at any time, the [***].

(b) [***]. Each of SanDisk and Toshiba shall have the right to invest in and secure the clean room space in each phase [***] as follows:

(i) Toshiba [***]. Toshiba shall have the right to invest in up to approximately [***] of the clean room space in each of Phase I and Phase II for the production by Toshiba [***] , subject to adjustments provided for in this Agreement or otherwise agreed by the Parties in writing.

(ii) SanDisk [***]. SanDisk shall have the right to invest in up to approximately [***] of the clean room space in each of Phase I and Phase II for the production by SanDisk [***] subject to adjustments provided for in this Agreement or otherwise agreed by the Parties in writing.

(iii) Unilateral Expansion Space. Subject to adjustments provided for in this Agreement or otherwise agreed by the Parties in writing, if a Party exercises a right to proceed unilaterally in expanding capacity in the Y5 Facility [***] shall be utilized in production by the Party exercising such Unilateral Expansion right.

(c) [***] Priority. [***] and there shall be no restriction on Flash Forward's ability to expand [***] or a Party's ability to make [***] is already fitted out and producing wafers.

**4. Representations and Warranties of the Parties**

Except as may be disclosed in disclosure schedules attached to this Agreement, each Party represents and warrants to the other Party, as of the Closing, as follows:

4.1 Organization, Ownership Interest, etc.

(a) It and each of its Affiliates that is a party to any Master Operative Document is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization or incorporation and has the power and authority to carry on its business as conducted on the date hereof, to own or hold under lease its properties and to enter into and perform its obligations under each Master Operative Document to which it is a party.

(b) It and each of its Affiliates that is a party to any Master Operative Document is duly qualified to own or lease its properties and generally to conduct its business as currently, or as proposed under the Master Operative Documents to be, conducted in each jurisdiction necessary for purposes of the transactions contemplated by the Master Operative Documents, except where failure to so qualify would not have a material adverse effect on either Party or Flash Forward.

4.2 Authorization; No Conflict.

(a) It and each of its Affiliates has duly authorized by all necessary action (i) the execution, delivery and performance of each Master Operative Document to which it or any of its Affiliates is a party and (ii) the exercise of its rights as a holder of capital interests (*mochibun*) of Flash Forward (the "FF Interests") to approve the execution, delivery and performance by Flash Forward of each Master Operative Document to which it is a party and for which the approval of the holders of FF Interests is required.

(b) Its and each of its Affiliates' execution and delivery of each Master Operative Document to which it is a party, its and each of its Affiliates' consummation of the transactions contemplated thereby and its and each of its Affiliates' compliance therewith does not and will not (i) require any approval of its or any of such Affiliates' stockholders or any approval or consent of any trustee or holder of any of its or any of such Affiliates' Indebtedness or obligations, (ii) contravene any Governmental Rule applicable to or binding on it or any of such Affiliates or any of its or their properties if such contravention would have a material adverse effect on it or any of such Affiliates or on its or their ability to perform any of its or any of such Affiliates' obligations under any Master Operative Document, (iii) contravene or result in any breach of, or constitute any default, with or without the passage of time, the giving of notice or both, under its charter or by-laws, or contravene or result in any breach of or constitute any default under, or result in the creation of any Lien (other than Permitted Liens) upon any of its or any of such Affiliates property or the property of Flash Forward under, any material indenture, mortgage, chattel mortgage, deed of trust, conditional sales contract, loan or credit agreement, non-compete agreement, license agreement, partnership or joint venture agreement or other material agreement or document to which it or any of such Affiliates is a party or by which it or any of such Affiliates or any of its or their properties is or is intended to be bound or by which Flash Forward or any of its properties is or is intended to be bound, (iv) require any negotiation with, or notice to, any labor union or violate, or require any procedure to be followed under, any collective bargaining or other agreement with employees or (v) require any Governmental Action (other than immaterial Governmental Actions such as routine qualifications to do business intended to be obtained as needed or Governmental Actions needed in connection with the construction and operation of the Y5 Facility), except, in each case described in clauses (i) through (v) above, such as have been duly obtained, made, taken or otherwise accomplished and which are in full force and effect. All consents and approvals of any Governmental Authority (other than immaterial Governmental Actions such as routine qualifications to do business intended to be obtained as needed or Governmental Actions needed in connection with the operation of the Y5 Facility) or other third Person necessary or advisable for such Party or any of its Affiliates to consummate in all material respects the transactions contemplated by the Master Operative Documents have been obtained. No Burdensome Condition exists with respect to such Party, any of its Affiliates or Flash Forward in connection with the transactions contemplated by the Master Operative Documents.

4.3 Enforceability.

(a) It has duly executed and delivered this Agreement and, upon the execution and delivery of this Agreement by the other Party, this Agreement will constitute its legal,

valid and binding obligation, enforceable against it in accordance with its terms except as enforceability may be limited by bankruptcy, insolvency, fraudulent conveyance or similar laws affecting the enforcement of creditors' rights generally or the availability of equitable remedies (regardless of whether enforceability is considered in a proceeding at law or in equity).

(b) It and each of its Affiliates have duly executed and delivered each other Master Operative Document to which it or any such Affiliate is a party and, upon the execution and delivery of each such other Master Operative Document by each other party thereto, each such other Master Operative Document will constitute its legal, valid and binding obligation, enforceable against it or its Affiliates in accordance with its terms except as enforceability may be limited by bankruptcy, insolvency, fraudulent conveyance or similar laws affecting the enforcement of creditors' rights generally or the availability of equitable remedies (regardless of whether enforceability is considered in a proceeding at law or in equity).

4.4 Proceedings. There are no actions, claims, investigations or proceedings pending, or to its knowledge threatened, by or before any Governmental Authority that, if adversely determined, would have a material adverse effect on it or any of its Affiliates that is a party to any Master Operative Document or, on the conduct of the business of Flash Forward following the Closing as contemplated in the Master Operative Documents or on it or any of its Affiliates' ability to perform any material obligation under any Master Operative Document.

4.5 Litigation; Decrees. Except as set forth in Schedule 4.5, there are no lawsuits, arbitrations or other legal proceedings pending, or to its knowledge threatened, by or against or affecting it or any of its Affiliates or any of their respective properties that (a) are reasonably likely, based on information known to it as of the date hereof, to have a material adverse effect on the conduct of the business of Flash Forward following the Closing as contemplated by the Master Operative Documents or (b) relate to any of the transactions contemplated by the Master Operative Documents in a manner which is material to it, any of its Affiliates' or Flash Forward's ability to carry out the transactions contemplated hereby and in the FF Operative Documents or which could have a material adverse effect on the conduct of the business of Flash Forward following the Closing as contemplated in the Master Operative Documents.

4.6 Compliance with Other Instruments. Neither it nor any of its Affiliates that is a party to any Master Operative Document is in default in any material respect in the performance of any material obligation, agreement, instrument or undertaking to which it or any of its Affiliates is a party or by which it or any of its Affiliates or any of its or their properties is bound, and there is no such obligation, agreement, instrument or undertaking to which it or any of its Affiliates is a party or by which it or any of its Affiliates or any of its or their properties is bound, in each case which is reasonably likely to have a material adverse effect on the conduct of the business of Flash Forward following the Closing as contemplated by the Master Operative Documents.

4.7 Patents and Proprietary Rights. Except as set forth in Schedule 4.7, to its knowledge, it owns or possesses sufficient legal rights to all patents, utility models, trademarks, service marks, trade names, copyrights, applications for any of the foregoing, mask works, software, trade secrets, licenses, information and proprietary rights and processes (collectively, "Intellectual Property") necessary (a) to carry out its or any of its Affiliates' obligations under the Master Operative Documents and (b) for the conduct of the business of Flash Forward following the Closing as contemplated in the Master Operative Documents, without any conflict with or infringement of the rights of others, except as will not have a material adverse effect on either (a) or (b) above. Except with respect to items referenced in Schedule 4.7, it has not received any communications alleging that its Intellectual Property violates, or by its or any of

its Affiliates entering into the transactions contemplated by the Master Operative Documents, would violate the Intellectual Property of any other Person or entity, which violation could reasonably be expected to have a material adverse effect on either (a) or (b) above.

4.8 Compliance with Laws. It and each of its Affiliates has complied and is complying in all material respects with all laws, statutes, permit requirements, licensing requirements, rules and regulations and judicial or administrative decisions, except where the failure to so comply would not have a material adverse effect on its or any of its Affiliates ability to perform its or their obligations hereunder or under any other Master Operative Document or on the conduct of the business of Flash Forward following the Closing as contemplated by the Master Operative Documents.

4.9 Patent Cross Licenses. Except as set forth on Schedule 4.9, with respect to (a) Toshiba, there are no patent cross licenses between it and any third party that would require Flash Forward to make any payment pursuant to Section 8 or Section 10 of Amendment No. 1 to the Cross License Agreement dated May 9, 2000, and (b) SanDisk, there are no patent cross licenses between it and any third party that would require Flash Forward to make any payment pursuant to Section 8 of the Cross License Agreement.

**5. Covenants**

5.1 Covenants of the Parties. Each Party agrees that, during the term of this Agreement:

(a) Performance of Obligations. It and each of its Affiliates shall fully and faithfully carry out (i) all its obligations under each Master Operative Document to which it or any Affiliate is a party, and (ii) once agreed, each applicable Business Plan (as defined in the FF Operating Agreement) ("Business Plan").

(b) Ownership Interest. Except as otherwise expressly permitted by the FF Operating Agreement and this Agreement, it shall not Transfer or permit any of its Affiliates to Transfer all or any portion of its FF Interests (or all or any portion of its interest in any Affiliate through which it beneficially owns its FF Interests) to any Person without the consent of the other Party.

5.2 Public Announcements.

(a) At or following the Closing, neither Party shall, nor shall it permit any of its Affiliates to, without the prior written consent of the other Party:

(i) issue any public release, announcement or other document, or otherwise publicly disclose any information or make any public statement, concerning the operations of Flash Forward that refers to the other Party or any of its Affiliates in connection therewith (other than a general reference to affiliation with Flash Forward) that (A) concerns the financial condition or results of operations of Flash Forward other than as required by any Governmental Rule, Japanese GAAP, Japanese GAAS, US GAAP or US GAAS, with respect to the financial disclosure obligations of either Party or (B) disparages either Party, or Flash Forward's performance or reflects negatively on either Party's commitment to either of Flash Forward; or

(ii) other than as may be required in connection with filings required to be made with Governmental Authorities with respect to the transactions contemplated by the FF Operative Documents pursuant to the Japanese Foreign Exchange and Foreign Trade Law and related regulations, (A) publicly file all or any part of any Master Operative Document or any description thereof or (B) issue or otherwise make publicly available any press release, announcement or other

document that contains Confidential Information belonging to the other Party (or its Affiliates) or Flash Forward, except as may be required by any applicable Governmental Rule, in which case such Party shall (or shall cause the Person required to make such filing to) cooperate with the other Party, to the extent reasonable and practicable, in obtaining any confidential treatment for such filing requested by the other Party.

(b) Each Party shall use commercially reasonable efforts to grant or deny any approval required under this Section 5.2 within five (5) days of receipt of written request by the other Party; *provided*, *however*, a Party's failure to respond within said time period shall not be deemed to constitute such Party's approval or consent.

5.3 Expenses. Each Party shall bear its own expenses in connection with the negotiation, execution and delivery of the Master Operative Documents.

5.4 Undertaking as to Affiliate Obligations. Each Party shall cause all covenants, conditions and agreements to be performed, observed or satisfied by each of its Affiliates that is a party to any Master Operative Document to be fully and faithfully observed, performed and satisfied by such Affiliate, and shall not cause or permit to exist (a) an Event of Default with respect to such Affiliate or (b) except as otherwise permitted by the FF Operating Agreement, any event of dissolution of Flash Forward caused by such Affiliate. Nothing in Section 5.1 or in this Section 5.4 shall be construed to create any right in any Person other than the Parties. Without limiting the generality of the foregoing, SanDisk hereby guarantees the obligations of SanDisk Flash hereunder and under any Master Operative Document to which SanDisk Flash is a party.

5.5 Continuity and Maintenance of Operations. During the term of this Agreement, each Party agrees on behalf of itself and each of its Affiliates that is a party to any Master Operative Document to use all reasonable efforts consistent with past practice and policies to (a) preserve intact in all material respects its and their present business operations, (b) keep available the services of its and their key employees as a group, and (c) preserve its relationships with suppliers, licensors, licensees, and others having business relationships with it or them, each to the extent necessary to allow it and such Affiliates to perform its and their obligations under the Master Operative Documents and to allow Flash Forward to conduct its business as contemplated in its most recently approved Business Plan.

5.6 Certain Deliveries and Notices. Each Party shall promptly inform in writing the other Party of (a) any event or occurrences which could be reasonably expected to have a material adverse effect on its or any of its Affiliates' ability to perform its or their obligations under any of the Master Operative Documents or the ability of Flash Forward to conduct its business as contemplated in its most recently approved Business Plan, or (b) any breach or failure to satisfy any condition or covenant contained herein or in any other Master Operative Document by such Party or any of its Affiliates.

## 6. Agreements Regarding Flash Forward Operation

6.1 Tool Acquisition.

(a) Flash Forward Tools. All tools to be used in the JV Space of Y5 shall be purchased by Flash Forward (or a lessor for Flash Forward's benefit as contemplated by Section 6.12(b)) and all such purchases shall be agreed upon by the Parties. Toshiba shall, from the Toshiba Semiconductor Company headquarters [***] provide Flash Forward with tool purchase service and support and negotiate with vendors on Flash Forward's behalf, and SanDisk shall have the right to participate in such negotiations or other tool purchase activities of Toshiba with respect to the JV Space [***]. For

such purpose, a joint SanDisk/Toshiba tool procurement team ("Joint Tool Procurement Team") will be formed and each member of the team will have total participation, visibility and responsibility in tool selection and procurement negotiations, including tool evaluation activities of the Joint Tool Procurement Team. [***]. Immediately after the effective date of this Agreement, the Parties will establish a process that enables equal participation and equal decision making by the Parties in tool evaluation and purchase for the JV Space (depending on SanDisk's ability to participate).

(b) Unilateral Expansion Tools.

(i) A Party undertaking a Unilateral Expansion (for the avoidance of doubt, excluding any Reservation Option exercise) shall have sole discretion and responsibility with respect to the purchase of all tools to be used for such Unilateral Expansion; *provided*, that tool purchases for jointly developed products will take into consideration the then-existing recommendations from the Joint Tool Procurement Team; *provided further*, that the Party undertaking such Unilateral Expansion shall provide the other Party with information concerning the types and quantities of tools purchased. [***].

(ii) For the avoidance of doubt, in the case of a Reservation Option exercise, tool purchases shall be conducted in accordance with Section 6.1(a), provided, however, if the Reservation Option exercise results in a Unilateral Expansion, then SanDisk, as the Party undertaking the Unilateral Expansion shall pay for tools to be used for such Unilateral Expansion.

(c) [***]. Toshiba shall have sole discretion and responsibility with respect to procurement of additional tools for production of Toshiba [***]. Toshiba shall have the right, in its sole discretion, to make decisions related to and to manage the investment and financing plan, schedule and loading plan relating to, and the operation of, Toshiba's [***], including manufacturing and production efficiencies and losses in the production of Toshiba [***]; provided (i) that any such decisions do not adversely affect the cost of, ramp of, or tool acquisition by Flash Forward and/or a Party effecting a Unilateral Expansion, and (ii) that Toshiba shall ensure that no adverse effect on the wafer cost [***] results from any such decision or management by Toshiba. If Toshiba desires to use any tool [***] in the production of Toshiba [***] Toshiba shall request the consent of the applicable tool owner for the use of such tool, and such consent shall not be unreasonably withheld or delayed. [***].

(d) [***]. SanDisk shall have sole discretion and responsibility with respect to procurement of additional tools for production of SanDisk [***]. SanDisk shall have the right, in its sole discretion, to make decisions relating to and to manage the investment and financing plan, schedule and loading plan relating to the production of SanDisk [***], including manufacturing and production efficiencies and losses and use of tools in the JV Space for production of SanDisk [***]; provided further (i) that any such decisions do not adversely affect the cost of, ramp of, or tool acquisition by Flash Forward and/or a Party effecting a Unilateral Expansion, and (ii) that SanDisk shall ensure that no adverse effect on the wafer cost of [***]results from any such decision or management by SanDisk. If SanDisk desires to use any tool [***] in the production of [***], SanDisk shall request the consent of the applicable tool owner for the use of such tool, and such consent shall not be unreasonably withheld or delayed. [***].

(e) Use of non-Flash Forward tools by Flash Forward If Flash Forward desires to use any tool of either SanDisk or Toshiba in the production of R/W, Flash Forward shall request the consent of the applicable tool owner for the use of such tool and such consent shall not be unreasonably withheld or delayed. Flash Forward's use of such

tool shall be subject to appropriate cost allocation, usage limitations and steps to minimize any potential contamination risk and effect on capacity.

(f) Tool Layout. Upon SanDisk's reasonable request, Toshiba shall provide a tool layout plan for the Y5 Facility related to: (x) Flash Forward, (y) any SanDisk Unilateral Expansion capacity and (z) SanDisk R/W. Toshiba shall provide SanDisk with appropriate information regarding Toshiba non-JV tools to reasonably demonstrate to the mutual satisfaction of the Parties that any space or capacity allocation is consistent with this Agreement.

6.2 Technology Transfers.

(g) Process Technology.

(i) The Parties will jointly make available to Flash Forward the process technology developed under the JMDY Agreement, the Product Development Agreement or the Common R&D Agreement and applicable to the manufacturing and testing of NAND Flash Memory Products and R/W ("Process Technology") on a mutually agreed schedule.

(ii) Transfers of Process Technology and process integration for new processes developed pursuant to the JMDY Agreement and that appear on the JMDY Roadmap (as defined in the JMDY Agreement), including those processes developed at AMC or any other facility in accordance with the JMDY Agreement, will be jointly reviewed and discussed by the Parties and will be made in a mutually satisfactory manner. All process integration for new process originating from AMC will be led by Toshiba employees, to the extent reasonably possible. Toshiba and SanDisk will cause their respective employees to cooperate in achieving an efficient transition from development module to operating process and volume production.

(iii) The transfer of Process Technology to JV Space shall be deemed complete when the transferred Process Technology passes a reasonable qualification procedure to be mutually agreed upon by the Parties.

(iv) [***]

(v) [***]

(vi) Non-JV Space Process Technology. The manner of Process Technology transfer from JMDY to a Party'sNon-JV Space and the conditions associated therewith shall be determined by such Party in its sole discretion; provided, that such Party shall exercise due care and shall comply with all Yokkaichi Facility or otherwise applicable safety and production regulations in effecting such transfer of Process Technology.

6.3 Ramp-Up. The Parties shall expand Y5 Facility NAND Flash Memory Product manufacturing capacity through development of Phase I and Phase II of the Y5 Facility as follows:

(a) Minimum Commitments.

(i) [***]. The initial [***] L/M in aggregate increases in production capacity of the Y5 Facility shall be considered firmly committed by each Party (*i.e.*, [***] L/M each) as described below [***]. Toshiba shall specify the timing and manner of implementation of [***] and the details shall be reflected in one or more Business Plans that provide for implementing [***]. If SanDisk [***] fails for any reason to make the investment necessary to implement its [***]

share of the [***] then Toshiba (so long as it makes the investment necessary to implement its [***] share of [***] shall have the right [***] either to maintain this Agreement in effect [***] or [***] in which case (A) [***] and (B) [***] shall apply.

(ii) [***]. If Toshiba gives notice to SanDisk of [***] to proceed with Phase II, the following terms and conditions shall apply with respect to the ramp-up in Phase II. The initial [***] in aggregate increases in production capacity of Phase II of the Y5 Facility shall be considered [***] as described below [***] shall specify the timing and manner of implementation of [***] and the details shall be reflected in one or more Business Plans that provide for implementing [***]. If SanDisk [***] fails for any reason to make the investment necessary to implement [***] Toshiba (so long as it makes the investment necessary to implement [***] share of [***] shall have the right, [***] to: (A) maintain this Agreement in effect [***]; (B) maintain this Agreement in effect with respect [***]; or (C) in the event that SanDisk's [***] in Phase I is [***] or less at the time of such failure to [***], in which case (1) [***] and (2) [***] shall apply.

(iii) Costs of Non-Investment. If [***], then it shall reimburse [***] the costs due to cancellation of any purchase orders the Parties have agreed to place for [***] to the extent such costs cannot be reducted or mitigated [***] commercially reasonable efforts to mitigate the Costs to the fullest extent possible. To the extent [***] alternative use ("Alternative Use") of Equipment, [***] unable to negotiate a termination of an Equipment purchase order and must acquire such Equipment (and will not make Alternative Use of it), [***] will promptly liquidate in one or more arm's length transactions ("Third Party Sale") such Equipment and the positive difference between the cost of such Equipment (including the out-of-pocket costs of conducting the Third Party Sale, such as costs related tode-installing Equipment, compensating a sales broker, delivering the Equipment to the purchaser thereof, etc.) and the proceeds of such Third Party Sale shall constitute Costs. [***] using commercially reasonable efforts to effect a Third Party Sale, the liquidation value of any given Equipment may be small compared to the purchase price for such Equipment given the specialized nature of the Equipment and limited secondary market for wafer manufacture equipment. To the extent [***] is in a commercially reasonable manner able to make Alternative Use or a Third Party Sale of any Equipment at any time after [***] paid the Costs arising from or related to such Equipment, [***] notify [***] of such Alternative Use or Third Party Sale and shall reimburse [***] for the full amount of the Costs paid by [***] with respect to such Equipment. If the net proceeds on the sale of any item of Equipment exceeds the cost thereof, such profit shall reduce amounts otherwise payable [***] under this Section 6.3.

(b) Failure to Invest as Committed in Investment Plan or Business Plan

(i) Investment Plan. After the [***] has been fulfilled by the Parties, once the Parties agree in the form of an Investment Plan (as defined below) approved by the Board of Executive Officers of Flash Forward to make investments to fulfill any given increment of capacity expansion for Flash Forward, if either Party, as the Non-Investing Party, then fails for any reason to make the investment necessary to implement its [***] share of such committed increment of the capacity expansion, then the other Party, [***] as applicable. The term "Investment Plan" shall mean a proposed increment of capacity expansion as set forth in the Business Plan or subsequent mutual agreement between the Parties and presented to the Board of Executive Officers of Flash Forward in accordance with Section 6.3(c).

(ii) Business Plan. Business Plans and proposals with respect to the adoption of new Business Plans shall describe JV Space capacity expansions to be effected by SanDisk and Toshiba through Flash Forward on a [***] basis. In the event that SanDisk does not approve an Investment Plan providing [***]. Accordingly, the Parties shall cooperate in good faith to agree on and implement the Business Plan in a timely manner in accordance with Section 3.4 of the Operating Agreement. In the event of a failure to either (A) agree on the capacity expansions in a Business Plan or (B) implement any specific capacity expansion set forth in the Business Plan, then the Board of Executive Officers of the Company shall meet and discuss the applicable capacity expansion. If the Board of Executive Officers fails to agree on a solution, then any Member may bring the matter to the attention of the Vice President, Memory Division of Toshiba, and the Chief Operating Officer of SanDisk (the "Designated Individuals"), who will attempt to find a resolution. If the matter has not been resolved within thirty (30) days of referral to the Designated Individuals, the matter will be referred to the Management Representatives for agreement on a final resolution. Any agreement of the Management Representatives on a final resolution will be final and binding and shall be implemented by the Company. In the event that no agreement on a final resolution is reached by the Management Representatives within thirty (30) days after submission of the matter to them, the matter shall be submitted to arbitration in accordance with [***]. The remedies set forth in this Section 6.3(b)(ii) shall constitute the exclusive remedies with respect to [***] in the context of a Business Plan, and no Deadlock shall arise from such failure.

(c) General Rule; Proposed NAND Capacity Expansions.

(i) General Rule. After the Parties have fulfilled their respective [***] in Phase I or Phase II, as applicable, if either Party desires to (A) further expand the production capacity of the Y5 Facility, expand or accelerate any capacity increase provided for in a then-agreed Business Plan or otherwise increase the number [***] or (B) otherwise expand its aggregate manufacturing capacity [***], then in each of (A) and (B) above, such Party will [***] to the other Party and will propose to the other Party a plan to make such desired expansion on a 50/50 basis with reasonable terms [***].

(ii) Expansions within Y5. Expansions of JV NAND Space production may be proposed by either Party in the form of a Proposal and, if and to the extent agreed, shall in due course be reflected in a Business Plan or amendment thereto. If no agreement with respect to joint implementation of the full amount of a proposed expansion of Y5 Facility production capacity beyond any capacity increase provided for in a then-agreed Business Plan is reached within [***] following a Party's written Proposal of such expansion, the proposing Party may [***]:

(A) If [***] is the proposing Party, it shall have the right to [***]

(B) If [***] is the proposing Party, it shall have the right to [***]

(iii) Other Facility Expansions. If no agreement with respect to a proposed expansion in a facility [***] is reached during [***] day period beginning on the day a Proposal is received by the non-proposing Party, then SanDisk and Toshiba shall cause the chief executive officer of SanDisk and the chief executive officer of Toshiba Semiconductor Company to meet face-to-face at Toshiba's headquarters, no later than the [***] day following receipt of the Proposal by the non-proposing Party, to develop and agree upon a solution [***]. If no resolution is reached within [***] days after the face-to-face meeting, then (x) with respect to the Y5 Facility, the Parties will continue to

pursue the ramp-up on the terms set forth in [***], (y) the proposing Party will [***]:

(A) If SanDisk is the proposing Party, it shall have the right [***]; and

(B) If Toshiba is the proposing Party, it shall have the right to [***].

6.4 Ramp Up of JV R/W Space in Phase II. If positive verification [***]

(a) is made prior to [***].

(b) is not made prior to [***].

6.5 Capacity.

(a) Priority.

(i) SanDisk's manufacturing capacity for, and purchased supply of, NAND Flash Memory Products shall be sourced by SanDisk and its Subsidiaries from, and in, the following priority:

(A) from Flash Partners, to fulfill the capacity allocated to SanDisk, as provided for under the FP Operative Documents,

(B) from Flash Alliance, to fulfill the capacity allocated to SanDisk, as provided for under the FA Operative Documents,

(C) from Flash Forward, to fulfill the capacity allocated to SanDisk, as provided for under FF Operative Documents,

(D) from unilateral capacity in Y5 acquired by SanDisk through one or more Unilateral Expansions, and

(E) [***].

(ii) [***]:

(A) from [***], to fulfill the capacity allocated to Toshiba, as provided for under [***]

(B) from [***], to fulfill the capacity allocated to Toshiba, as provided for under [***]

(C) from [***], to fulfill the capacity allocated to Toshiba, as provided for under [***]

(D) [***], and

(E) from [***] and/or from other third parties (so long as [***], SanDisk shall have fulfilled its fifty percent (50%) share of the Ramp-Up Plan for the Y3 Facility (the "Y3 Ramp-Up Plan") and Y4 Facility (the "Y4 Ramp-Up Plan") and its fifty percent (50%) share of (x) the Phase I Minimum RUP Commitment and, (y) if Phase II is constructed, the Phase II Minimum RUP Commitment).

(iii) In no event will [***] SanDisk [***] source NAND Flash Memory Products [***] from a source other than Flash Partners or Flash Alliance if the effect of such sourcing is the diversion of resources or other (intended or collateral) effects which reduce the economic or other efficiency of the Y3 or Y4 Facility; provided, that sourcing by Toshiba from the Toshiba Capacity (as defined in the JVRA and including, for the avoidance of doubt, any Toshiba Unilateral Expansion Space) shall not be deemed such a diversion of resources or other reduction in efficiency.

(b) [***]

(c) Transfer of Technology to External Manufacturing Source. If the Parties mutually agree to secure external manufacturing sources other than the Yokkaichi Facility through joint investment, Flash Forward and Toshiba, as applicable, will jointly transfer the applicable manufacturing technology and know-how to such source. Flash Forward, Flash Alliance and Flash Partners will conduct all negotiations with the external manufacturing source; *provided*, *however*, the terms and conditions of any agreement shall be subject to prior consultation with and the approval of Toshiba. In connection with any technology transfer to such external source, Toshiba will be reimbursed its mutually agreed transfer costs for assisting in the transfer of manufacturing technology and know-how. If the new capacity secured at such external manufacturing source is requested by only one of the Parties, such Party will pay the transfer costs and be entitled to purchase the full output of Flash Forward products purchased by Flash Alliance, Flash Partners or Flash Forward, as applicable, from such external manufacturing source. If both Parties request such new external capacity, then Flash Alliance, Flash Partners or Flash Forward, as applicable, will pay the transfer costs to Toshiba. Unless otherwise agreed by the Parties in writing, neither Party shall have the right to grant manufacturing licenses to such external manufacturing source or to disclose or transfer to any such external manufacturing source, manufacturing know-how related to the manufacture of Flash Forward products, except through Flash Alliance, Flash Partners or Flash Forward.

6.6 Capacity Sharing Arrangement.

(a) Equal right to Joint Venture capacity. Each of the Parties will have the right and obligation, through Flash Forward, to utilize fifty percent (50%) of the JV Space products, on an Equivalent Lot basis. The actual monthly NAND Flash Memory Product lot output from the Y5 Facility shall be allocated between Toshiba and SanDisk, as applicable, based on the Y5 NAND Capacity Ratio.

(b) Alternative use of allotted capacity.

(i) If a Party is unable to utilize its allotted manufacturing capacity for JV Y5 NAND Flash Memory Products (such Party, an "Excess Capacity" or "EC Party"), it may do any of the following:

(A) An EC Party may request the other Party to negotiate the terms of transfer of its capacity shortfall to the other Party, which may choose whether to accept such additional capacity and on what terms in its sole discretion.

(B) An EC Party may use its capacity for Embedded NAND Products, as defined in and subject to Section 6.6(c).

(C) An EC Party may use its capacity for Proprietary NAND Flash Memory Products and non-Proprietary NAND Flash Memory Products, in accordance with and subject to Sections 6.6(d) and (e).

(D) An EC Party may produce less than one hundred percent (100%) of its total Equivalent Lot capacity, provided its allocation of costs in this case will be done in accordance with Section 7.4(a)(i) ("EC Compensation").

(ii) If both Parties are EC Parties because demand for both Parties' JV Y5 NAND Flash Memory Products are significantly below expectations, the Parties will discuss in good faith whether to permit products which are not JV Y5 NAND Flash Memory Products to be produced in the JV Space; provided that (A) the inability of the Parties to so agree shall not constitute a Deadlock (as defined in the FF Operating Agreement) and (B) the foregoing shall not limit either Party's rights in the remainder of this Section 6.6.

(c) Either Party shall have the right to use a portion of its total allocated capacity with respect to the JV Space to run a memory product which is not a JV Y5 NAND Flash Memory Product (solely because the NAND flash memory array area is equal to or less than [***] of the total die area ("Embedded NAND Product")) so long as such Embedded NAND Product [***]. If a Party exercises its option to run Embedded NAND Products, it must [***]. No such products may be run if doing so [***]. The conditions stated in Sections 6.6(d) and (e) do not apply to Embedded NAND Products.

(d) Each Party may use a portion of its total allocated capacity from the JV Space to cause to be manufactured NAND Flash Memory Products which are proprietary to that Party ("Proprietary NAND Flash Memory Products") and which need not be shared with the other Party. Proprietary NAND Flash Memory Products may be produced in the JV Space so long as such products [***]. If a Party exercises such option, it must [***]. No such Proprietary NAND Flash Memory Products may be run if doing so [***]. Each Party shall give the other Party at least ninety (90) days' advance written notice of its intention to use a portion of its allocated capacity to manufacture Proprietary NAND Flash Memory Products and the Parties shall refer the matter to the Board of Executive Officers (as defined in the FF Operating Agreement) for consultation and planning, with the intention to minimize the impact of such allocation. Such notifying Party will limit the output volume of such Proprietary NAND Flash Memory Products to [***] unless it receives the consent of the other Party to an increase in such output volume above such limit.

(e) Each Party (the "Originating Party") shall inform the other (the "Non-Originating Party") of the development plans by the Originating Party to develop NAND Flash Memory Products, and the Originating Party and the Non-Originating Party shall each refer such matter to the Coordinating Committee (as defined in the Product Development Agreement). If the Coordinating Committee unanimously decides that such planned development shall be undertaken jointly, then the cost of such joint development shall be borne by each Party in accordance with the Product Development Agreement or JMDY Agreement, as applicable, and the NAND Flash Memory Products manufactured following such joint development shall be considered non-Proprietary NAND Flash Memory Products for purposes of Section 6.6(d);*provided*, *however*, the NAND Flash Memory Products set forth in Exhibit A to the Product Development Agreement shall be deemed to benon-Proprietary NAND Flash Memory Products without any action by the Coordinating Committee. Subject to the foregoing, if the Coordinating Committee does not unanimously decide that such planned development shall be undertaken jointly, then the Originating Party may, at its sole discretion, either (i) transfer to the Non-Originating Party the technology, including the items in Exhibit C to the Product Development Agreement relating to such technology, used to manufacture such NAND Flash Memory Products on a royalty-free basis, whereupon such NAND Flash Memory Products shall be considered non-Proprietary NAND Flash Memory Products, or (ii) treat such NAND Flash Memory Products as Proprietary NAND Flash Memory Products for purposes of Section 6.6(d). In the event the Originating Party elects to treat any NAND Flash Memory Products as Proprietary NAND Flash Memory Products in accordance with the preceding sentence, but thereafter the Coordinating Committee unanimously determines that such Proprietary NAND Flash Memory Products should be developed jointly, the Originating Party shall transfer to the other Party the technology used to

manufacture such NAND Flash Memory Products on reasonable terms and conditions to be mutually agreed upon by the Parties, whereupon such Proprietary NAND Flash Memory Products shall be treated as non-Proprietary NAND Flash Memory Products.

6.7 SanDisk Reservation Option.

(a) Ramp Flexibility. When [***] initiates one or more [***], such that the total capacity of [***] will be [***] than [***] in Y5 [***] may execute one or more [***] under the following conditions [***]

(i) [***]. The [***] Party will commit to utilize or release to [***] all or a portion of its Phase I space as set forth below [***] capacity as adjusted [***] for any space that has been released by[***]::

(A) The [***] Party will commit to utilize or release [***] all or a portion of its Phase I space at the time of, and for the inclusion in, an annual or amended Business Plan, taking into account the results of [***], available resources, and the time required to effect the necessary ramp-up, among other relevant factors; provided, that neither Party shall have any right to [***] of the Parties to agree with respect to [***]; provided, further, that the [***] shall commit to utilize or release all or a portion of the [***] Phase I space [***] no later than [***] prior to the Phase II building target completion date as set forth in the Phase II Construction Plan Notice (as defined below); provided, that no further [***] shall apply in Phase I. Toshiba may issue a notice of its intention to pursue Phase II construction (a "Phase II Construction Plan Notice") [***] such notice shall include the target building completion date for Phase II. If and to the extent that, on the date when the [***] delivers [***] with respect to the [***] required for it [***] as adjusted for any [***] that has been [***] by the [***] Party, the [***] in Phase I [***] such [***] space of the [***] Party shall be deemed [***].

(B) The [***] Party will complete the ramp [***] space no later than [***] after the [***] Party fully [***], unadjusted for any [***] by the [***] Party; provided, however, that the [***] shall be [***] by that [***] between the Parties' start and completion of [***].

(ii) Phase II Ramp. The [***] Party will commit to utilize or release to [***] all or a portion of its [***] prior to the date on which the [***] Party [***] which will result in [***], and no further [***] shall apply in Phase II. The [***] Party will complete its [***] no later than [***] after the [***] Party fully [***].

(iii) In the event that any of the events that trigger [***] by the [***] Party to commit or release [***], as applicable, pursuant to [***] above is unreasonably [***], then the [***] Party may [***] commit to or release such [***], as applicable,[***]; provided, that no such right of the [***] Party [***]arise in the case where [***] by reason of the [***] Party's [***] space subject the [***].

(iv) [***]. Prior to implementing any [***], the [***] Party must first propose such [***] for implementation pursuant to [***]. Solely in the event that [***] refuses to consent to such [***] and/or the [***] does not agree with the [***] Party on the [***] may the [***] Party proceed [***]. Unless otherwise agreed by the Parties, only the [***] Party shall have the right [***] by placing [***] space in the applicable phase that the [***] Party has committed to utilize [***]. At the end of either the Phase I [***] or the Phase II [***], as applicable, any [***] space [***] subject to the general rules [***].

(v) Operational Efficiencies. Within the framework provided by the FF Operative Documents, the Parties shall cooperate to ensure that there is no significant adverse effect on [***] as a result of the [***] Party's exercise of [***]; provided, that the [***] corresponding to the applicable [***] shall not in and of itself constitute [***].

(b) Reservation [***]. During the term of each of the Phase I [***] and Phase II [***], the [***] Party shall make [***] for such [***] quarter or portion thereof. The Parties shall cause [***] the other provisions of this Agreement, other than the [***], the [***] per unit of the same product and same design rule shall be the same for both Parties. The obligation for the Phase I [***]shall be required only until the earlier to occur of [***] production capacity is included in the [***] and producing wafers, provided that the next [***] will be prioritized into this space [***] which the [***] Party has released [***], provided that the [***] will only terminate as to that [***] that is released to [***]. The obligation for the Phase II [***] shall be required only until the Phase II [***] has expired. [***].

(c) Procedure for Catch-Up Expansions. When a [***] Party expands into its [***] and the [***] Party is not simultaneously [***], upon approval by the Board of Executive Officers of Flash Forward, Flash Forward will make [***] on behalf of the [***] Party equal to the proposed expansion by the [***] Party and, upon the consent of the [***] Party, the [***] Party will [***] and Flash Forward will [***] amount of [***] Party's [***] capacity [***], provided that (i) both Parties mutually agree on the Purchased Capacity [***] and (ii) such Purchased Capacity is purchased by [***] from the [***] Party at the [***] and any other costs for installation, hook up and facilitization. [***] amount and [***] of the Purchased Capacity will transfer from [***] Party [***] over a period and at a [***].

(d) Consideration of Release. Upon [***] request prior to the date that [***] prior to the expected completion of Phase II clean-room space construction and facilitization, [***] shall [***] with respect to its release to [***] of some or all of [***] then-unutilized Phase I [***] for [***] expansion in Phase I, where (i) other than the Phase I [***], the [***] could only next expand into Phase II [***] has reasonable assurance that it can timely continue its ramp in Phase II, provided, that any such release shall be [***] after considering the foregoing factors and that in no event shall [***] in Phase II [***] of total Phase II [***].

6.8 Engineering Wafers and Development Expense. Each Party will have full access to all operational and engineering data and reports related to engineering wafers manufactured in the JV Space.

(a) Engineering wafers and development expenses are defined in five (5) categories: Common R&D Development Expenses, Y5 Direct R&D Development Products, JMDY Development Expenses, Evaluation Wafers and Qualification Wafers (each as defined below); *provided*, *however*, that if there are any development expenses not falling in these categories and such expenses are not to be charged under the JMDY Agreement or the Product Development Agreement, such expenses shall be appropriately paid or borne between the Parties.

(i) "Common R&D Development Expenses" means those expenses approved in accordance with [***] that are associated with activities mainly done [***] for the purpose of development of fundamental semiconductor technology. For the avoidance of doubt, in no event shall [***] allocated any costs attributed to [***] unless the project that generated such [***] was on the [***], such expenses are explicitly approved [***], or as otherwise mutually agreed by the Parties (in such case [***] of a project that generated such costs).

(ii) [***] are those products developed [***] for the purpose of joint product development. R&D costs for [***] shall be allocated to the Parties in accordance with [***]. If similar products have also been manufactured [***] (not including [***]), the R&D costs for such products shall be shared among [***] in accordance with applicable [***].

(iii) "[***] Expenses" are those development expenses incurred in accordance with [***] for the purpose of product development. R&D costs for [***] Expenses shall be allocated to the Parties in accordance with [***].

(iv) "Evaluation Wafers" are those wafers manufactured [***] for the purpose of [***]. Both Parties are entitled to receive Evaluation Wafers [***]; *however*, the Party responsible for completion of [***] has the right to receive [***] necessary to perform the [***]. The cost of Evaluation Wafers is [***] intended to be shared [***] by the Parties and is therefore included [***] Product manufacturing cost and is subsequently part of the [***].

(v) "Qualification Wafers" are those wafers manufactured in the JV Space for the purpose of [***]. The Parties will discuss and agree on the appropriate quantity of Qualification Wafers required for each JV Y5 NAND Flash Memory Product. Each Party shall have the right to receive such quantity of Qualification Wafers [***]. For such Qualification Wafers, [***] will charge the receiving Party pursuant to [***] and the [***], as applicable, a price per wafer equal [***] set forth in the [***]. The Parties intend that the [***] for Qualification Wafers shall not [***] the [***] of production lots in the Y5 Facility. It is understood that by the Parties that each Party's Qualification Wafers shall come from [***] capacity of lots in the JV Space.

(b) It is the intent of the Parties that Qualification Wafers manufactured in the JV Space will be allocated [***] between the Parties. [***] will charge the receiving Party, pursuant to the [***] and the FF [***], as applicable, a price per wafer equal to the [***] set forth in the [***].

6.9 Management Representatives. Each Party shall designate a person (each a "Management Representative") and the two so designated shall have the authority to (a) advise Flash Forward with respect to policy and operating matters common to Toshiba and SanDisk as well as on such other matters as Flash Forward may refer to the Management Representatives from time to time, (b) hear and seek to resolve any disputes regarding operational matters or alleged breaches of any Master Operative Documents (including dispute resolution), and (c) take the actions specified to be taken by the Management Representatives in this Agreement or any Master Operative Document.

6.10 FF Management Structure and Headcount.

(a) Flash Forward Headcount Plan and Working Group.

(i) The Parties will meet and mutually agree on an overall headcount plan for [***], which will incorporate [***] (the "FF Headcount Plan").

(ii) Each Party is committed to provide (itself or through its Affiliates) [***] of the engineers (other than line engineers), including, but not limited to, device, integration, process and test, included in the FF Headcount Plan ("Engineers"). In addition, Toshiba will use its reasonable best efforts to provide [***] and the Parties will mutually agree on the number of [***]. SanDisk will provide an execution status for the FF Headcount Plan and, in case of any shortage [***] from the number agreed in the FF Headcount Plan, an improvement plan to fulfill such [***] In no case will [***] to SanDisk, Toshiba (including if it

is unable to provide all Engineers not provided by SanDisk or to provide all necessary non-engineers), or Affiliates of SanDisk or Toshiba.

(iii) The Parties shall establish a working group with equal representation from each Party for the purpose of discussing integration of SanDisk-provided Engineers into the Toshiba Y5 Facility organization with respect to the JV Space, organization structure, updates on SanDisk's and Toshiba's respective hiring of Engineers, and related matters (the "Headcount Working Group"). SanDisk and Toshiba should prepare updates to the FF Headcount Plan through the Headcount Working Group. The Parties acknowledge their general intent to deploy [***] engineering organization at all levels, subject to taking into account the capabilities of the individuals and the needs of the particular position. The Headcount Working Group will meet as and for so long as its members consider necessary. Deployment and positions of Engineers and any other SanDisk personnel at the Y5 Facility and issues and concerns related thereto shall be handled through the Y5 Operating Committee (as defined in the FF Operating Agreement), and the agenda for meetings of the Y5 Operating Committee shall include review and assessment of such issues if requested by either Party.

(iv) Recognizing that Japanese language skills will be necessary for Engineers working at the Y5 Facility, SanDisk shall seek to minimize the number of its Engineers seconded to Flash Forward who are not highly proficient in Japanese and for those who are not Japanese speakers SanDisk shall ensure they receive some language training in Japanese at SanDisk's cost before being sent to work at the Y5 Facility.

(b) With respect to the SanDisk-seconded Engineers (including any seconded from SanDisk Affiliates) and any other SanDisk employees seconded to the Y5 Facility pursuant to the FF Headcount Plan or further agreement with Toshiba (collectively, the "SanDisk Team"), the Parties agree as follows:

(i) Members of the SanDisk Team who are Engineers shall be integrated by Toshiba at the Yokkaichi Facility and shall work together with Toshiba Engineers to seek to ensure the optimal operation of the Y5 Facility from a cost and technology perspective. To the extent any SanDisk Team member who is an Engineer reasonably follows the properly issued directions of such person's manager at the Y5 Facility and contributes to the success of the Y5 Facility's operations that support Flash Forward to the degree that would be reasonably expected of a Toshiba Engineer in his or her position, [***] member shall be charged to [***]. With respect to such costs, [***] shall reimburse [***] for salaries, bonuses and benefits (other than stock options or other similar equity incentive compensation but including expatriation benefits) in an amount [***].

(ii) Members of the SanDisk Team who are not Engineers ("Non-Engineer SanDisk Team Members") shall work with their respective counterparts at the Yokkaichi Facility to facilitate SanDisk's access to the operations of the Y5 Facility as follows. Non-Engineer SanDisk Team Members who support the operations of Flash Forward or the manufacturing of NAND Flash Memory Products shall have full access to the Y5 Facility other than the Toshiba Non-JV Space, and information related to the operations of the Y5 Facility other than the Toshiba Non-JV Space, and reasonable access to other information relevant to Flash Forward or the operations of the Y5 Facility. [***].

(iii) Each member of the SanDisk Team may, at all times and in such SanDisk Team member's sole discretion, raise issues with the Y5 Operating Committee (as provided in the FF Operating Agreement) and may communicate with

SanDisk as otherwise contemplated by the Master Operative Documents. If the Y5 Operating Committee is unable to agree on the resolution of an issue raised by a member of the SanDisk Team, it shall be referred to the Board of Executive Officers.

(iv) Office space used in connection with the JV Space shall be made available for the [***] on a non-discriminatory basis as compared to [***]. The members of the [***] shall be provided with secure and confidential private data and voice linkages [***], consistent with the practice of the Parties in connection with Flash Partners and Flash Alliance).

(v) [***].

(vi) Either or both of [***] shall be entitled to condition the [***] onto its premises on such [***] member's execution of a nondisclosure and visitor requirements document in the forms to be mutually agreed by the Parties.

(vii) SanDisk shall ensure that SanDisk Y5 personnel (including Y5 Engineers) (A) comply with the written safety and security regulations, the other written policies and direct instructions of Toshiba related to site security and information security, as well as any otherwise applicable safety and production regulations (copies of the written Toshiba regulations and policies will be provided to SanDisk upon the request of SanDisk or upon the amendment of such regulations or policies) while such SanDisk Y5 personnel are in Toshiba's facilities and (B) in their operation of the [***] exercise due care and act with the degree of prudence that would be reasonably expected of a Toshiba Engineer in an analogous position. Toshiba will provide safety and security training in Japanese to senior managers of SanDisk at Y5 to ensure that SanDisk Y5 personnel have the right to access [***]. The training of the senior managers shall be in Yokkaichi. The senior managers of SanDisk Y5 personnel will be responsible for providing or delegating, to other SanDisk personnel, in English or Japanese, the safety and security training to other SanDisk Y5 personnel.

(viii) All members of the SanDisk Team will remain employees of SanDisk. Each Party will indemnify the other Party and Flash Forward from any claim by any of such Party's employees, consultants or agents (such Party being the "Employer") (A) based on other than willful misconduct of such Employer, its employees, consultants or agents; or (B) that he or she has rights, or is owed obligations, as an employee of the Party that is not the Employer.

(c) [***] members (including employees [***] or any of its Affiliates) who are not located at the [***] who are not located at the [***], are requested by [***] to provide engineering services, their time shall be charged to [***] at mutually agreed rates using the same principle as provided in [***], plus travel expenses.

6.11 Non-solicitation of Employees. So long as the business of Flash Forward continues, each Party (and each of its respective Affiliates) shall not, without the prior written consent of the other Party, directly recruit or solicit (a) any employee or director of Flash Forward or (b) any employee of the other Party involved in the Flash Forward business to leave his or her employment with Flash Forward or such other Party prior to the period ending twenty-four (24) months after the FF Termination Date; *provided*, *however*, that placement of employment advertisements or other general solicitation for employees not specifically targeted to the employees or directors of Flash Forward or such other Party shall not constitute direct recruitment. In the event of the dissolution and liquidation of Flash Forward, either Party (or any Affiliate of either Party) may solicit any former employee of such dissolved and liquidated company, but neither Party (nor any of its Affiliates) shall be required to employ any

such Person. If all of the FF Interests held by one Party are purchased by the other Party or its designee, if requested by the acquiring Party, the Parties shall reach agreement on a reasonable transition plan (without profit to the seller) in connection with the services provided to Flash Forward, as applicable, by employees and contractors of the selling Party.

6.12 Financing.

(a) [***]. Neither Party will be obligated to make any assurance or guarantee [***]; however, [***] will use its reasonable best efforts to assist [***], to the extent reasonably requested by [***], in securing financing on favorable terms. If either Party is unable to obtain financing, the Parties will meet to discuss in good faith a resolution to such Party's inability to obtain financing. For the avoidance of doubt, [***], and all loans to Flash Forward by the Parties will be shared 50/50.

(b) The Parties currently intend, but are not obligated, to structure the financing for equipment purchases by Flash Forward necessary to effect the ramp-up as follows:

(i) Flash Forward will enter into equipment lease or loan agreements and pledge the financed equipment as collateral;

(ii) Flash Forward will secure external financing for approximately [***] of the initial purchase price of its tools and each Party will provide equity capital contributions and loans (on a subordinated basis) for the remaining cash requirements of Flash Forward necessary to effect the ramp-up;

(iii) each Party will severally and not jointly and through separate arrangements guarantee as close as possible to fifty percent (50%) of Flash Forward's obligations under such lease or loan agreements (any financing separately guaranteed or provided by Toshiba for Flash Forward or otherwise for investment in the Y5 Facility, "Toshiba Financing", any such financing separately guaranteed or provided by SanDisk for Flash Forward or otherwise for investment in the Y5 Facility "SanDisk Financing" and the Toshiba Financing and SanDisk Financing, each a "Financing"); and

(iv) the Parties will attempt to obtain the foregoing financing from the same financial institution, but under separate agreements that expressly disclaim any joint and several liability of the Parties.

(c) With respect to any Toshiba Financing or SanDisk Financing, the following shall apply:

(i) The terms and conditions of any Toshiba Financing shall be subject to the prior written approval of SanDisk and the terms of any SanDisk Financing shall be subject to the prior written approval of Toshiba, in each case after review of final drafts of all documents evidencing such Financings. The foregoing approval of either Party shall (A) not be unreasonably withheld, delayed or conditioned by such Party, and (B) not subject such approving Party to any liability or obligations with respect to such financing.

(ii) Unless otherwise expressly agreed by both Parties in writing in each case, all Toshiba Financing and all SanDisk Financing shall create only several obligations of the Parties and no joint and several obligations or liability. Toshiba (with respect to Toshiba Financing) and SanDisk (with respect to SanDisk Financing) hereby indemnifies and holds harmless the other Party and its Indemnified Parties from any claims by any financial institution or other Person that the other Party has any liabilities or obligations with respect to, respectively, any Toshiba Financing or SanDisk Financing (unless joint

liability has been agreed pursuant to the first sentence of this Section 6.12(c)(ii)).

(iii) Flash Forward will use commercially reasonable efforts to comply with the requirements of any financing sources. Flash Forward will make available to each Party one-half of its assets (with as near as practicable cost, collateral value and type) to secure such Party's Financing (whether external or loans from a Party or its Affiliates).

(d) If the lender under the Financing for either Party (as the "Defaulting Party") takes significant actions to enforce its right in the collateral, then the other Party (as the "Non-Defaulting Party") shall have the right, but not the obligation, to cure the default giving rise to the lender's enforcement action. If the Non-Defaulting Party exercises such cure right, then theNon-Defaulting Party's rights in any subject collateral shall be superior to the Defaulting Party's and the Non-Defaulting Party may exercise one of the following options:

(i) the Non-Defaulting Party (A) shall have a claim against the Defaulting Party for reimbursement of any payments made by theNon-Defaulting Party on the Defaulting Party's behalf (which will be subordinate to the lender's claims and bear interest at a rate 500 basis points in excess of the rate being charged by the lender to the Defaulting Party) and (B) shall have the right, until and unless the Defaulting Party pays in full the obligation to the Non-Defaulting Party under foregoing clause (A), to take over the increment of production of the Y5 Facility represented by the collateral with respect to which the lender took significant actions to enforce its rights; or

(ii) the Non-Defaulting Party shall have the right to terminate the Operating Agreement pursuant to Section 11.6 thereof (foreclosure default).

6.13 Other Activities. Except as expressed in this Section 6 and in the JMDY Agreement and the JVRA, neither Party nor any of their respective Affiliates shall: (a) fabricate NAND Flash Memory Integrated Circuits or R/W at any location other than the Yokkaichi Facility or any other fabrication facility agreed upon by the Parties in writing; (b) have any third party fabricate NAND Flash Memory Integrated Circuits or R/W; or (c) have any right to fabricate NAND Flash Memory Integrated Circuits or R/W beyond the capacity as limited pursuant to this Section 6. For the avoidance of doubt, nothing contained in the foregoing shall restrict the Parties from engaging in any other activities, including, without limitation, (i) designing any NAND Flash Memory Product or R/W; (ii) selling any NAND Flash Memory Product or R/W to any customer; (iii) entering into any equipment purchase or material supply agreements; or (iv) entering into any patent licensing arrangement. For purposes of this Section 6.13, "NAND Flash Memory Integrated Circuits" means ICs included in the definition of NAND Flash Memory Products pursuant to Section 3.2.

6.14 Protection of Intellectual Property. Both Parties recognize that it is important for the success of the Y5 NAND Flash Memory Products business to promote the adoption of such Y5 NAND Flash Memory Products with a wide variety of customers and applications, whether for card use or non-card use, and with such recognition, each Party shall use reasonable efforts to protect and enhance the value of Y5 NAND Flash Memory Products.

## 7. Start-Up and Production Costs

7.1 Start-Up Services for Y5. The Parties acknowledge that either or both of the Parties and Flash Forward have incurred or will incur costs in connection with developing Flash Forward and the Y5 Facility and preparing the Y5 Facility for production, including personnel costs, materials costs and other operating expenses, for which

each Party has the obligation ultimately to bear fifty percent (50%) of the responsibility ("Start-Up Costs"). The Parties shall discuss in good faith and agree upon the Start-Up Costs borne by either Party and the means and timing of each Party, as applicable, being reimbursed or credited for having incurred more than fifty percent (50%) of the Start-Up Costs or of making payments due to having incurred less than fifty percent (50%) of the Start-Up Costs; *provided*, that the determination and allocation of Start-Up Costs and the means and timing of reimbursement shall be in a manner substantially similar to that utilized in connection with the start-up costs of the Y4 Facility.

7.2 Equal Participation and Purchase Price Per Unit Generally. The Parties intend to meet demand for increased capacity by equally investing in, and jointly building, and sharing, on equal or substantially equal terms, equal amounts of new capacity for Y5 NAND Flash Memory Products, except as otherwise provided herein. So long as each Party's Threshold NAND Capacity Ratio (as defined below) is greater than or equal to [***], each Party will pay [***] of the same product and same design rule.

7.3 Adjustment Payment. If either Party's Threshold NAND Capacity Ratio falls below [***].

7.4 Cost Terms.

(a) Fixed and Variable Manufacturing Costs. All costs of manufacturing shall be either Fixed Manufacturing Costs (as defined below) or Variable Manufacturing Costs (as defined below).

(i) [***].

(ii) [***].

(b) Threshold NAND Capacity Ratio. The term "Threshold NAND Capacity Ratio" shall mean the applicable Party's NAND lot per month capacity [***] in the Y5 Facility, as calculated on an Equivalent Lot (as defined below) basis divided by [***], provided, however, that [***].

(c) Y5 Capacity Ratio. The term "Y5 Capacity Ratio" for either SanDisk or Toshiba shall mean [***].

(d) Y5 NAND Capacity Ratio. The term "Y5 NAND Capacity Ratio" for either SanDisk or Toshiba shall mean [***].

(e) Equivalent Lot. [***].

7.5 Negative Impacts. In the event of any negative impact on the cost or output efficiency of JV Y5 NAND Flash Memory Products or Flash Forward R/W due to Non-NAND Product production in one Party's Non-JV Space, [***].

7.6 Cost and Methodology. In all events, Y5 manufacturing cost and wafer cost methodology will be in accordance with Toshiba's past practice and accounting system.

## 8. Other Agreements

To supplement their agreement as expressed in certain of the Master Operative Documents, the Parties agree as set forth in this Section 8. To the extent of any conflict between this Section 8 and any other Master Operative Document referenced in this Section 8, the other Master Operative Document shall prevail.

8.1 Flash Forward Management.

(a) As contemplated by the FF Operating Agreement, the Y5 Operating Committee's purpose is to give both Parties the ability to influence the day to day operating decisions of Flash Forward and the Y5 Facility. The Y5 Operating Committee is intended to be a collaborative body with real-time communications, respectful consultation and dispute resolution with the goal of making the Y5 Facility the most competitive (cost and technology) memory fabrication facility in the world.

(b) If the Y5 Operating Committee is unable to decide an issue (by agreement of its two members) such issue shall be referred to the Board of Executive Officers. Special meetings of the Board of Executive Officers may be noticed for issues requiring urgent resolution. The Parties contemplate that while a special meeting of the Board of Executive Officers is being noticed, their respective management teams will discuss any issue that the Y5 Operating Committee could not resolve.

(c) If the Board of Executive Officers is unable to decide an issue (by unanimous agreement), such issue shall be referred to the Management Representatives for resolution, which shall be vested with final decision making authority. This Agreement separately provides for procedures if the Management Representatives is unable to reach agreement on such issue.

8.2 Y5 Facility.

(a) Site Preparation, Building Construction and Facilitization.

(i) Toshiba will design, construct and facilitize the Y5 Facility. SanDisk shall work with Toshiba to help minimize administrative approval delays. Toshiba shall exercise all commercially reasonable efforts to ensure that Y5 Facility is (A) insurable, (B) designed and constructed to mutually acceptable high levels of risk standards, and (C) is completed [***]; *provided*, that Toshiba shall have no liability to SanDisk, any Affiliate of SanDisk or Flash Forward if completion is not achieved by such time. The depreciation for the Y5 Facility will be charged in accordance with Section 8.3(d).

(ii) With prior coordination with Toshiba and the construction contractors for the Y5 Facility, SanDisk will have reasonable access to the construction site for the Y5 Facility and to all information pertaining to the construction of the Y5 Facility, on condition that SanDisk will be solely responsible for all damage caused by such access.

(iii) Building Depreciation Prepayment and Shortened Depreciation Schedule for [***]:

(A) Each of the Parties agrees to [***], in a manner to be mutually agreed.

(B) If [***], the Parties agree to [***].

(iv) Also for purposes of this Section 8.2, Toshiba's cost of site/land preparation for the Y5 Facility [***].

(b) Land. With respect to the land purchased by Toshiba related to the establishment of the Y5 Facility, SanDisk will pay to Toshiba on a quarterly basis during the term of this Agreement compensation for [***] for the actual aggregate purchase price of such land [***]. For purposes of this Section 8.2, [***]. Annual depreciation of the Y5 Facility shall be calculated in accordance with Section 8.3(d). To the extent appropriate, these charges will be invoiced under the FF Foundry Agreement, as

provided at Section 8.3 below. For any portion of the Y5 Capacity Ratio that is not subject to the FF Foundry Agreement, such charges shall be invoiced directly.

(c) Incentives. Government incentives (financial or otherwise) attributable to the assets or operations of Flash Forward and the Y5 Facility will be shared by the Parties in accordance with the Y5 Capacity Ratio at the time such incentives are realized. The Parties will discuss such incentives and the sharing thereof based on the type of incentives.

8.3 FF Foundry Agreement. Flash Forward and Toshiba shall enter into the FF Foundry Agreement at the Closing. In the event SanDisk owns or leases manufacturing equipment located in the Y5 Facility as a result of [***], SanDisk and Toshiba will enter into a foundry agreement with terms substantially similar to the FF Foundry Agreement. The FF Foundry Agreement provides for ordering procedures, prices, delivery, cost reporting and other specific terms and conditions for the manufacture by Toshiba and supply to Flash Forward of Y5 NAND Flash Memory Products, which shall be consistent with the following basic terms:

(a) Facilities, Equipment and Raw Materials. The manufacturing facilities will be located at the Y5 Facility and die sort will be located [***] or such other place as the Parties may agree upon. Flash Forward and Toshiba will enter into an exclusive lease agreement with respect to the Y5 Facility and Flash Forward's manufacturing equipment located in the Y5 Facility to be used in the manufacture of Y5 NAND Flash Memory Products by Toshiba. Toshiba shall be responsible for obtaining the raw materials and services to be used in the manufacture of Y5 NAND Flash Memory Products. Raw materials shall be procured in accordance with that certain RMPA.

(b) Production. Toshiba will manufacture Y5 NAND Flash Memory Products at the Y5 Facility for Flash Forward ordered by Toshiba and SanDisk under the terms and conditions of the FF Purchase and Supply Agreements. Flash Forward and Toshiba (from the Yokkaichi Facility) will use their best efforts to achieve the Business Plan manufacturing capacity. Wafers produced in the JV Space will be sorted between the Parties such that aggregate yield losses will be shared on an equal basis.

(c) Operating Relationship. The Parties shall provide personnel necessary for the manufacturing of the Y5 NAND Flash Memory Products as described in Section 6.10.

(d) Consideration to be Paid to Toshiba. Toshiba will be compensated by Flash Forward as provided in the FF Foundry Agreement [***].

(e) No Duplication of Costs or Expenses. It is the intent of the Parties that any payments made by SanDisk under or pursuant to any Master Operative Documents, FA Operative Documents, FP Operative Documents or Joint Operative Documents shall not be duplicative and SanDisk shall in no event be required to pay or contribute more than once for any service, product or development work provided under such agreements, if such service, product or development work is provided under more than one agreement. In addition, if SanDisk makes a direct payment for any service, product or development work provided under any such agreement, the cost incurred by Toshiba (from the Yokkaichi Facility), Flash Alliance, Flash Partners or Flash Forward, as the case may be, in connection with the provision of such service, product or development work shall not be included in the applicable wafer price charged to SanDisk.

(f) Exclusivity. The Yokkaichi Facility shall be Flash Forward's exclusive manufacturing source for output of Y5 NAND Flash Memory Products. Flash Forward may seek external manufacturing sources for output in excess of the Yokkaichi Facility's capacity upon agreement by the Management Representatives.

8.4 FF Purchase and Supply Agreements. Flash Forward and each of the Parties or their respective Affiliates will enter into substantially identical FF Purchase and Supply Agreements providing for specific terms and conditions for the purchase by the Parties of Y5 NAND Flash Memory Products from Flash Forward, which shall be consistent with the following basic terms:

(a) Manufacturing. Flash Forward shall manufacture or cause to be manufactured Y5 NAND Flash Memory Products and, as applicable, Y5 R/W as contemplated by Section 8.3.

(b) Purchase Commitment. Except as contemplated in Section 6.3, each Party shall (itself or through Affiliates) purchase one half (based on a measure of Equivalent Lots out per week) of the total L/M of JV Y5 NAND Flash Memory Products. The foregoing purchase commitment of each Party shall not be subject to reduction except as provided in Section 6.6(b).

(c) Sales Price for JV Y5 NAND Flash Memory Products Purchased by the Parties The sales price charged by Flash Forward to the Parties for wafers manufactured at Y5 shall be the sum of:

(i) [***]

(ii) [***].

(d) Other Cost Items. Other items related to the manufacture of Y5 NAND Flash Memory Products will be charged on a monthly basis from Flash Forward to the Parties and will include the following:

(i) [***];

(ii) [***];

(iii) [***];

(iv) [***];

(v) [***]; and

(vi) [***].

8.5 Documentation of JV R/W Production. In the event that R/W comes to be produced in the Y5 Facility, the Parties shall negotiate in good faith with respect to adopting modified documentation concerning such production, including, in the event of production in the JV R/W Space, (a) a foundry agreement indicating ordering procedures, prices, delivery, cost reporting and other specific terms and conditions for the manufacture by Toshiba and supply to Flash Forward of R/W, and (b) agreements governing the Parties' respective purchases of R/W from Flash Forward, taking into account the differences between the production process of R/W and that of NAND Flash Memory Products, among other factors.

8.6 Other Matters.

(a) Forecasts/Production Planning. Each Party will submit forecasts, [***] as further provided in the FF Purchase and Supply Agreements. The Parties shall use the system at the Yokkaichi Facility for such direct forecast submission, provided that the cost necessary for [***] shall be borne by SanDisk. Each Party shall be provided the same access to Y5 data relating to Flash Forward data and such Party's non-JV data, including data used for output forecasts, as the Parties receive with respect to Y4 data

relating to Flash Alliance. Flash Forward production planning will hold a monthly production planning meeting with representatives of each Party, as further provided in the FF Purchase and Supply Agreements. At such meetings, the Parties will agree on a production plan for the [***] which plan will be final (and the related forecast will be deemed to be covered by a binding purchase order).

(b) Production Control. Flash Forward will provide each Party [***] on anon-discriminatory basis [***] with respect to [***] provided that the cost necessary for making such system available to SanDisk will be borne by SanDisk. Each Party shall be provided the same access to Y5 data relating to Flash Forward data and such Party's non-JV data, including data used for tool/process analysis, as the Parties receive with respect to Y4 data relating to Flash Alliance. Each Party (through the Y5 Management Representatives) will have the right to discuss the production schedule, planned wafer starts and [***].

(c) Operating Reports. SanDisk will have full access to any management or operation reports related to Flash Forward or Flash Forward's business through the Y5 Operating Committee (as defined in the FF Operating Agreement). Management and operating reports related to Flash Forward or Flash Forward's business as mutually agreed from time to time will be simultaneously made available in Japanese and English to each Party. Upon request, Toshiba employees will explain such reports to SanDisk's employees and respond to questions from SanDisk's employees, but Toshiba will not be responsible for SanDisk's failure to understand such reports.

(d) Insurance. Toshiba shall maintain or arrange property insurance covering assets owned or leased by Flash Forward, and business interruption insurance in respect of the business of Flash Forward, the scope and amounts of which shall be consistent with Toshiba's practices at the Yokkaichi Facility and as required by any lender. This coverage shall provide basically full replacement value of all Flash Forward owned and leased equipment, subject to valuation as part of Toshiba's annual insurance policy renewal, and shall name Flash Forward as a beneficiary in respect of assets owned or leased by it and Flash Forward's employee expenses covered by business interruption insurance. On an annual basis, or when requested by either Party, the Y5 Operating Committee shall discuss and review the current insurance coverage and/or the need for any additional property or business interruption insurance in respect of Flash Forward's assets or business. Further, SanDisk reserves the right to seek to arrange additional property or business interruption insurance for its own account in respect of Flash Forward's assets or business, and shall be responsible for the maintenance of insurance with respect to equipment used in the SanDisk R/W Space and any SanDisk Unilateral Expansion Space, and Toshiba shall cooperate in good faith to provide such information and access as is reasonably necessary for SanDisk to arrange such insurance. If Toshiba makes a recovery from a third party (other than an insurer per the above) in respect of both assets of Flash Forward and other assets, then Toshiba shall allocate to Flash Forward a share of the net amount of such recovery in proportion to the losses suffered by Flash Forward and total losses suffered by Flash Forward and Toshiba.

**9. Termination**

9.1 Termination.

(a) Termination of any Master Operative Document by either Party shall be done only in good faith.

(b) This Agreement shall be terminated automatically upon the earlier of the Transfer of all of a Party's FF Interests to the other Party (or its Affiliate) or upon completion of the dissolution and liquidation of Flash Forward pursuant to Section 11 (Dissolution)

of the FF Operating Agreement (the date of such Transfer or dissolution and liquidation, the "FF Termination Date").

(c) Upon termination of this Agreement resulting from an event of dissolution of Flash Forward due to the expiration of Flash Forward pursuant to Section 11.1(a) (Expiration) of the FF Operating Agreement:

(i) the Parties shall further amend the Cross License Agreement, as then in effect, to specify that each Party's patents issued or issuing on patent applications entitled to an effective filing date prior to the FF Termination Date are licensed on a royalty-free basis for the duration of such patents. The scope of the licenses as amended pursuant to this Section 9.1(c)(i) shall not be greater than the scope of those granted under the Cross License Agreement, as in effect as of the FF Termination Date.

(ii) Toshiba shall grant to SanDisk, effective upon the FF Termination Date, anon-exclusive, non-transferable (except to Affiliates of SanDisk), non-sub-licensable, fully paid up, royalty-free license to make, have made, use, sell and have sold NAND Flash Memory Products anywhere in the world utilizing the NAND technology transferred to and/or utilized at the Yokkaichi Facility, and SanDisk shall have full access to all such know-how at the Yokkaichi Facility which has been transferred to the Yokkaichi Facility prior to the FF Termination Date.

(d) Upon a termination of this Agreement resulting from (i) an event of dissolution of Flash Forward or (ii) one Party's acquisition of all of the other Party's FF Interests (the acquirer thereof referred to hereinafter as the "Acquiring Party" and the seller thereof referred to hereinafter as the "Selling Party") pursuant to Section 11.5 (Dissolution Upon Notice) of the FF Operating Agreement:

(i) Toshiba or the Acquiring Party, as the case may be, will, upon the request, prior to the FF Termination Date, of (A) SanDisk (such request to be made at the time of its notice pursuant to Section 11.5 of the FF Operating Agreement) in the case of the dissolution of Flash Forward or (B) the Selling Party (each, a "Requesting Party") as the case may be, continue to manufacture NAND Flash Memory Products for the Requesting Party (not to exceed the Requesting Party's capacity allocation available from Flash Forward under this Agreement as of the FF Termination Date (the "Termination Capacity")) for a period of [***] following the Termination Date in the following ramp-down manner:

(A) [***]

(B) [***]

(C) [***]

(ii) Toshiba and SanDisk and their respective Affiliates shall have a perpetual, fully paid-up, royalty-free right to use technology previously transferred to one another during the term of this Agreement.

(iii) The Parties shall further amend the Cross License Agreement to specify that each Party's patents issued or issuing on patent applications entitled to an effective filing date prior to the FF Termination Date are licensed on a royalty free basis for the duration of such patents. The scope of the licenses as amended pursuant to this Section 9.1(d)(iii) shall not be greater than the scope of those granted under the Cross License Agreement, as in effect as of FF Termination Date.

(iv) Upon termination of this Agreement resulting from an event of dissolution of Flash Forward caused by Toshiba's election to withdraw from Flash Forward pursuant to the FF Operating Agreement, Toshiba hereby grants to SanDisk, effective upon the FF Termination Date, a non-exclusive, non-transferable (except to Affiliates of SanDisk), non-sub-licensable, fully paid-up, royalty-free license to make, have made, use, sell and have sold NAND Flash Memory Products anywhere in the world utilizing the NAND technology transferred to and/or utilized at the Yokkaichi Facility, and SanDisk shall have full access to all such know-how at the Yokkaichi Facility which has been transferred to the Yokkaichi Facility prior to the FF Termination Date.

(e) **[**Intentionally omitted.**]**

(f) Upon termination of this Agreement resulting from an event of dissolution of Flash Forward or one Party's acquisition of the other Party's FF Interests following a Deadlock (as defined in the FF Operating Agreement) pursuant to Section 10.3 (Dispute Resolution; Deadlock) of the FF Operating Agreement:

(i) In the case of one Party's acquisition of the other Party's FF Interests pursuant to Section 10.3(e) of the FF Operating Agreement, the Acquiring Party shall continue to manufacture products for the other Party (not to exceed the other Party's Termination Capacity) for a period of [***] following the FF Termination Date in accordance with the following ramp down manner:

(A) [***]

(B) [***]

(C) [***]

(ii) The Parties and their respective Affiliates shall have a perpetual, fully paid-up, royalty-free right to use technology previously transferred to one another during the term of this Agreement.

(iii) The Parties shall further amend the Cross License Agreement to specify that, with respect only to Y5 NAND Flash Memory Products and any other Licensed Products defined in the Cross License Agreement and manufactured with 300mm wafers at any facility, each Party's patents issued or issuing on patent applications entitled to an effective filing date prior to the FF Termination Date are licensed: (x) at the royalty rates specified in Schedule 9.1(f) until March 31, 2018; and (y) thereafter, on a royalty-free basis. Both Parties shall negotiate in good faith for up to [***] upon request of either Party at any time during the [***] after the FF Termination Date to agree on royalty rates for patents filed by each Party after the FF Termination Date. The scope of the licenses as amended pursuant to this Section shall not be greater than the scope of those granted under the Cross License Agreement, as in effect as of the FF Termination Date.

(g) Upon termination of this Agreement resulting from an event of dissolution of Flash Forward or a Party's acquisition of the other Party's FF Interests described in Section 11.3 (Dissolution Upon Event of Default) of the FF Operating Agreement:

(i) The Parties shall further amend the Cross License Agreement to specify that, with respect only to Y5 NAND Flash Memory Products and any other Licensed Products defined in the Cross License Agreement and manufactured with 300mm wafers at any facility, each Party's patents issued or issuing on patent applications entitled to an effective filing date prior to the FF Termination Date are licensed at the royalty rates specified in Schedule 9.1(g)

for [***] after the FF Termination Date or until the end of [***], whichever comes first, and thereafter such licenses shall be [***].

(ii) In the event that Toshiba or an Affiliate of Toshiba is the Defaulting Party, Toshiba shall grant to SanDisk, effective upon such date of termination, a non-exclusive, non-transferable (except to Affiliates of SanDisk), non-sub-licensable, fully paid-up, royalty-free license to make, have made, use, sell and have sold NAND Flash Memory Products anywhere in the world utilizing the NAND technology transferred to and/or utilized at the Yokkaichi Facility, and SanDisk shall have full access to all such know-how at the Yokkaichi Facility which has been transferred to the Yokkaichi Facility prior to the FF Termination Date.

(h) Upon termination of this Agreement resulting from an event of dissolution described in Section 11.1(f) (Bankruptcy Event) of the FF Operating Agreement:

(i) If such termination is caused by a Bankruptcy Event in respect of Toshiba, (x) the license granted to SanDisk under Toshiba Licensed Patents pursuant to the Cross License Agreement shall continue on a royalty-free basis, and (y) Toshiba shall grant to SanDisk, effective upon such date of termination, a non-exclusive, non-transferable (except to Affiliates of SanDisk), non-sub-licensable, fully paid-up, royalty-free license to make, have made, use, sell and have sold NAND Flash Memory Products anywhere in the world utilizing the NAND technology transferred to and/or utilized at the Yokkaichi Facility, and SanDisk shall have full access to all such know-how at the Yokkaichi Facility which has been transferred to the Yokkaichi Facility prior to the Termination Date.

(ii) If such termination is caused by a Bankruptcy Event in respect of SanDisk, the license granted to Toshiba under SanDisk Licensed Patents (as defined in the Cross License Agreement) pursuant to the Cross License Amendment shall continue on a royalty-free basis.

(i) Upon a termination of this Agreement resulting from a purchase and sale transaction described in Section 11.6 (Financing Default) of the FF Operating Agreement, there shall be no capacity ramp-down rights or obligations and:

(i) If such termination is caused by a financing default in respect of Toshiba, (x) the Parties shall further amend the Cross License Agreement to specify that, with respect only to Y5 NAND Flash Memory Products and any other Licensed Products defined in the Cross License Agreement and manufactured with 300mm wafers at any facility, Toshiba's patents issued or issuing on patent applications entitled to an effective filing date prior to the FF Termination Date are licensed to SanDisk on a royalty-free basis, and (y) Toshiba shall grant to SanDisk, effective upon such date of termination, a non-exclusive, non-transferable (except to Affiliates of SanDisk), non-sub-licensable, fully paid-up, royalty-free license to make, have made, use, sell and have sold NAND Flash Memory Products anywhere in the world utilizing the NAND technology transferred to and/or utilized at the Yokkaichi Facility, and SanDisk shall have full access to all such know-how at the Yokkaichi Facility which has been transferred to the Yokkaichi Facility prior to the Termination Date.

(ii) If such termination is caused by a financing default in respect of SanDisk, the Parties shall further amend the Cross License Agreement to specify that, with respect only to Y5 NAND Flash Memory Products and any other Licensed Products defined in the Cross License Agreement and manufactured with 300mm wafers at any facility, SanDisk's patents issued or issuing on patent

applications entitled to an effective filing date prior to the FF Termination Date are licensed to Toshiba on a royalty-free basis.

(j) Restructuring Costs.

(i) In the event this Agreement is terminated, the Parties will exercise best efforts to plan such termination in advance with the goal of minimizing related costs. With respect to Toshiba employees and SanDisk employees working at the Y5 Facility, (A) in the case of those that are Toshiba employees, Toshiba will use its best efforts to retrain or relocate such individuals to other Toshiba facilities, and (B) in the case of those that are SanDisk employees, SanDisk will use its best efforts to retrain or relocate such individuals to other SanDisk facilities, each to the maximum extent possible.

(ii) The Parties agree that in the event of such a SanDisk exit from Flash Forward, [***].

(A) [***]

(B) [***]

(iii) Upon any termination of this Agreement, the Parties shall meet and discuss in good faith an estimate of the Restructuring Costs anticipated to be incurred by Toshiba. [***].

(k) Unless otherwise expressly provided herein, termination of this Agreement shall not affect any surviving rights or obligations of either Party set forth in the Joint Operative Documents.

**10. Miscellaneous**

10.1 Survival. Sections 1.3, 6.10(b)(vii), 6.11, 6.12(d), 9 and 10 and Appendix A shall survive the termination or expiration of this Agreement.

10.2 Entire Agreement. This Agreement, together with the exhibits, schedules, appendices and attachments thereto, constitutes the agreement of the Parties to this Agreement with respect to the subject matter hereof and supersedes all prior written and oral agreements and understandings with respect to such subject matter.

10.3 Governing Law. This Agreement shall in all respects be governed by and construed in accordance with the internal laws of the State of California applicable to agreements made and to be performed entirely within such state without regard to the conflict of laws principles of such state. Each Master Operative Document shall be governed in accordance with its governing law provision and, in the absence of any such provision, by the first sentence of this Section 10.3.

10.4 Assignment. Except as separately agreed by the Parties in writing, neither Party may transfer this Agreement or any of its rights hereunder (except for any transfer to an Affiliate or in connection with a merger, consolidation or sale of all or substantially all the assets or the outstanding securities of such party, which transfer shall not require any consent of the other party) without the prior written consent of the other Party (which consent may be withheld in such other Party's sole discretion), and any such purported transfer without such consent shall be void.

10.5 [***]. Notwithstanding the provisions of Section 2.9 of Appendix A, any other provision of this Agreement, and any delay beyond the date of hereof of execution by SanDisk Flash of this Agreement, Toshiba and SanDisk acknowledge and agree that, by the execution and delivery hereof to Toshiba and SanDisk Corporation: (a) this

Agreement shall be effective as between Toshiba and SanDisk Corporation as of the date hereof; and (b) upon the execution and delivery to Toshiba and SanDisk Corporation of this Agreement by SanDisk Flash, SanDisk Flash shall be joined as a Party to this Agreement, this Agreement shall be effective by and among Toshiba, SanDisk Corporation and SanDisk Flash as of the date written by the signature of the authorized signatory of SanDisk Flash, and SanDisk Flash shall enjoy and be subject to all rights and obligations hereunder from and after such date.

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

IN WITNESS WHEREOF, this Agreement has been executed and delivered by the Parties as of the date first above written.

TOSHIBA CORPORATION

By: /s/ Kiyoshi Kobayashi
Name: Kiyoshi Kobayashi
Title: President and CEO
Semiconductor Company
Corporate Senior Vice President

SANDISK CORPORATION

By: /s/ Eli Harari
Name: Eli Harari
Title: Chairman and CEO

SANDISK FLASH B.V.

By: /s/ Sanjay Mehrotra
Name: Sanjay Mehrotra
Title: Director

**APPENDICES**

Appendix A - Definitions, Rules of Construction and General Terms and Conditions

**EXHIBITS**

(FF Operative Documents)
Exhibit A1 - Capital Interests Purchase Agreement
Exhibit A2 - FF Operating Agreement
Exhibit A3 - FF Patent Indemnification Agreement
Exhibit A4 - Environmental Indemnification Agreement
Exhibit A5 - Lease Agreement
Exhibit A6 - Toshiba-SanDisk Flash Services Agreement
Exhibit A7 - Toshiba-Flash Forward Services Agreement
Exhibit A8 - SanDisk Flash-Flash Forward Services Agreement

(Joint Operative Documents)
Exhibit B - Amendment No. 5 to Cross License Agreement

**SCHEDULES**

Schedule 4.5 - Litigation; Decrees
Schedule 4.7 - Patents and Proprietary Rights
Schedule 4.9 - Cross License Payment Obligations
Schedule 6.2(a) - Technology Transfer Costs
Schedule 7.4(a) - Fixed Manufacturing Costs and Variable Manufacturing Costs
Schedule 9.1(f) - Royalty in case of Deadlock Termination
Schedule 9.1(g) - Royalty in case of Event of Default Termination

**APPENDIX A**

**DEFINITIONS, RULES OF CONSTRUCTION AND DOCUMENTARY CONVENTIONS**

The following shall apply unless otherwise required by the main body of the agreement into which this Appendix A is being incorporated (as used herein, "this Agreement"):

Definitions

The following terms shall have the specified meanings:

"3D Collaboration Agreement", means the 3D Collaboration Agreement, dated as of June 13, 2008, between SanDisk Corporation and Toshiba.

"Accountants" means such firm of internationally recognized independent certified public accountants for Flash Forward as is appointed pursuant to the FF Operating Agreement from time to time. Initially, the Accountants shall be Shin Nihon & Company, an affiliate of Ernst & Young LLP.

"Affiliate" of any Person means any other Person which directly or indirectly controls, is controlled by or is under common control with, such Person; *provided*, *however*, that the term Affiliate, (a) when used in relation to Flash Forward or any Subsidiary of Flash Forward, shall not include SanDisk Corporation or Toshiba or any Affiliate of either of them, and (b) when used in relation to SanDisk Corporation or Toshiba or any Affiliate of either of them, shall not include Flash Forward or any Subsidiary of Flash Forward.

"Articles" means the Articles of Incorporation of Flash Forward.

"Asahi Area" means Toshiba's facilities in Asahi, Japan.

"Bankruptcy Event" means, with respect to any Person, the occurrence or existence of any of the following events or conditions: such Person (1) is dissolved; (2) becomes insolvent or fails or is unable or admits in writing its inability generally to pay its debts as they become due; (3) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (4) institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding up or liquidation and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition (A) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding up or liquidation or (B) is not dismissed, discharged, stayed or restrained in each case within 60 days of the institution or presentation thereof; (5) has a resolution passed by its governing body for its winding-up or liquidation; (6) seeks or becomes subject to the appointment of an administrator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets (regardless of how brief such appointment may be, or whether any obligations are promptly assumed by another entity or whether any other event described in this clause (6) has occurred and is continuing); (7) experiences any event which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (1) through (6) above; or (8) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

"Board of Executive Officers" has the meaning set forth in Section 5.1(a) of the FF Operating Agreement.

"Burdensome Condition" means, with respect to any proposed transaction, any action taken, or credibly threatened, by any Governmental Authority or (except if such action or threat is frivolous) other Person to challenge the legality of such proposed transaction, including (i) the pendency of a governmental investigation (formal or informal) in contemplation of the possible actions described in clauses (ii)(A), (ii)(B) or (ii)(C) below, (ii) the institution of a suit or the written threat thereof (A) seeking to restrain, enjoin or prohibit the consummation of such transaction or material part thereof, to place any material condition or limitation upon such consummation or to invalidate, suspend or require modification of any material provision of any Operative Document, (B) challenging the acquisition by either Toshiba or SanDisk Flash of its Interests or (C) seeking to impose limitations on the ability of either Toshiba or SanDisk Flash effectively to exercise full rights as Members of Flash Forward, including the right to act on all matters properly presented to the parties pursuant to the FF Operating Agreement, or (iii) an order by a court of competent jurisdiction having any of the consequences described in (ii)(A), (ii)(B) or (ii)(C) above, or placing any conditions or limitations upon such consummation that are unreasonably burdensome in the reasonable judgment of the applicable Person.

"Business Day" means any day (other than a day which is a Saturday, Sunday or legal holiday in the State of California or Japan) on which commercial banks are open for business in the State of California or Tokyo, Japan.

"Business Plan" means the Initial Business Plan and each subsequent business plan, including budgets and projections for Flash Forward for each relevant period, approved in accordance with Section 3.4(c) of the FF Operating Agreement and complying with Section 3.4(b) of the FF Operating Agreement.

"Capital Contribution" means the capital contribution made by or allocated to a Party by virtue of its ownership of Interests as indicated on Schedule 6.1 to the FF Operating Agreement.

"Change of Control" with respect to a Person means a transaction or series of related transactions as a result of which (i) more than 50% of the beneficial ownership of the outstanding common stock or other ownership interests of such Person (representing the right to vote for the board of directors or similar organization of such Person) is acquired by another Person or affiliated group of Persons, whether by reason of stock acquisition, merger, consolidation, reorganization or otherwise or (ii) the sale or disposition of all or substantially all of a Person's assets to another Person or affiliated group of Persons.

"Closing" means the closing of the transactions described in Sections 2.1 of the Master Agreement.

"Closing Date" means the date of the Closing.

"Code" means the Internal Revenue Code of 1986, as amended from time to time, or any successor statute. Any reference to a particular provision of the Code or a treasury regulation promulgated pursuant to the Code means, where appropriate, the corresponding provision of any successor statute or regulation.

"Common R&D Agreement" means the Fourth Amended and Restated Common R&D and Participation Agreement, dated as of the Effective Date, between Toshiba and SanDisk Corporation.

"Companies Act" means the Companies Act (*Kaisha-ho*), Law No. 86 of July 26, 2005, as may be amended hereafter and in effect as at any time.

"Control" (including its correlative meanings "controlled by" and "under common control with") means possession, directly or indirectly, of power to direct or cause the

direction of management or policies (whether through ownership of securities or partnership or other ownership interests, by contract or otherwise).

"Cross License Agreement" has the meaning given in the Master Agreement.

"Effective Date" means July 13, 2010.

"Environmental Indemnification Agreement" means the Flash Forward Mutual Contribution and Environmental Indemnification Agreement, dated as of July 13, 2010, between Toshiba and SanDisk Flash.

"Event of Default" means, with respect to a Party, the occurrence or existence of any of the following events or conditions which remains uncured for sixty (60) days following receipt by such Party of written notice thereof:

(a) a Bankruptcy Event in respect of such Party or any Person of which such Party is a Subsidiary; or

(b) the breach by such Party of its covenant in Section 9.1 of the FF Operating Agreement or the breach by such Party of its covenant in Section 5.1(b) of the Master Agreement, *provided* that a Change of Control of a Party shall not be deemed an Event of Default.

"FA Master Agreement" means the Master Agreement among Toshiba, SanDisk and SanDisk Ireland dated as of July 7, 2006.

"FA Operative Documents" means the Flash Alliance Master Agreement, dated as of July 7, 2006, the Share Purchase Agreement between Toshiba and SanDisk Ireland, dated as of July 7, 2006, the Operating Agreement between Toshiba and SanDisk Ireland, dated as of July 7, 2006, the Articles of Incorporation of Flash Alliance, the Foundry Agreement between Flash Alliance and Toshiba, dated as of July 7, 2006, the Purchase and Supply Agreement between Flash Alliance and [***], dated as of July 7, 2006, the Purchase and Supply Agreement between Flash Alliance and Toshiba, dated as of July 7, 2006, the Patent Indemnification Agreement among SanDisk Corporation, [***] and Toshiba, dated as of July 7, 2006, the Mutual Contribution and Environmental Indemnification Agreement between SanDisk Ireland and Toshiba, dated as of July 7, 2006, the Lease Agreement between Flash Alliance and Toshiba, as owner of the Yokkaichi Facility, dated as of July 7, 2006, the Services Agreement between SanDisk Ireland and Toshiba, dated as of July 7, 2006, the Services Agreement between Flash Alliance and Toshiba, as owner of the Yokkaichi Facility, dated as July 7, 2006, and the Services Agreement between Flash Alliance and SanDisk Ireland, dated as of July 7, 2006, in each case as amended by the JVRA.

"FF Foundry Agreement" means the Foundry Agreement, dated as of the Effective Date, between Flash Forward and Yokkaichi.

"FF Operating Agreement" means the Operating Agreement, dated as of the Effective Date, between Toshiba and SanDisk Flash.

"FF Operative Documents" has the meaning set forth in the Master Agreement.

"Fiscal Quarter" means, unless changed by the Board of Executive Officers, a calendar quarter.

"Fiscal Year" means the one year period commencing on April 1 of each year.

"Flash Alliance" means Flash Alliance, Ltd., a Japanese special limited liability company (*tokurei yugen kaisha*).

"Flash Forward" has the meaning set forth in the Master Agreement.

"Flash Partners" means Flash Partners, Ltd., a Japanese special limited liability company (*tokurei yugen kaisha*).

"FP Master Agreement" means the Master Agreement among Toshiba, SanDisk and SanDisk International dated as of September 10, 2004.

"FP Operative Documents" means the Flash Partners Master Agreement, dated as of September 10, 2004, the Share Purchase Agreement between Toshiba and SanDisk Manufacturing, dated as of September 10, 2004, the Operating Agreement between Toshiba and SanDisk International, dated as of September 10, 2004, the Foundry Agreement between Flash Partners and Toshiba, dated as of September 10, 2004, the Purchase and Supply Agreement between Flash Partners and SanDisk International, dated as of September 10, 2004, the Purchase and Supply Agreement between Flash Partners and Toshiba, dated as of September 10, 2004, the Patent Indemnification Agreement between SanDisk Corporation and Toshiba, dated as of September 10, 2004, the Mutual Contribution and Environmental Indemnification Agreement between SanDisk Corporation and Toshiba, dated as of September 10, 2004, and the Lease Agreement between Flash Partners and Toshiba, as owner of the Yokkaichi Facility, dated as of September 10, 2004, in each case as amended by the JVRA.

"FVC Japan" means FlashVision Ltd., a Japanese special limited liability company (*tokurei yugen kaisha*).

"FVC Japan Equipment" means any equipment which is or will, from time to time, be owned or leased by FVC Japan.

"Governmental Action" means any authorization, consent, approval, order, waiver, exception, variance, franchise, permission, permit or license of, or any registration, filing or declaration with, by or in respect of, any Governmental Authority.

"Governmental Authority" means any United States or Japanese federal, state, local or other political subdivision or foreign governmental Person, authority, agency, court, regulatory commission or other governmental body, including the Internal Revenue Service and the Secretary of State of any State.

"Governmental Rule" means any statute, law, treaty, rule, code, ordinance, regulation, license, permit, certificate or order of any Governmental Authority or any judgment, decree, injunction, writ, order or like action of any court or other judicial or arbitration tribunal.

"Indebtedness" of any Person means, without duplication:

(a) all obligations (whether present or future, contingent or otherwise, as principal or surety or otherwise) of such Person in respect of borrowed money or in respect of deposits or advances of any kind;

(b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments;

(c) all obligations of such Person upon which interest charges are customarily paid, except for trade payables;

(d) all obligations of such Person under conditional sale or other title retention agreements relating to property or assets purchased by such Person;

(e) all obligations of such Person issued or assumed as the deferred purchase price of property or services (other than with respect to the purchase of personal property under standard commercial terms);

(f) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such Person, whether or not the obligations secured thereby have been assumed;

(g) all guarantees by such Person of Indebtedness of others;

(h) all obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property (or a combination thereof), which obligations would be required to be classified and accounted for as capital leases on a balance sheet of such Person prepared in accordance with Japanese GAAP or US GAAP, as applicable;

(i) all obligations of such Person (whether absolute or contingent) in respect of interest rate swap or protection agreements, foreign currency exchange agreements or other interest or exchange rate hedging arrangements; and

(j) all obligations of such Person as an account party in respect of letters of credit and bankers' acceptances.

The Indebtedness of any Person shall include the Indebtedness of any partnership in which such Person is a general partner.

"Indemnified Parties" means the Party being indemnified's officers, directors, employees, agents, contractors, subcontractors, and transferees permitted pursuant to the FF Operating Agreement and the Master Agreement.

"Interests" means the issued and outstanding interests (*mochibun*) in Flash Forward.

"Japanese GAAP" means generally accepted accounting principles in Japan as in effect from time to time, consistently applied.

"Japanese GAAS" means generally accepted auditing standards in Japan as in effect from time to time.

"JMDY Agreement" means the Amended and Restated Joint Memory Development Yokkaichi Agreement, dated as of the Effective Date, between Toshiba and SanDisk Corporation.

"JV Y5 NAND Flash Memory Products" has the meaning given in Section 3.2(a)(ii) of the Master Agreement.

"JVRA" means the Joint Venture Restructure Agreement, dated as of January 29, 2009, among SanDisk Corporation and certain of its affiliates, Toshiba Corporation, Flash Alliance and Flash Partners, dated as of January 29, 2009.

"License Agreement" means the Patent Cross License Agreement, dated July 30, 1997, by and between Toshiba and SanDisk, as amended.

"Lien" means, with respect to any asset, (a) any mortgage, deed of trust, lien, pledge, encumbrance, charge or security interest in or on such asset, (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement relating to such asset and (c) in the case of securities, any purchase option, call or similar right with respect to such securities.

"L/M" means Equivalent Lots (as defined in the Master Agreement) per month.

"Management Representative" has the meaning given in the Master Agreement.

"Master Agreement" means the Flash Forward Master Agreement, dated as of July 13, 2010, by and among Toshiba, SanDisk and SanDisk Flash.

"Material" means, with respect to any Person, an event, change or effect which is or, insofar as reasonably can be foreseen, will be material to the condition (financial or otherwise), properties, assets, liabilities, capitalization, licenses, businesses, operations or prospects of such Person and, in the case of Flash Forward, the ability of Flash Forward to carry out its then-current Business Plan.

"Member" means the holder of any Interests.

"NAND Flash Memory Products" has the meaning given in Section 3.2 of the Master Agreement.

"Net Book Value" means, with respect to any Person, the total assets of such Person less the total liabilities of such Person, in each case as determined in accordance with Japanese GAAP or US GAAP, as applicable.

"Patent Indemnification Agreement" means the Patent Indemnification Agreement dated as of July 13, 2010, among Toshiba, SanDisk Corporation and SanDisk Flash.

"Percentage" means, with respect to any Member (as defined in the FF Operating Agreement), the percentage of such Member's ownership interest in Flash Forward. For the avoidance of doubt, as of the date hereof, Percentage means with respect to Toshiba or its Affiliate, 50.1%, and with respect to SanDisk Flash or its Affiliate, 49.9%; *provided*, *however*, if either Member transfers all of its Interests to any Affiliate in accordance with the FF Operating Agreement, its Percentage shall be 0% and such Affiliate transferee shall receive the entire Percentage of the transferring Member.

"Permitted Liens" means (a) the rights and interests of Flash Forward, either Party or any Affiliate of any such Person as provided in the FF Operative Documents, and (b) Liens for Taxes which are not due and payable or which may after contest be paid without penalty or which are being contested in good faith and by appropriate proceedings and so long as such proceedings shall not involve any substantial risk of the sale, forfeiture or loss of any part of any relevant asset or title thereto or any interest therein.

"Person" means any individual, firm, company, corporation, limited liability company, unincorporated association, partnership, trust, joint venture, Governmental Authority or other entity, and shall include any successor (by merger or otherwise) of such entity.

"Product Development Agreement" means the Amended and Restated Product Development Agreement, dated as of the Effective Date, between Toshiba and SanDisk Corporation.

"SanDisk Corporation" means SanDisk Corporation, a Delaware corporation.

"SanDisk Flash" means SanDisk Flash B.V., a company organized under the laws of The Netherlands.

"SanDisk Ireland" means SanDisk (Ireland) Limited, a company organized under the laws of the Republic of Ireland.

"SanDisk International" means SanDisk (Cayman) Limited, a company organized under the laws of the Cayman Islands.

"SanDisk Purchase and Supply Agreement" means the Purchase and Supply Agreement, dated as of the Effective Date, between SanDisk Flash and Flash Forward.

"Subsidiary" of any Person means any other Person:

(i) more than 50% of whose outstanding shares or securities (representing the right to vote for the election of directors or other managing authority) are, or

(ii) which does not have outstanding shares or securities (as may be the case in a partnership, joint venture or unincorporated association), but more than 50% of whose ownership interest representing the right to make decisions (equivalent to those generally reserved for the board of directors of a corporation) for such other Person is,

now or hereafter owned or controlled, directly or indirectly, by such Person, but such other Person shall be deemed to be a Subsidiary only so long as such ownership or control exists; *provided*, *however*, that the term Subsidiary as used in any FF Operative Document, when used in relation to a Party or any of its Affiliates, shall not include Flash Forward or any of its Subsidiaries.

"Tax" or "Taxes" means all United States or Japanese Federal, state, local or other political subdivision and foreign taxes, assessments and other governmental charges, including: (a) taxes based upon or measured by gross receipts, income, profits, sales, use or occupation and (b) value added, ad valorem, transfer, franchise, withholding, payroll, employment, excise or property taxes, together with (c) all interest, penalties and additions imposed with respect to such amounts and (d) any obligations under any agreements or arrangements with any other Person with respect to such amounts.

"Termination Date" means the date on which one Member, itself or together with its Affiliates, holds one hundred percent (100%) of the interests of Flash Forward or the date Flash Forward is dissolved in accordance with applicable law.

"Toshiba" means Toshiba Corporation, a Japanese corporation.

"Toshiba Capacity" has the meaning set forth in the JVRA.

"Toshiba Licensed Patent" has the meaning given in the Cross License Agreement.

"Toshiba- SanDisk Flash Services Agreement" means the Services Agreement, dated as of the Effective Date, between SanDisk Flash and Toshiba.

"Toshiba Purchase and Supply Agreement" means the Purchase and Supply Agreement, dated as of the Effective Date, between Toshiba and Flash Forward.

"Transfer" means any transfer, sale, assignment, conveyance, creation of any Lien (other than a Permitted Lien), or other disposal or delivery, including by dividend or distribution, whether made directly or indirectly, voluntarily or involuntarily, absolutely or conditionally, or by operation of law or otherwise.

"Unique Activities" means production activities of Flash Forward at the request of either Member to (i) implement changes in the manufacturing processes to be employed for Products to be manufactured for such Member (or its Affiliates) that are not agreed to by the other Member, (ii) commence manufacturing other Products for the requesting Member (or its Affiliates) that the other Member does not desire to have manufactured for it and which require a change in manufacturing processes or in the utilization of the Facility or production

resources, or (iii) implement any other change in its operations in order to manufacture Products specifically for the requesting Member (or its Affiliates).

"US GAAP" means generally accepted accounting principles in the United States as in effect from time to time, consistently applied.

"US GAAS" means generally accepted auditing standards in the United States as in effect from time to time.

"Y3 Facility" means the facility at which Y3 NAND Flash Memory Products are manufactured for Flash Partners.

"Y3 NAND Flash Memory Products" has the meaning given in Section 3.2(a)(iii) of the Master Agreement.

"Y4 Facility" means the facility at which Y4 NAND Flash Memory Products are manufactured for Flash Alliance.

"Y4 NAND Flash Memory Products" has the meaning given in Section 3.2(a)(iii) of the Master Agreement.

"Y5 Facility" has the meaning given in the Master Agreement.

"Y5 NAND Flash Memory Products" has the meaning given in Section 3.2(a)(ii) of the Master Agreement.

"Yokkaichi Facility" means Toshiba's facilities in Yokkaichi Japan, including the FVC Japan Equipment, the Y3 Facility, the Y4 Facility, the Y5 Facility and Toshiba's Asahi facility.

Rules of Construction and Documentary Conventions

2.1 Amendment and Waiver. No amendment to or waiver of this Agreement shall be effective unless it shall be in writing, identify with specificity the provisions of this Agreement that are thereby amended or waived and be signed by each party hereto. Any failure of a party to comply with any obligation, covenant, agreement or condition contained in this Agreement may be waived by the party entitled to the benefits thereof only by a written instrument duly executed and delivered by the party granting such waiver, but such waiver or failure to insist upon strict compliance with such obligation, covenant, agreement or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure of compliance.

2.2 Severability. If any provision of this Agreement or the application of any such provision is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement (except as may be expressly provided in this Agreement) or invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law, the parties hereto waive any provision of law that renders any provision of this Agreement invalid, illegal or unenforceable in any respect. The parties hereto shall, to the extent lawful and practicable, use their reasonable efforts to enter into arrangements to reinstate the intended benefits, net of the intended burdens, of any such provision held invalid, illegal or unenforceable. If the intent of the Parties for entering into the FF Operative Documents, considered as a single transaction, cannot be preserved, the FF Operative Documents shall either be renegotiated or terminated by mutual agreement of the Parties.

2.3 Assignment. Except as may otherwise be specifically provided in this Agreement, no party hereto shall Transfer this Agreement or any of its rights hereunder (except for any

Transfer to an Affiliate or in connection with a merger, consolidation or sale of all or substantially all the assets or the outstanding securities of such party, which Transfer shall not require any consent of the other parties) without the prior written consent of each other party hereto (which consent may be withheld in each such other party's sole discretion), and any such purported Transfer without such consent shall be void.

2.4 Remedies.

(a) Except as may otherwise be specifically provided in this Agreement, the rights and remedies of the parties under this Agreement are cumulative and are not exclusive of any rights or remedies which the parties hereto would otherwise have.

(b) Equitable relief, including the remedies of specific performance and injunction, shall be available with respect to any actual or attempted breach of this Agreement; *provided*, *however*, in the absence of exigent circumstances, the parties shall refrain from commencing any lawsuit or seeking judicial relief in connection with such actual or attempted breach that is contemplated to be addressed by the dispute resolution process set forth in the Master Agreement and in Section 2.5 of this Appendix A until the parties have attempted to resolve the subject dispute by following said dispute resolution process to its conclusion.

(c) If the due date for any amount required to be paid under this Agreement is not a Business Day, such amount shall be payable on the next succeeding Business Day; *provided* that if payment cannot be made due to the existence of a banking crisis or international payment embargo, such amount may be paid within the following 30 days. If due to the occurrence of an act of God, any party is prevented from providing training, technical assistance or other similar support required to be provided to Flash Forward pursuant to this Agreement, such party shall have an additional 30 day period to make alternative arrangements to provide such support.

2.5 Arbitration. Any dispute concerning this Agreement shall be referred to the Management Representatives and handled by it in accordance with the Master Agreement. If the Management Representatives cannot resolve such dispute in accordance with the terms of the Master Agreement, then such dispute will be settled by binding arbitration in San Francisco, California. The dispute shall be heard by a panel of three arbitrators pursuant to the rules of the International Chamber of Commerce. The awards of such arbitration shall be final and binding upon the parties thereto. Each party will bear its own fees and expenses associated with the arbitration. Filing fees and arbitrator fees charged by the ICC shall be borne equally by the Parties.

2.6 Damages Limited. IN THE ABSENCE OF ACTUAL FRAUD, IN NO EVENT SHALL ANY PARTY BE LIABLE TO OR BE REQUIRED TO INDEMNIFY ANY OTHER PARTY OR ANY OF THEIR RESPECTIVE AFFILIATES FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL OR INDIRECT DAMAGE OF ANY KIND, (INCLUDING WITHOUT LIMITATION LOSS OF PROFIT OR DATA), WHETHER OR NOT ADVISED OF THE POSSIBILITY OF SUCH LOSS.

2.7 Parties in Interest; Limitation on Rights of Others. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their permitted successors and assigns. Nothing in this Agreement, whether express or implied, shall give or be construed to give any Person (other than the parties hereto and their permitted successors and assigns) any legal or equitable right, remedy or claim under or in respect of this Agreement, unless such Person is expressly stated in such agreement or instrument to be entitled to any such right, remedy or claim.

2.8 Table of Contents; Headings. The Table of Contents and Article and Section headings of this Agreement are for convenience of reference only and shall not affect the construction of or be taken into consideration in interpreting any such agreement or instrument.

2.9 Counterparts; Effectiveness. This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all of which counterparts shall together constitute but one and the same contract. This Agreement shall not become effective until one or more counterparts have been executed by each party hereto and delivered to the other parties hereto.

2.10 Entire Agreement. This Agreement, together with each other FF Operative Documents and the Exhibits, Schedules, Appendices and Attachments hereto and thereto, when completed, constitute the agreement of the parties to the FF Operative Documents with respect to the subject matter thereof and supersede all prior written and oral agreements and understandings with respect to such subject matter.

2.11 Construction. References in this Agreement to any gender include references to all genders, and references in this Agreement to the singular include references to the plural and vice versa. Unless the context otherwise requires, the term "party" when used in this Agreement means a party to this Agreement. References in this Agreement to a party or other Person include their respective permitted successors and assigns. The words "include", "includes" and "including", when used in this Agreement, shall be deemed to be followed by the phrase "without limitation". Unless the context otherwise requires, references used in this Agreement to Articles, Sections, Exhibits, Schedules, Appendices and Attachments shall be deemed references to Articles and Sections of, and Exhibits, Schedules, Appendices and Attachments to, this Agreement. Unless the context otherwise requires, the words "hereof", "hereby" and "herein" and words of similar meaning when used in this Agreement refer to this Agreement in its entirety and not to any particular Article, Section or provision of this Agreement. Any reference to a FF Operative Document shall include such FF Operative Document as amended or supplemented from time to time in accordance with the provisions thereof.

2.12 Official Language. The official language of this Agreement is the English language only, which language shall be controlling in all respects, and all versions of this Agreement in any other language shall not be binding on the parties hereto or nor shall such other versions be admissible in any legal proceeding, including arbitration, brought under this Agreement. All communications and notices to be made or given pursuant to this Agreement shall be in the English language.

2.13 Notices. All notices and other communications to be given to any party under this Agreement shall be in writing and any notice shall be deemed received when delivered by hand, courier or overnight delivery service, or by facsimile (if confirmed within two Business Days by delivery of a copy by hand, courier or overnight delivery service), or five days after being mailed by certified or registered mail, return receipt requested, with appropriate postage prepaid and shall be directed to the address of such party specified below (or at such other address as such party shall designate by like notice):

(a) If to SanDisk or SanDisk Flash:

SanDisk Corporation
601 McCarthy Boulevard
Milpitas, CA 95035 USA
Telephone: (408) 542-0555
Facsimile: (408) 542-0600
Attention: President and CEO

With a copy to:

SanDisk Corporation
601 McCarthy Boulevard
Milpitas, CA 95035 USA
Telephone: (408) 548-0208
Facsimile: (408) 548-0385
Attention: Vice President and General Counsel

(b) If to Toshiba:

Toshiba Corporation
Semiconductor Company
1-1 Shibaura 1-Chome
Minato-Ku, Tokyo 105-8001 Japan
Telephone: 011 81 3 3457 3362
Facsimile: 011 81 3 5444 9339
Attention: Memory Division, Vice President

With a copy to:

Toshiba Corporation
Semiconductor Company
Legal Affairs Division
1-1 Shibaura 1-Chome
Minato-Ku, Tokyo 105-8001 Japan
Telephone: 011-81-3-3457-3452
Facsimile: 011-81-3-5444-9342
Attention: General Manager

(c) If to Flash Forward:

Flash Forward, Ltd.
800 Yamanoisshikicho,
Yokkaichi, Mie, Japan
Attention: President

With a copy to:

SanDisk Corporation
601 McCarthy Boulevard
Milpitas, CA 95035 USA
Telephone: (408) 542-0510
Facsimile: (408) 542-0640
Attention: Chief Operating Officer

And

Toshiba Corporation
Semiconductor Company
Legal Affairs Division
1-1 Shibaura 1-Chome
Minato-Ku, Tokyo 105-8001 Japan
Telephone: 011-81-3-3457-3452
Facsimile: 011-81-3-5444-9342
Attention: General Manager

2.14 Non Disclosure Obligations. Each party hereto agrees as follows:

(a) In this Agreement, "Confidential Information" means information disclosed in written, recorded, graphical or other tangible from which is marked as "Confidential", "Proprietary" or in some other manner to indicate its confidential nature, and/or orally or in other intangible form, identified as confidential at the time of disclosure and confirmed as confidential information in writing within thirty (30) days of its initial disclosure.

(b) For a period of [***] from the date of receipt of the Confidential Information disclosed by one Party (the "Disclosing Party") hereunder, the receiving Party (the "Receiving Party") agrees to safeguard the Confidential Information and to keep it in confidence and to use reasonable efforts, consistent with those used in the protection of its own confidential information, to prevent its disclosure to third parties, except that the Receiving Party shall not be obligated hereunder in any respect to information which:

(i) is already known to the Receiving Party at the time of its receipt from the Disclosing Party as reasonably evidenced by its written records; or

(ii) is or becomes publicly available without breach of this Agreement by the Receiving Party; or

(iii) is made available to a third party by the Disclosing Party without restriction on disclosure; or

(iv) is rightfully received by the Receiving Party from a third party without restriction and without breach of this Agreement; or

(v) is independently developed by the Receiving Party as reasonably evidenced by its written records contemporaneous with such development; or

(vi) is disclosed with the prior written consent of the Disclosing Party, provided that each recipient from the Receiving Party shall execute a confidentiality agreement prohibiting further disclosure of the Confidential Information, under terms no less restrictive that those provided in this Agreement; or

(vii) is required to be disclosed by the order of a governmental agency or legislative body of a court of competent jurisdiction, provided that the Receiving Party shall give the Disclosing Party prompt notice of such request so that the Disclosing Party has an opportunity to defend, limit or protect such disclosure; or

(viii) is required to be disclosed by applicable securities of other laws or regulations, provided that SanDisk shall, prior to any such disclosure required by the U.S. Securities and Exchange Commission, provide Toshiba with notice which includes a copy of the proposed disclosure. Further, SanDisk shall consider Toshiba's timely input with respect to the disclosure.

(c) Receiving Party shall use its reasonable best efforts to limit dissemination of the Disclosing Party's Confidential Information to such of its employees who have a need to know such information for the purpose for which such information was disclosed to it. Receiving Party understands that disclosure or dissemination of the Disclosing Party's Confidential Information not expressly authorized hereunder would cause irreparable injury to the Receiving Party, for which monetary damages would not be an adequate remedy and the Disclosing Party shall be entitled to equitable relief in addition to any remedies the Disclosing Party may have hereunder or at law.

(d) Nothing contained in this Agreement shall be construed as granting or conferring any rights, licenses or relationships by the transmission of the Confidential Information.

(e) All Confidential Information disclosed hereunder shall remain the property of the Disclosing Party. Upon request by the Disclosing Party, the Receiving Party shall return all Confidential Information, including any and all copies thereof, or certify in writing that all such Confidential Information had been destroyed.

2.15 Definitions. The definitions set forth in Article I of thisAppendix A shall apply to this Article II.

**Schedule 4.5**
**Litigation, Decrees**

For Toshiba: [***]

For SanDisk: [***]

**Schedule 4.7**

**Patents and Proprietary Rights**

For Toshiba: [***]

For SanDisk: [***]

**Schedule 4.9**

**Cross License Payment Obligations**

For Toshiba: [***]

For SanDisk: [***]

**Schedule 6.2(a)**

**Technology Transfer Costs**

[***]

**Schedule 7.4(a)**

**Fixed Manufacturing Costs and Variable Manufacturing Costs**

(i) "Fixed Manufacturing Costs" shall include [***].

(ii) "Variable Manufacturing Costs" shall include [***].

**Schedules 9.1(f) and 9.1(g) Generally**

For the purpose of Schedules 9.1(f) and 9.1(g), the following terms shall have the following meanings, and all capitalized term used herein but not defined herein are defined in the [***]

"Adapter" shall mean [***].
"Card with Controller" shall mean [***].
"Embedded NAND MLC" shall mean [***].
"Embedded NAND SLC" shall mean [***].
"NAND Controller" shall mean [***].
"NAND MLC" shall mean [***].
"NAND SLC" shall mean [***].
"NOR Controller" shall mean [***].
"NOR MLC" shall mean [***].
"NOR SLC" shall mean [***].
"Other IC" shall mean [***].

**Schedule 9.1(f)**

**Royalty in case of Deadlock Termination**

**[***]**

**Schedule 9.1(g)**

**Royalty in case of Event of Deadlock Termination**

**[***]**

**Exhibit 10.16**

CERTAIN CONFIDENTIAL PORTIONS HAVE BEEN REDACTED FROM THIS EXHIBIT BECAUSE THEY ARE BOTH (i) NOT MATERIAL AND (ii) WOULD BE COMPETITIVELY HARMFUL IF PUBLICLY DISCLOSED. INFORMATION THAT HAS BEEN OMITTED HAS BEEN IDENTIFIED IN THIS DOCUMENT WITH A PLACEHOLDER IDENTIFIED BY THE MARK "[***]".

**Execution Version**

---

**OPERATING AGREEMENT OF FLASH FORWARD, LTD.**

Dated as of March 1, 2011

between

TOSHIBA CORPORATION

and

SANDISK FLASH B.V.

---

**TABLE OF CONTENTS**

**TABLE OF CONTENTS**
(continued)

**TABLE OF CONTENTS**
(continued)

**TABLE OF CONTENTS**
(continued)

**Page**

**Execution Version**

OPERATING AGREEMENT of FLASH FORWARD, LTD., a Japanese limited liability company (*godo kaisha*), dated as of March 1, 2011, between TOSHIBA CORPORATION, a Japanese corporation ("Toshiba"), and SANDISK FLASH B.V., a Netherlands company ("SanDisk").

WHEREAS, Flash Forward, Ltd. (the "Company") is a Japanese limited liability company (*godo kaisha*);

WHEREAS, pursuant to that certain Member Interests Purchase Agreement, dated as of the date hereof, by and between SanDisk and Toshiba, concurrently with the execution hereof, SanDisk has acquired from Toshiba equity interests in the Company representing 49.9% of all outstanding membership interests (any or all of such membership interests (*mochibun*) of the Company shall be referred to herein as "Interests");

WHEREAS, Toshiba holds the remaining 50.1% of outstanding Interests; and

WHEREAS, SanDisk and Toshiba (each a "Member") desire to enter into this Operating Agreement in order to provide, subject to the Companies Act and the Articles of Incorporation of the Company (as amended from time to time, the "Articles") for (i) the business of the Company, (ii) the conduct of the Company's affairs and (iii) the rights, powers, preferences, limitations and responsibilities of the Company's Members, employees and Executive Officers.

Accordingly, Toshiba and SanDisk agree as follows:

**1. Definitions, Rules of Construction and Documentary Conventions**

1.1 Certain Definitions.

(a) Capitalized terms used but not defined in the main body of this Agreement shall have the respective meanings assigned to them in that certain Flash Forward Master Agreement, dated as of the date hereof, among SanDisk, SanDisk Corporation and Toshiba (the "Master Agreement") or in Appendix A to the Master Agreement.

(b) As used herein, the term "Agreement" means this Operating Agreement together with any Exhibits, Schedules, Appendices and Attachments hereto.

1.2 Additional Definitions. The following capitalized terms used in this Agreement shall have the respective meanings assigned in the sections indicated below:

| Term | Defined in |
|---|---|
| "Appendix A" | Recitals |
| "Articles" | Recitals |
| "Bankruptcy Event" | Section 11.1(f) |
| "Board of Executive Officers" | Section 5.1(a) |
| "Claim" | Section 12.4(a) |
| "Company" | Recitals |
| "Deadlock" | Section 10.3(c) |
| "Deadlock Dissolution Notice" | Section 10.3(e) |
| "Defaulting Member" | Section 10.4 |
| "Designated Individuals" | Section 10.3(b) |
| "Executive Officer(s)" | Section 3.5(a) |
| "Executive Vice President" | Section 5.2(a) |
| "General Meeting of Members" | Section 4.2(a) |
| "Indemnified Party" | Section 12.4(a) |
| "Indemnifying Party" | Section 12.4(a) |
| "Initiating Member" | Section 10.3(e) |
| "Interests" | Recitals |
| "Losses" | Section 12.1(a) |
| "Master Agreement" | Section 1.1(a) |
| "Member" | Recitals |
| "Nondefaulting Member" | Section 10.4 |
| "Notified Party" | Section 11.5 |
| "Notifying Party" | Section 11.5 |
| "Permissible Assignee" | Section 9.1(c) |
| "Permissible Assignment Agreement" | Section 9.1(c) |
| "President" | Section 5.2(a) |
| "Responding Member" | Section 10.3(e) |
| "SanDisk Representative" | Section 5.3(a) |
| "Toshiba Representative" | Section 5.3(a) |
| "Y5 Operating Committee" | Section 5.3(a) |

1.3 Rules of Construction and Documentary Conventions. The rules of construction, documentary conventions and general terms and conditions set forth in Appendix A shall apply to, and are hereby incorporated in, this Agreement.

**2. General Provisions**

2.1 Ownership of Interests; Capital Increase. The rights and obligations of the Members shall be as set forth herein, subject to the Articles and mandatory provisions of the Companies Act.

2.2 Name. The name of the Company is "Flash Forward Godo Kaisha," which shall be translated as "Flash Forward, Ltd." in English, and all Company business shall be conducted in that name or such other name as the Members shall mutually agree.

2.3 Principal Office. The principal office of the Company shall be located in Yokkaichi, Mie, or such other place as the Members shall mutually agree.

2.4 Term; Extension. The Company shall be terminated on December 31, 2025, unless extended by mutual written agreement of all of the Members or earlier terminated in accordance with Section 11 (Dissolution). Any such extension shall be effective only upon the written agreement of all of the Members and shall be on such terms and for such period as set forth in such agreement. The Members agree to meet, no later than December 31, 2024, to discuss the possible extension of the term of the Company.

2.5 Scope of Activity. The scope of activity of the Company shall be as set forth in Sections 3.1 (Purpose) and 6.7 (Capacity Sharing Arrangement) of the Master Agreement.

2.6 Powers. The Company shall have all the powers now or hereafter conferred by applicable law on limited liability companies formed under the Companies Act and may do any and all acts and things necessary, incidental or convenient to the purpose specified in Section 2.5 (Scope of Activity).

2.7 Articles of Incorporation. On the date hereof and immediately following the execution of this Agreement, the Members shall hold a General Meeting of the Members and, among other matters agreed between them, vote their Interests to amend the Articles so that they will be in the form of Exhibit A. In the event of any conflict between this Agreement and the Articles, the Members confirm their intent that the terms of this Agreement shall prevail, and on the request of either Member, the Members shall amend the Articles to conform with this Agreement to the extent legally possible; provided that the inability to implement such amendment shall not relieve any Member from liability for any breach of its obligations hereunder. The Articles shall provide that each of the Members shall have the authority of a *gyomu shikko shain* (a "Managing Member") under the Companies Act.

2.8 Company Actions. The Members hereby authorize the Company, and ratify (including for purposes of Section 4.1 (Matters Requiring the Approval of the Members)) all action having been taken by or on behalf of the Company (including by its Members and Executive Officers) prior to the date hereof, to execute and deliver the FF Operative Documents to which it is a party, including all certificates, agreements and other documents required in connection therewith.

**3. Business Operations**

3.1 Business Dealings with the Company. Subject to Sections 4.1(a) (Matters Requiring the Approval of the Members) and 5.1(d) (Matters Requiring the Approval of the Board of

Executive Officers), the Company may enter into contracts or agreements, or otherwise enter into transactions or dealings, with any Member or any of their respective Affiliates, and derive and retain profits therefrom. The validity of any such contract, agreement, transaction or dealing or any payment or profit related thereto or derived therefrom shall not be affected by any relationship between the Company and any Member or any of their respective Affiliates, subject to the Companies Act. The Members agree that where practicable and contractually allowable (based on competitive price, availability and other material terms), the Board of Executive Officers will consider whether to utilize any Member or any of their respective Affiliates as the preferred providers of products and services that may be required in the manufacturing operations of the Company, subject to the ability of such Member or Affiliate to meet the Company's manufacturing requirements on competitive terms. Unless otherwise approved by the Members or otherwise expressly provided in the FF Operative Documents, all business dealings of the Company with any Member or any of their respective Affiliates shall be on the most beneficial standard commercial terms and conditions, including volume, price and credit terms, currently offered or made available to unaffiliated customers by such Member or Affiliate, as the case may be, with respect to the products and services to be offered and provided to the Company.

3.2 Other Activities. The provisions of Section 6.13 (Other Activities) of the Master Agreement are hereby incorporated herein by reference.

3.3 Personnel. The provisions of Section 6.10 (FF Management Structure and Headcount) of the Master Agreement are hereby incorporated herein by reference.

3.4 Business Plans and Related Matters.

(a) Initial and Subsequent Business Plans. The initial Business Plan of the Company, consistent with the Phase I Minimum RUP Commitment and Toshiba's proposed schedule therefor and setting forth the Company's products, pricing, operating budget, capital expenditures, expense budgets, financing plans and other business activities of the Company through the [***] will be agreed upon and certified by the Board of Executive Officers as soon as practicable after the Closing.

(i) The initial Business Plan and each successive Business Plan will, at the time such Business Plan is in effect, represent the Company's then-current forecast of the proposed operations of the Company.

(ii) An updated Business Plan complying with Section 3.4(b) (Form and Scope) in respect of each successive Fiscal Year after the [***] shall be prepared under the direction of the President of the Company and submitted to the Board of Executive Officers for review and approval not later than the [***] preceding the commencement of such Fiscal Year.

(iii) When the proposed Business Plan in respect of a Fiscal Year is approved by the Board of Executive Officers, it shall constitute the Business Plan of the Company for such Fiscal Year and the Company and its Executive Officers and employees shall implement such Business Plan, which shall be the basis of the Company's operations for such Fiscal Year. Upon approval, the approved Business Plan shall constitute the approved operational, financing and capital expenditure budget, subject to Section 6.3 of the Master Agreement. The Board of Executive Officers shall have the authority pursuant to Section 5.1(d) (Matters Requiring the Approval of the Board of Executive Officers) to amend the most recently approved Business Plan, including the operating budget contained therein, and

any Member may request that the Board of Executive Officers review the Company's operating results and prospects, as well as market conditions, and consider a proposal for amendment or review of the most recently approved Business Plan at any regularly scheduled or special meeting of the Board of Executive Officers and upon such request, the Board of Executive Officers shall in good faith make such review and/or consider such proposal.

(b) Form and Scope. Each Business Plan shall contain a statement of long-range strategy and short-range tactics detailing quantitative and qualitative goals for the Company and relating the attainment of those goals to the Company's manufacturing objectives, and shall include such items as planned capital expenditures, planned product development, planned product output and projected product cost, sales forecasts, total headcount, total spending and revenue and profit projections, financing plans and tax planning. No Business Plan shall be deemed to be an amendment of this Agreement. Any capital commitments made in any Business Plan for a period after the Fiscal Year to which the Business Plan applies shall be considered non-binding for purposes of any FF Operative Document.

(c) Approval. Other than the initial Business Plan (which shall be approved in accordance with Section 3.4(a)), the Board of Executive Officers shall vote upon any proposed Business Plan, with such modifications as it may deem necessary, before [***] preceding the commencement of each Fiscal Year. Subject to Sections 10.3(c), (e) and (f) (Dispute Resolution; Deadlock) herein and Section 6.3 of the Master Agreement, pending approval by the Board of Executive Officers of any proposed Business Plan, the most recently approved Business Plan shall continue in effect; *provided*, *however*, the Board of Executive Officers may, by unanimous vote, adopt an amended interim business plan for the Company's operations until it is able to reach agreement on the proposed Business Plan for the forthcoming year.

3.5 Standard of Care.

(a) Each Member and each Executive Officer, shall be entitled to rely (unless such Person has knowledge or information concerning the matter in question that makes reliance unwarranted) on information, opinions, reports or statements, including financial statements and other financial data, if prepared or presented by:

(i) one or more managers or employees of the Company who such Member or Executive Officer believes in good faith to be reliable and competent in the matters presented; or

(ii) legal counsel, public accountants or other Persons as to matters that such Member or Executive Officer believes to be within such Person's professional or expert competence.

(b) Each Member shall also be entitled to rely upon information, opinions, reports or statements, including financial statements and other financial data, prepared or presented by the Board of Executive Officers pursuant to the responsibilities delegated to the Board of Executive Officers pursuant to this Agreement.

3.6 Use of Names. Except as may be expressly provided in the FF Operative Documents, nothing in this Agreement shall be construed as conferring on the Company or any Member the right to use in advertising, publicity or other promotional activities any name, trade name, trademark or other designation of any other Member or any of its Affiliates, including any contraction, abbreviation or simulation of any of the foregoing.

**4. Actions by the Members**

4.1 Matters Requiring the Approval of the Members.

(a) Notwithstanding any provision of the Articles to the contrary, no action shall be taken by or on behalf of the Company in connection with any of the following matters without the prior unanimous written approval of the Members, each acting through the Executive Officers appointed by it:

(i) any amendment, restatement or revocation of the Articles;

(ii) any amendment to or renewal of any FF Operative Document between the Company and any Member or any of their respective Affiliates;

(iii) any change in the scope of activity or strategic direction of the Company's business;

(iv) any merger, consolidation or other business combination to which the Company or any of its Subsidiaries is a party, or any other transaction to which the Company is a party resulting in a Change of Control of the Company;

(v) any sale, lease, pledge, assignment or other disposition of assets of the Company in an amount (in terms of consideration to be received by the Company) in excess of ¥5,000,000 in one transaction or a series of related transactions, other than as expressly provided for in the FF Operative Documents or as set forth in the most recently approved Business Plan;

(vi) the approval of any transaction or agreement between the Company and any Member or any of their respective Affiliates (other than transactions or agreements expressly provided for or authorized by an FF Operative Document or the most recently approved Business Plan) or any amendment thereto (including the waiver of any material term thereof), other than any such transaction, agreement or amendment that contains generally available, arm's length commercial terms and is in an amount (in terms of payments to be made or the value of services or products to be provided or delivered) less than ¥5,000,000 for any single transaction or agreement or for substantially identical transactions within a twenty-four (24) month period (or a waiver that does not materially adversely affect the rights and benefits of the Company), other than as set forth in the most recently approved Business Plan;

(vii) incurring Indebtedness in an amount in excess of ¥1,000,000 or an increase in aggregate Indebtedness in excess of ¥1,000,000 in any calendar quarter, other than as authorized by Section 5.1(d) (Matters Requiring the Approval of the Board of Executive Officers);

(viii) with respect to the Company or any of its Subsidiaries, (A) the voluntary commencement of any proceeding or the voluntary filing of any petition seeking relief under Japanese or foreign bankruptcy, insolvency, receivership or similar law, (B) the consent to the institution of, or the failure to contest in a timely and appropriate manner, any involuntary proceeding or any involuntary filing of any petition of the type described in clause (A) above, (C) the application for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for the Company, or for a substantial part of its property or assets, (D) the filing of an answer admitting the material allegations of

a petition filed against the Company in any such proceeding described above, (E) the consent to any order for relief issued with respect to any such proceeding described above, (F) the making of a general assignment for the benefit of creditors, (G) the admission in writing of the Company's inability, or the failure of the Company generally, to pay its debts as they become due or (H) the taking of any action for the purpose of effecting any of the foregoing;

(ix) subject to Section 9.1(a) and Appendix A, the granting of consent to the transfer of any Interests;

(x) the winding up, dissolution or liquidation of the Company or any of its Subsidiaries (other than the dissolution of the Company pursuant to and as contemplated by Section 11 (Dissolution));

(xi) the acquisition of any business, entry into any joint venture or partnership, or creation of any direct or indirect Subsidiary of the Company;

(xii) the commitment of the Company to any development project;

(xiii) the sale, license, assignment or other Transfer of any of the Company's intellectual property owned or in its possession (including any technology or know-how, whether or not patented, any trademark, trade name or service mark, any copyright or any software or other method or process;

(xiv) any increase or decrease in the capital amount of the Company;

(xv) any other matter material to the operation, staffing, business or financial condition of the Company; and

(xvi) any matter required by the Companies Act to be decided, in the case of a limited liability company (*godo kaisha*) by its Members (or its Managing Members, as the case may be).

(b) Each Member may exercise its vote by proxy; provided, that such proxy shall submit to the Company, prior to the relevant General Meeting of Members, a power of attorney duly signed by the Member and/or other document establishing its power of representation; and provided, further, that the conferment of the power of proxy for one General Meeting of Members shall not be deemed to be a conferment of the power of proxy for any subsequent General Meeting of Members.

(c) Notwithstanding the requirements of Section 4.1(a) (Matters Requiring the Approval of the Members) relating to agreements between the Company and any Member or any of their respective Affiliates, any question regarding a material default or alleged material default (including any question regarding a breach of representation or alleged breach of representation) under any FF Operative Document between the Company and any Member or any of their respective Affiliates shall be subject to the dispute resolution process set forth in Sections 10.3(a) and (b) (Dispute Resolution; Deadlock).

4.2 General Meetings of Members.

(a) The Members acknowledge and agree that while under the Companies Act a limited liability company (*godo kaisha*) does not have a requirement to convene a General Meeting of Members, for convenience they will in this Agreement (and elsewhere in the FF Operative Documents) refer to such meeting or meetings as are required under this

Agreement as a "General Meeting of Members." An annual General Meeting of Members shall be held within three (3) months from the date immediately following the last day of each Fiscal Year of the Company. A special General Meeting of Members may be held at any time and may be called by each Member, a resolution of the Board of Executive Officers or in any other manner permitted by the Articles. All General Meetings of Members shall be called and held in accordance with the Articles. The General Meetings of Members may be held at the Company's principal office or at any other location, or, if all the Members agree, by telecommunications conferences by means of which all persons participating in the meeting can hear and be heard by each other, provided that such communications equipment continues to be operational throughout the meeting. The Members may by unanimous written consent effect any resolution that could otherwise be resolved at a General Meeting of the Members.

(b) Except as otherwise provided in this Agreement, each Member shall be entitled to one vote for each JPY 1 contributed by such Member in respect of its Interests.

(c) The minutes of every General Meeting of Members shall be kept with the Company's records referred to in Section 5.5 (Records).

(d) The quorum necessary for any General Meeting of Members shall be those Persons entitled to cast all of the votes held by the Members. A quorum shall be deemed not to be present at any meeting for which notice was not properly given under the Articles, unless the Member as to whom such notice was not properly given attends such meeting without protesting the lack of notice or duly executes and delivers a written waiver of notice or a written consent to the holding of such meeting.

4.3 Restrictions on Members. No Member may, without the prior written consent of the other Member:

(a) confess any judgment against the Company;

(b) enter into any agreement on behalf of or otherwise purport to bind the other Member or the Company;

(c) do any act in contravention of this Agreement;

(d) except as contemplated by Section 11 (Dissolution), dispose of the goodwill or the business of the Company; or

(e) assign the property of the Company in trust for creditors or on the assignee's promise to pay any Indebtedness of the Company.

**5. Management and Operations of Company**

5.1 Meetings of the Board of Executive Officers.

(a) General. The Members agree to form a steering committee consisting of executive officers nominated by each of the Members (each person so nominated, an "Executive Officer"). The Members acknowledge and agree that while under the Companies Act a limited liability company (*godo kaisha*) does not have a Board of Executive Officers, for convenience they will in this Agreement (and elsewhere in the FF Operative Documents) refer to such committee as the "Board of Executive Officers" ("*yakuin kai*"). Except as otherwise provided herein, as between the Parties the Board of Executive Officers is vested with complete and exclusive power to direct and control the Company and to

manage the Company as provided by the Articles and this Agreement, as it may be amended from time to time. The Board of Executive Officers shall have the power to delegate such responsibilities as it may deem appropriate from time to time (including certain day-to-day responsibilities set forth in Section 5.2 (Officers; Employees) and Section 5.3 (Y5 Operating Committee)). The Members shall cooperate in taking any necessary corporate steps under the Companies Act to attain the purposes of this Section 5, including without limitation, approval by the Executive Officers and General Meeting of Members with respect to decisions made by the Board of Executive Officers.

(b) Members of the Board of Executive Officers; Voting; etc.

(i) The Board of Executive Officers of the Company shall consist of six (6) Executive Officers, three (3) of which shall be nominated by Toshiba, and the other three (3) of which shall be nominated by SanDisk; provided that the total number of Executive Officers of the Company may be changed by mutual agreement of the Members.

(ii) Executive Officers shall be elected to serve until complete adjournment of the annual General Meeting of Members for the Fiscal Year last to end within one (1) year after his or her assumption of the office of Executive Officer, and shall be eligible for re-election.

(iii) Subject to the fiduciary duty of the *shokumu shikko sha* under the Companies Act, as applicable, each Executive Officer shall serve at the pleasure of the designating Member and may be removed as such, with or without cause, and his or her successor designated, by the designating Member. Each Member shall have the right to designate a replacement Executive Officer in the event of any vacancy among such Member's appointees.

(iv) Each Member shall bear any cost incurred by any Executive Officer nominated by it to serve on the Board of Executive Officers, and no Executive Officer shall be entitled to compensation from the Company for serving in such capacity.

(v) Each Member shall notify the other Member and the Company of the name, business address and business telephone,e-mail address and facsimile numbers of each Executive Officer that such Member has nominated. Each Member shall promptly notify the other Member and the Company of any change in such Member's nominated or of any change in any such address or number.

(vi) For purposes of any approval or action taken by the Board of Executive Officers, each Executive Officer shall have one vote. Unless otherwise required under Japanese law, unanimous agreement of all Executive Officers is required for valid action to be taken by the Board of Executive Officers.

(vii) At any meeting of the Board of Executive Officers, each Executive Officer may exercise his or her vote by proxy; provided, that such proxy shall submit to the Company, prior to the relevant meeting, a power of attorney duly signed by the Executive Officer and/or other document establishing his or her power of representation; and provided, further, that the conferment of the power of proxy for one meeting of the Board of Executive Officers shall not be deemed to be a conferment of the power of proxy for any subsequent meeting of the Board of Executive Officers.

(viii) The quorum necessary for any meeting of the Board of Executive Officers shall be those Executive Officers entitled to cast all of the votes held by the members of the Board of Executive Officers. A quorum shall be deemed not to be present at any meeting for which notice was not properly given under Section 5.1(c) (Meetings, Notices, etc.), unless the Executive Officer or Executive Officers as to whom such notice was not properly given attend such meeting without protesting the lack of notice or duly execute and deliver a written waiver of notice or a written consent to the holding of such meeting.

(ix) In the event that, under the Companies Act, an action approved by the Board of Executive Officers requires the approval of each Member in order to be a duly authorized action of the Company, each Member agrees promptly to provide such further evidence of approval as may be required by any third parties with whom the Company transacts or wishes to transact business.

(c) Meetings, Notice, etc. Meetings of the Board of Executive Officers shall be held at such location or locations as may be selected by the Board of Executive Officers from time to time.

(i) Regular meetings of the Board of Executive Officers shall be held on such dates and at such times as shall be determined by the Board of Executive Officers and shall be held at least on a quarterly basis, unless otherwise agreed by the Executive Officers.

(ii) Notice of any regular meeting or special meeting pursuant to Section 5.1(c)(iii) shall be given to each Executive Officer at least ten (10) Business Days prior to such meeting in the case of a meeting in person or at least five (5) Business Days prior to such meeting in the case of a meeting by conference telephone or similar communications equipment pursuant to Section 5.1(c)(vii), which notice shall state the purpose or purposes for which such meeting is being called and include any supporting documentation relating to any action to be taken at such meeting.

(iii) Special meetings of the Board of Executive Officers may be called by any Executive Officer by notice given in accordance with the notice requirements set forth in Section 5.1(c)(ii); provided that the Executive Officers appointed by the Member that is not represented by the Executive Officer calling such special meeting shall be entitled to select a convenient location for the meeting and to suggest an alternative time or times if the designated time is not convenient for them. No action may be taken and no business may be transacted at such special meeting which is not identified in such notice unless (A) such action or business is incidental to the action or business for which the special meeting is called or (B) such action or business does not materially adversely affect any Member or the Company.

(iv) Each Member may invite a reasonable number of observers to all meetings of the Board of Executive Officers.

(v) The minutes of each meeting of the Board of Executive Officers shall be delivered to all Executive Officers within twenty (20) calendar days after such meeting. Material to be presented at a Board of Executive Officers meeting shall be delivered to all Executive Officers ten (10) Business Days prior to such meeting if feasible in light of the circumstances giving rise to the need for such meeting, or in any event a minimum of five (5) Business Days prior to such meeting.

(vi) The actions taken by the Board of Executive Officers at any meeting, however called and noticed, shall be as valid as though taken at a meeting duly held after regular call and notice if (but not until), either before, at or after the meeting, each Executive Officer as to whom such meeting was improperly held duly executes and delivers a written waiver of notice or a written consent to the holding of such meeting; provided, however, any Executive Officer who is present at a meeting and does not protest the failure of notice shall be deemed to have received adequate notice thereof. A vote of the Board of Executive Officers may be taken only (A) at a meeting of the members thereof duly called and held or (B) without a meeting by the execution by the Executive Officers eligible to cast all the votes on the Board of Executive Officers of a consent setting forth the action so taken, and identified as a unanimous written consent of the Executive Officers.

(vii) Upon the consent of both the President and the Executive Vice President, meetings of the Board of Executive Officers may be held by conference telephone or similar communications equipment by means of which all Executive Officers participating in the meeting can be heard by all other participants; provided that such communications equipment continues to be operational throughout the meeting. Any Executive Officer may elect to participate in a meeting by conference telephone or similar communications equipment upon sufficient advance notice to permit arrangements therefor to be made.

(viii) At each meeting, the Board of Executive Officers shall consider (A) any of the items set forth in Section 5.1(d) (Matters Requiring the Approval of the Board of Executive Officers) that may require the Board of Executive Officers' attention, (B) any items added to the Board of Executive Officers' agenda for discussion by any Member and (C) such other matters as the Board of Executive Officers decides to review; *provided*, *however*, that the Executive Officers shall not be required to vote or take other action (other than carrying on discussions) on matters that were not placed on the meeting agenda at least five (5) Business Days in advance of the time set for the meeting unless such action or business is incidental to the action or business which was otherwise properly on the agenda and considered at such meeting.

(ix) The Board of Executive Officers shall, from time to time, elect one of its members to preside at its meetings. The Board of Executive Officers may establish reasonable rules and regulations to (A) require Executive Officers to call meetings and perform other administrative duties, (B) limit the number and participation of observers, if any, and require them to observe confidentiality obligations and (C) otherwise provide for the keeping and distribution of minutes and other internal Board of Executive Officers governance matters not inconsistent with the terms of this Agreement.

(x) The Board of Executive Officers shall have the authority to establish subcommittees and to delegate to any such subcommittee any of the Board of Executive Officers' responsibilities; provided, however, the power of the Board of Executive Officers to approve the matters set forth in Section 5.1(d) (Matters Requiring the Approval of the Board of Executive Officers) may not be delegated to a subcommittee.

(d) Matters Requiring the Approval of the Board of Executive Officers. Notwithstanding any provision of the Articles to the contrary, no action may be taken by or on behalf of the Company in connection with any of the following matters without the unanimous written approval of the Board of Executive Officers:

(i) any sale, lease, pledge, assignment or other disposition of assets of the Company in an amount (in terms of consideration to be received by the Company) in excess of ¥1,000,000 in one transaction or a series of related transactions, other than as set forth in the most recently approved Business Plan;

(ii) the approval of any transaction or agreement between the Company and any Member or any of their respective Affiliates (other than transactions or agreements expressly provided for or authorized by an FF Operative Document or the most recently approved Business Plan) or any amendment thereto (including the waiver of any material term thereof), other than any such transaction, agreement or amendment that contains generally available, arm's length commercial terms and is in an amount (in terms of payments to be made or the value of services or products to be provided or delivered) less than ¥1,000,000 for any single transaction or agreement or for substantially identical transactions within a twenty-four (24) month period (or a waiver that does not materially adversely affect the rights and benefits of the Company), other than as set forth in the most recently approved Business Plan;

(iii) the purchase, lease, license or other acquisition of (A) personal property or services or (B) any list of capital equipment approved by the Members, in each case in an amount (in terms of payments to be made or the value of services of products to be provided or delivered) exceeding ¥1,000,000 in any one transaction or a series of related transactions, other than as provided for in the most recently approved Business Plan;

(iv) the selection of attorneys, accountants, auditors and financial advisors;

(v) the adoption of accounting and tax policies, procedures and principles;

(vi) incurring any Indebtedness;

(vii) the hiring or termination of any employees referenced in Section 5.2(a) (Officers; Employees) who are not members of the SanDisk Team, if any;

(viii) the adoption of or changes to the forms of confidentiality, assignment or disclosure of intellectual property or employment agreements to be entered into between the Company and its employees;

(ix) the adoption of or changes to any employee benefit plan, including any incentive compensation plan;

(x) the amount and timing of any distributions;

(xi) the commencement or settlement of litigation by or against the Company;

(xii) the purchase, sale or lease (as lessor or lessee) of any real property;

(xiii) any acquisition of securities or any other ownership interest in any entity;

(xiv) the making of any public announcements by or on behalf of the Company; provided, that in any case any such public announcements must otherwise comply with the requirements of Section 5.2 (Public Announcements) of the Master Agreement, if applicable;

(xv) the entry into or amendment of any collective bargaining arrangements or the waiver of any material provision or requirement thereof;

(xvi) the approval of a proposed Business Plan, or the amendment to the most recently approved Business Plan, in each case including the operating budget contained therein;

(xvii) the incurrence of capital expenditures in excess of those provided for in the most recently approved Business Plan or the commitment of the Company to any development projects other than as provided for in the most recently approved Business Plan;

(xviii) subject to Section 5.1(c)(x), the establishment of any subcommittees or delegation of authority of the Board of Executive Officers;

(xix) the authorization and approval of any filing with, public comments to, or negotiation/discussion with, any Governmental Authority (excluding regular operating filings and other routine administrative matters);

(xx) the approval of Unique Activities to be performed by the Company at the request of any Member, in connection with which the Board of Executive Officers shall be satisfied that such Member has reached agreement with the Company as to the payment by such Member of all costs incurred in connection with such Unique Activities and that adequate provision has been made by such Member for the funding of any additional required capital expenditures required in conjunction with such Unique Activities;

(xxi) the decision of the Company to negotiate external sources of additional wafer fabrication capacity for NAND Flash Memory Products;

(xxii) any dispute referred to the Board of Executive Officers by the Y5 Operating Committee pursuant to Section 5.3(b); and

(xxiii) such other matters as the Board of Executive Officers decides, in its sole discretion, to review.

5.2 Officers; Employees.

(a) Unless otherwise mutually agreed by the Members, the Executive Officers of the Company with specific titles shall be designated as: the President/Chief Executive Officer ("President") and the Executive Vice President ("Executive Vice President"). The President and Executive Vice President shall be elected by the Board of Executive Officers and serve three successive one-year terms, with the first such set of terms ending at complete adjournment of the annual meeting of Members for the Fiscal Year last to end within one (1) year after his or her assumption of the officership. Toshiba shall have the right to nominate the first President and SanDisk shall have the right to nominate the first Executive Vice President, and then the Members will then alternate such nominating rights for each three year term for such positions. The President or Executive Vice President, as applicable, nominated by a Member, shall be designated by such Member as a *shokumu shikko sha* of the Company on behalf of such Member for purposes of the Companies Act. Each nominee for the President and for the Executive Vice President shall be subject to the consent of the non-nominating Member, which consent shall not unreasonably be withheld. In addition to the President and Executive Vice President, the Board of Executive Officers may appoint such other officers from time to time as it

deems necessary or advisable in the conduct of the business and affairs of the Company. Any individual may hold more than one office.

(b) The President shall have the authority to retain other senior management of the Company, subject to the prior approval of the Board of Executive Officers.

(c) The Company shall have agreements with and policies applicable to each of its officers, employees and consultants who are not members of the SanDisk Team, in forms acceptable to each Member, and shall also have appropriate arrangements with its members of the SanDisk Team, in each case with respect to (i) protection of confidential information, (ii) patent and copyright assignment, (iii) invention disclosure (including improvements and advances) and assignments thereof and (iv) in respect of certain employees who are not members of the SanDisk Team, non-competition.

5.3 Y5 Representatives; Y5 Operating Committee.

(a) The Company shall have an Operating Committee for Y5 Facility operations (the "Y5 Operating Committee"') consisting of a senior executive designated by each of SanDisk and Toshiba (each such individual the "SanDisk Representative" and the "Toshiba Representative," respectively) each of whom shall represent the designating Party on a day-to-day basis at the Y5 Facility. Each Member shall notify the other Member in advance of any replacement of its representative. If a Member requests in good faith that the other Member's representative be replaced with another person from the other Member's organization, the other Member shall consider and discuss in good faith with the requesting Member such request, provided that such replacement, if any, shall be determined solely by such other Member. [***]

(b) The Y5 Operating Committee shall work together and endeavor to make the Y5 Facility the most advanced and competitive memory fabrication facility in the world. The Y5 Operating Committee shall have the authority to determine all matters concerning the day-to-day operations of the Company and the Y5 Facility (including staffing matters as provided in Section 6.10(a)(iii) of the Master Agreement), subject to those matters reserved herein to the Board of Executive Officers or the Members as well as to the requirements of this Agreement, the Articles and the Companies Act. The Y5 Operating Committee shall communicate on a day-to-day basis with respect to the status of Y5 Facility operations and any other issues that may arise, and shall meet in person no less than two (2) times per week, or such other times and frequency as may be agreed upon by all members of such committee. If the members of the Y5 Operating Committee are unable to agree on any issue after thirty (30) days, they shall submit such matter together with their respective recommendations to the Board of Executive Officers, which shall endeavor to immediately resolve the issue. If the Board of Executive Officers is unable to agree on any such issue after ten (10) days, such issue shall be submitted to the Management Representatives for final resolution.

(c) The Y5 Operating Committee shall hold a monthly review meeting in English at the Yokkaichi Facility on [***] of each calendar month, unless otherwise agreed by the Members or the Y5 Operating Committee. The Y5 Operating Committee shall prepare and distribute to each Member (at least three (3) Business Days in advance of the monthly review meetings) monthly reports in English with respect to the engineering activities, operations and financial affairs of the Company and the Y5 Facility.

(d) Upon the request of either Member, the Y5 Operating Committee shall provide the Members with (i) any management or operation reports of the Company related to the Y5 Facility (which neither Member shall have an obligation to translate) and

(ii) simultaneously in Japanese and English, those management and operating reports identified on Schedule 5.3 as mutually agreed upon from time to time by the Parties. Upon reasonable request from SanDisk, Toshiba employees shall explain such reports to SanDisk's employees and respond to questions from SanDisk's employees; provided, however that SanDisk acknowledges and agrees that Toshiba shall not be responsible for SanDisk's failure to understand any such reports.

5.4 Insurance. The Company shall maintain insurance against such liabilities and other risks associated with the conduct by the Company of its business and in such amounts and against such risks as agreed by the Members, and in any event as is generally maintained by companies engaged in a business similar to that of the Company.

5.5 Records. The Company shall maintain the following records at its principal office:

(a) a current list of the full name set forth in alphabetical order and last known business address of each Member and Executive Officer;

(b) a copy of the Articles, and all articles of amendment thereto;

(c) a copy of this Agreement and all amendments hereto;

(d) a copy of all financial statements of the Company for the three most recent Fiscal Years;

(e) a copy of the Company's income tax or information returns and reports, if any, for the three most recent years;

(f) a copy of all indentures, loan agreements, lease agreements, guarantees, security agreements, promissory notes, licensing or other intellectual property agreements, agreements that relate to the payment or receipt by the Company of amounts in excess of ¥5,000,000 or that are not terminable by the Company upon ninety (90) days notice, documents, if any, evidencing employee compensation arrangements, employee pension or other benefit arrangements, and similar documents and instruments executed and delivered by the Company;

(g) a list of all contributions made to the Company by the Members; and

(h) a record of all distributions by the Company to each Member.

The Members and/or the Executive Officers and/or their respective designees (which shall be limited to its employees or professional advisers subject to appropriate confidentiality obligations) shall have reasonable access to the records of the Company during normal business hours upon reasonable request. Copies of records shall be made available and delivered to the Members and/or the Executive Officers promptly after reasonable request for same, provided the requesting party pays for copy and delivery charges.

**6. Capital Contributions; Distributions**

6.1 Capital Contributions.

(a) The Members shall be deemed to have made Capital Contributions to the Company in the amounts set forth opposite their respective names on Schedule 6.1.

(b) No Member shall be obligated to make any additional Capital Contributions to the Company, unless otherwise mutually agreed upon by the Members in writing, in which

case such additional Capital Contributions shall be made in proportion to the Members' respective Percentages as of the date of such additional Capital Contribution.

6.2 Distributions.

(a) General. Notwithstanding any provision of the Articles to the contrary, and subject to Section 11.8 (Liquidation Proceeds), unless otherwise agreed by the Members, no distributions of cash (or in the case of Section 11.8, other property) shall be made by the Company to the Members for a period of three (3) years from the date of this Agreement, and thereafter all distributions of cash (or, in the case of Section 11.8, other property) by the Company to the Members shall be made in Japanese Yen at the times and in the amounts determined by the Board of Executive Officers. Except as provided in Section 11.8, each distribution to the Members shall be made on a pro rata basis based upon the respective Percentages of the Members as of the date of such distribution.

(b) Distribution for Taxes. Notwithstanding Section 6.2(a), subject to the Companies Act and other applicable law, the Company shall make, in respect of each Fiscal Year in which SanDisk or its Affiliates must recognize taxable income of the Company in SanDisk's tax returns, including, but not limited to, its US federal, state and local income (including withholding tax) and franchise tax returns, a distribution to SanDisk to the extent necessary to meet SanDisk's aggregate US tax liability with respect to such taxable income, with such liability calculated at the highest US, state and local corporate tax rates as may be then applicable to SanDisk. SanDisk will make a request upon the Company for such distribution as soon as is practicable after the filing of SanDisk Corporation's applicable US tax returns. Following receipt of such request, the Company shall make the requested distribution on the next date on which the Company is permitted to make distributions pursuant to the Companies Act. Simultaneously therewith, the Company shall also make a distribution to Toshiba in an amount equal to the amount of the per Interest distribution made to SanDisk pursuant to this Section 6.2(b). Any such prior distributions shall be taken into account upon any purchase and sale of Interests under Section 10 (Certain Agreements of the Members) or dissolution of the Company under Section 11 (Dissolution) hereof. If necessary, the Board of Executive Officers shall consider capital reductions to the extent that any such capital reduction will not adversely affect the Y5 Facility's operations.

6.3 No Interest. No interest shall be payable to the Members on their Capital Contributions or otherwise in respect of the capital of the Company.

6.4 Return of Capital Contributions. Except as expressly provided herein, no Member shall be entitled to the return of any part of such Member's Capital Contributions.

## 7. Additional Contributions

No Member shall be obligated under this Agreement or the Articles to contribute any additional amounts to the Company or otherwise to be liable for the debts and obligations of the Company.

## 8. Accounting and Taxation

8.1 Financial Accounting Conventions.

(a) The Company shall adopt and follow Japanese GAAP.

(b) Notwithstanding anything to the contrary in Appendix A, the first Fiscal Year shall begin on the date of formation of the Company and end on March 31, 2011.

(c) The Company shall in principle (but subject to applicable Law) utilize a five-year straight line depreciation method for manufacturing equipment.

8.2 Maintenance of Books of Account. The Company shall keep or cause to be kept at its principal office, or such other location as the Board of Executive Officers shall designate, full and complete books of account. The books of account shall be maintained in a manner that provides sufficient assurance that transactions of the Company are recorded so as to comply with all applicable laws and to permit (a) the preparation of the Company's consolidated financial statements in accordance with Japanese GAAP and (b) the Members to account for their interest in the Company in accordance with Japanese GAAP.

8.3 Financial Statements.

(a) Annual Statements. As soon as practicable following the end of each Fiscal Year (and in any event not later thanfifty-two (52) days after the end of such Fiscal Year), the Company shall prepare and deliver to each Member and each Executive Officer, audited consolidated and consolidating balance sheets of the Company as of the end of such Fiscal Year and the related audited consolidated and consolidating statements of operations, the Members' capital accounts and cash flows of the Company for such Fiscal Year (or similar statements if such statements change as the result of changes in Japanese GAAP), together with appropriate notes to such consolidated financial statements, and in each case setting forth in comparative form the corresponding figures for the preceding Fiscal Year and for the budget for the Fiscal Year just completed. Such financial statements shall be accompanied by (i) the report of the Accountants to the effect that such financial statements (except for the comparison to the budget) have been prepared in conformity with Japanese GAAP (except as otherwise specified in such report) and that the audit of such financial statements has been performed in accordance with Japanese GAAP and (ii) a report as to all transactions (including the nature, type and amount) between the Company and each Member and their respective Affiliates. The Company shall conduct its business such that the report of the Accountants shall not contain any qualifications as to the scope of the audit or with respect to the Company's compliance with Japanese GAAP, except for changes in methods of accounting in which such Accountants concur and except that the foregoing shall not be deemed to obligate any Member to contribute any capital to the Company. The Company shall also provide SanDisk with an English version of such report, which shall contain sufficient data to enable SanDisk to prepare a reconciliation of the Company's financial reports from Japanese GAAP to United States GAAP. The Company shall deliver to SanDisk, at SanDisk's request and expense, any other financial information related to the Company that is reasonably requested by SanDisk for tax purposes, including, but not limited to, US Federal, state, and local income (including withholding tax) or franchise tax purposes.

(b) Quarterly Statements.

(i) As soon as practicable following the end of each Fiscal Quarter (and in any event not later than ten (10) days after the end of such Fiscal Quarter), the Company shall prepare and deliver to each Member and each Executive Officer unaudited consolidated and consolidating balance sheets of the Company as of the end of such Fiscal Quarter and the related unaudited consolidated and consolidating statements of operations, the Members' capital accounts and cash flows of the Company for such Fiscal Quarter and for the Fiscal Year to date (or similar

statements if such statements change as the result of changes in Japanese GAAP), in each case setting forth in comparative form the corresponding figures for the preceding Fiscal Quarter, for the corresponding Fiscal Quarter of the preceding Fiscal Year and for the budget for the Fiscal Quarter just completed and for the Fiscal Year to date.

(ii) The financial statements for such Fiscal Quarter shall be accompanied by a certificate of the principal accounting or financial officer of the Company to the effect that such financial statements have been prepared under such officer's supervision and that, although such financial statements do not contain the footnotes and other disclosures required to be presented in interim financial statements by Japanese GAAP, such financial statements, in such officer's judgment, fairly present the financial condition and results of operations of the Company as of the date and for the periods indicated, subject to normal recurring year-end audit adjustments. The Company shall deliver to SanDisk, at SanDisk's request and expense and, except as otherwise provided herein, in the same manner as is delivered in connection with the Operating Agreement of Flash Alliance, Ltd. dated as of July 7, 2006, by and between Toshiba and SanDisk (Ireland) Ltd., any other financial information related to the Company (including an English translation thereof), that is reasonably requested by SanDisk for US financial reporting or Federal, state, and local income (including withholding tax) or franchise tax purposes.

(c) The Company shall obtain a professional tax audit from a qualified accountant complying with Japanese GAAP by May 22 of each year (including an English translation thereof). As part of its engagement of its auditors, the Company shall cause its auditors to provide such English language financial statements, audit reports, US GAAP reconciliations and consents as are required (or reasonably requested by SanDisk) in connection with SanDisk Corporation's filings with the United States Securities and Exchange Commission; *provided* that SanDisk shall pay for all the costs relating to such auditors' work. SanDisk may also request that the Company provide SanDisk with "comfort letters" in the manner customary for Japanese auditors in connection with public offerings in the United States, at SanDisk's own expense.

(d) Monthly Reports. Each month, the Company shall prepare and deliver to each Member and each Executive Officer the reports and other information set forth on Schedule 8.3. Such reports and other information will become available at the respective times set forth on Schedule 8.3.

(e) Business Plan. Subject to Sections 10.3(c), (e) and (f), and provided that the most recently approved Business Plan does not provide for the next Fiscal Year, the Company shall, not later than [***] prior to the commencement of each Fiscal Year, deliver to each Member a copy of the Business Plan, including the Company's monthly budgets, for the upcoming Fiscal Year, as approved by the Board of Executive Officers.

(f) Legal Proceedings. The Company shall promptly inform each Member and each Executive Officer with regard to litigation, governmental investigations, material government notices and threatened legal proceedings.

8.4 Other Reports and Inspection. The Company shall furnish promptly to each Member such other reports, financial data and information relating to the Company as such Member may reasonably request and shall require the Accountants to provide to each Member copies of any document related to the Company in the possession of the Accountants as such Member may reasonably request. The Company shall, upon

reasonable prior notice and during normal business hours, make available to each Member and their respective professional advisors, from time to time as requested by such Member, all properties, assets, books of account, corporate records, contracts and documentation, if any, relating to employee benefits of the Company, and any other material requested by such Member for inspection and, in the case of books of account, corporate records, contracts and documentation, if any, relating to employee benefits, copying, and shall use reasonable efforts to make available to such Member the Accountants and the key employees of the Company for interviews to verify any information furnished or to enable such Member otherwise to review the Company and its operations. The Company may condition such availability upon the entering into of reasonable and appropriate confidentiality agreements. Notwithstanding the foregoing, the Company will not make available to any Member information provided to the Company on a confidential basis by any other Member without the consent of such other Member.

8.5 Deposit of Funds. All funds of the Company and its Subsidiaries not otherwise employed shall be deposited from time to time to its credit in such banks, trust companies or other depositories, or invested in such other investments held as cash equivalents, as the Board of Executive Officers shall authorize. The funds of the Company and its Subsidiaries shall not be commingled with the funds of any Member or any of their respective Affiliates.

**9. Share of Contribution; Disposition of Interests**

9.1 Restrictions on Transfer of Interests.

(a) No Member (nor any permitted transferees of any Member) may Transfer any interest in the Company, including any of such Member's Interests, to any Person, except by a Change of Control; provided, that any Member may Transfer all of its interest in the Company, including all of its Interests, subject to the Companies Act, to any one (1) of their respective Affiliates, with the prior written consent of every other Member, which consent shall not be unreasonably withheld; and provided, further, that (i) the transferee agrees in writing to become a party hereto and assumes all the obligations of the transferring Member hereunder and under each other FF Operative Document to which the transferring Member is a party (except to the extent the express terms of the Patent Indemnification Agreement condition its transferability on the consent of the non-transferring Member and such Member has not consented to Transfer thereof), and (ii) immediately after giving effect to such Transfer, no Event of Default or an event or condition that with the giving of notice or lapse of time or both would constitute an Event of Default with respect to the transferee Member shall exist. Following the effectiveness of any such Transfer, the transferring Member shall no longer have the transferred right, title or interest in the Company or any rights under this Agreement and the transferee shall be substituted as a Member for all purposes of this Agreement. The transferring Member shall, however, remain responsible for all obligations under this Agreement and the other FF Operative Documents for any transferee which is an Affiliate of the transferring Member and shall not be released or discharged from any existing liability or obligation to any Person. Any subsequent Transfer of an ownership interest in such Affiliate by the transferring Member shall be deemed to constitute a Transfer of Interests requiring compliance with this Section 9.1.

(b) If a Member Transfers its entire interest in the Company pursuant to Section 9.1(a), the transferee shall succeed to all the rights and obligations of such Member under this Agreement.

(c) Any Member may agree to pay amounts equal to distributions received by such Member from the Company to a third party in its sole discretion pursuant to a Permissible Assignment Agreement. "Permissible Assignment Agreement" means an agreement between a Member and another Person (the "Permissible Assignee") which:

(i) provides for the grant by such Member to the Permissible Assignee of the right to receive amounts equal to distributions received by such Member from the Company pursuant to Section 6 or 11 of this Agreement, but does not give the Permissible Assignee any Interests or any other rights whatsoever with respect to the Company;

(ii) provides that under no circumstances (including any Bankruptcy Event in respect of such Member) may any claim be made by the Permissible Assignee against the Company or any such Member or any Affiliate of any such Member or any of their respective assets, under or in connection with such agreement, even if such Member defaults in performance thereunder;

(iii) provides that the rights of the Permissible Assignee under such agreement may not be transferred without the prior written consent of each Member and that any such Transfer without such consents shall be null and void;

(iv) may not be amended, nor any provision thereof waived, in a manner that would cause it not to be a Permissible Assignment Agreement, without the prior written consent of the non-assigning Member;

(v) provides that the assigning Member is authorized to Transfer its entire interest in the Company pursuant to Section 9.1(a) free and clear of any interest of the Permissible Assignee and without any liability on the part of the transferee thereunder to the Permissible Assignee; and

(vi) contains an express acknowledgment by the Permissible Assignee, for the benefit of thenon-assigning Member and the Company, to the effect of clauses (i)-(v) above.

The assigning Member shall ensure that any payment due to a Permissible Assignee pursuant to or in connection with a Permissible Assignment Agreement shall be made in full to such Permissible Assignee when due.

9.2 Admission of New Members. No Person shall have the right to become a Member unless and until all the following conditions are satisfied:

(a) except in the case of a Transfer of all of a Member's Interests of such Member in accordance with Section 9.1(a) (Restrictions on Transfer of Interests), such Person, the terms and conditions of such Person's admission as a Member and the rights appurtenant to the Interests to be granted or Transferred, as applicable, to such Person are approved by all existing Members and, if applicable, the creation of any new class or group of Interests in the Company having different rights, powers and duties is reflected in amendments to the Articles and to this Agreement;

(b) such Person executes a counterpart of this Agreement and such other instrument or instruments as the Company and a non-transferring Member may reasonably deem appropriate to affirm that the representations and warranties contained in the Master Agreement are true and correct with respect to such Person and that such Person agrees to

be bound as a Member by this Agreement and all of the covenants and agreements herein; and

(c) if requested by the Company, an opinion of counsel, a purchaser representation letter or other appropriate documentation is furnished to the Company establishing that the grant or Transfer, as applicable, of Interests to the new Member will comply with the Companies Act.

Except to the extent required by law, the Company shall have no obligation to recognize or to furnish information or make distributions to any new Member or any transferee of a Member who does not become a Member in accordance with Section 9.1 (Restrictions on Transfer of Interests) or this Section 9.2.

9.3 Withdrawal Prohibited. Except as otherwise expressly permitted by this Agreement or the Master Agreement, (i) no Member may withdraw from the Company and (ii) no Member may effect or cause a termination or dissolution of the Company without the prior written consent of all other Members (which consent may be withheld in such other Member's sole discretion).

9.4 Purchase of Additional Interest. At any time during the term of this Agreement and so long as SanDisk is a Member, SanDisk shall have the right to purchase from Toshiba 0.1% of the total Interests then outstanding in the event that (i) Toshiba's patent umbrella does not adequately protect the Company or (ii) dissolution of the Company is commenced pursuant to Section 11 hereof. The purchase price of such Interests shall equal [***] as of the date of such transaction.

**10. Certain Agreements of the Members**

10.1 Taxes and Charges; Governmental Rules. Each Member and the Company shall (a) promptly pay all applicable Taxes and other governmental charges imposed against such Member and the Company except to the extent any such Taxes or other charges are being contested in good faith by appropriate proceedings and (b) comply with all applicable Governmental Rules, in each case except to the extent that nonpayment or noncompliance will not have a material adverse effect on the Company.

10.2 Further Assurances. Following the Closing, each Member shall, and shall cause its Affiliates and the Company to take all reasonable actions necessary or appropriate to effectuate the transactions contemplated by this Agreement, and to obtain (and cooperate with the other Member in obtaining) any Governmental Action or third party consent required to be obtained or made by it in connection with the transactions contemplated by this Agreement; provided, that no Burdensome Condition shall be made to exist with respect to such Member or any of its Affiliates in connection therewith.

10.3 Dispute Resolution; Deadlock.

(a) The Members shall endeavor to settle, through their respective designees to the Board of Executive Officers, any disputes which may arise between them, including without limitation, failure by the Board of Executive Officers to reach agreement (or failure to take a vote) on any matter requiring Executive Officers approval pursuant to Section 5.1(d) (Matters Requiring the Approval of the Board of Executive Officers). The Members shall attempt to resolve the issue or proposed action in question, to the extent practicable, in a manner consistent with the Company's most recently approved Business Plan, unless the issue in dispute is the adoption of a new Business Plan, in which case,

except as provided for in Section 6.3 of the Master Agreement, the provisions of Sections 10.3(c), (e) and (f) shall apply.

(b) If (i) the Members are unable to agree on any matter requiring the approval of the Members pursuant to Section 4.1(a) (Matters Requiring the Approval of the Members), (ii) the Board of Executive Officers is unable to agree on any matter requiring the approval of the Board of Executive Officers pursuant to Section 5.1(d) (Matters Requiring the Approval of the Board of Executive Officers) (other than the approval of any Business Plan, with respect to which the failure to agree shall be governed by Sections 10.3(c), (e) and (f)) or (iii) the Members or the Board of Executive Officers are otherwise unable to resolve a dispute on any other item (other than the approval of any Business Plan, with respect to which the failure to agree shall be governed by Sections 10.3(c), (e) and (f)), then any Member may bring the matter to the attention of the General Manager Memory Division, Semiconductor Company of Toshiba, and the Chief Operating Officer of SanDisk (the "Designated Individuals"), who will attempt to find a resolution. If the matter has not been resolved within thirty (30) days of referral to the Designated Individuals, the matter will be referred to the Management Representatives for a final decision, which decision will be final and binding on the Company and the Members with respect to any matter specified in Sections 10.3(b)(i) and (ii) above. If an agreement is reached by the Management Representatives, the mutually agreed resolution shall be implemented by the Company. Should no solution be agreed upon within thirty (30) days after submission of the matter to the Management Representatives with respect to the matters specified in (iii) above, such matter shall be submitted to arbitration in accordance with Section 2.5 of the Appendix A. Should no solution be agreed upon within sixty (60) days after submission of the matter to the Management Representatives with respect to the matters specified in Sections 10.3(b)(i) and (ii) above, then the action for which approval was requested will not occur, unless it is already included in the most recently approved Business Plan, subject to Section 6.5 of the Master Agreement.

(c) Except as provided below and subject to Section 6.3 of the Master Agreement, if by [***] of any calendar year during the term of this Agreement, commencing [***], the Board of Executive Officers and the Members have not approved and agreed upon a Business Plan for the upcoming Fiscal Year, then any Member may refer the dispute to the Management Representatives for a decision, which decision shall be final and binding on the Company and the Members. If a decision is reached by agreement of the Management Representatives, such decision shall be implemented by the Company. Should no decision be reached within ninety (90) days after submission of the matter to the Management Representatives, and unless the Members have agreed to continue operations under the most recently approved Business Plan until a new Business Plan is approved, then within ten (10) Business Days thereafter any Member may elect by written notice to all other Members to declare a deadlock ("Deadlock"), except with respect to any issue where the Master Agreement expressly prohibits declaration of a Deadlock.

(d) If demand for both Members' NAND Flash Memory Products is significantly below expectations, they shall address the matter as contemplated in Section 6.6(b)(ii) of the Master Agreement.

(e) Within thirty (30) days after a Member has notified the other Member of a Deadlock, either Member (the 'Initiating Member") may submit to the other Member (the "Responding Member") a written irrevocable notice (the "Deadlock Dissolution Notice") to the effect that the Initiating Member offers to sell to the Responding Member or its designee the Initiating Member's Interests for a cash payment, by wire transfer of

immediately available Japanese Yen, in an amount equal to the [***] as of the date of such transaction multiplied by the Initiating Member's Percentage as of such date.

(f) The Responding Member may accept such offer by written response to the Initiating Member within forty-five (45) days of receipt of the Deadlock Dissolution Notice indicating that the Responding Member elects to purchase the Interests of the Initiating Member. If the Responding Member declines to exercise its right to purchase the Interests of the Initiating Member pursuant to this Section 10.3 or fails to respond to such Deadlock Dissolution Notice (or if both Members submit Deadlock Dissolution Notices), the Company shall be dissolved pursuant to Section 11.1(d) (Events of Dissolution), at the end of a one-year period for the wind-down of operations commencing with the receipt of the Deadlock Dissolution Notice by the Responding Member. During such one-year period, the Company's business shall be conducted in accordance with the most recently approved Business Plan except that additional capital expenditures will not be made except as required for line maintenance.

10.4 Remedies Upon Event of Default; Termination on Breach. If there has occurred and is continuing an Event of Default with respect to a Member (upon such occurrence, such Member is referred to herein as the "Defaulting Member") in addition to all other remedies available to the Company or the other Member (the "Nondefaulting Member"), whether under any of the FF Operative Documents or other agreements or by law, the Nondefaulting Member shall have the option to take one or more of the following actions:

(a) give written notice to the Defaulting Member of its intention to acquire all of the Interests of the Defaulting Member for a cash payment, by wire transfer of immediately available Japanese Yen, in an amount equal to the [***] as of the date of such transaction multiplied by the Defaulting Member's Percentage as of such date; and/or

(b) elect to dissolve the Company pursuant to Section 11.3 (Dissolution Upon Event of Default), in which case the affairs of the Company shall be wound up and the Company shall be dissolved in accordance with Section 11 (Dissolution).

10.5 Mechanics of Sale.

(a) The closing of any purchase and sale of Interests pursuant to Section 10.3 (Dispute Resolution; Deadlock), 10.4 (Remedies Upon Event of Default; Termination on Breach) or 11.5 (Dissolution Upon Notice) shall take place not later than the thirtieth (30th) Business Day after notice of the purchase is given, as the case may be, except that such period shall be extended as necessary in order to comply with any Governmental Rule. The purchasing Member shall pay for the Interests being acquired by wire transfer of immediately available funds in Japanese Yen to an account specified by the selling Member. The selling Member shall execute all documents necessary to effect the conveyance of its Interests, free and clear of all Liens, to the purchasing Member. In addition, the Members shall enter into an indemnity and release agreement, in a form reasonably satisfactory to each Member, indemnifying and holding harmless the selling Member and its Affiliates for liabilities or claims made after the date of the purchase and sale under any guarantees or other agreements supporting the obligations of the Company which may have been extended by the selling Member or any of its Affiliates. The Members shall also reach agreement on a reasonable transition plan of up to six (6) months in connection with services provided to the Company by members of the SanDisk Team assigned to the Company by the Selling Member.

(b) If a Member elects to acquire all of the Interests of the other Member pursuant to Section 10.3 (Dispute Resolution; Deadlock), 10.4 (Remedies Upon Event of Default; Termination on Breach) or 11.5 (Dissolution Upon Notice), such Member shall be obligated to take all actions required of it to consummate the applicable purchase and sale on the date determined pursuant to this Section 10.5 (Mechanics of Sale). If any Member has the right to purchase the Interests of any other Member, such Member shall have the right to assign such right to purchase to any other Person.

**11. Dissolution**

11.1 Events of Dissolution. The Company shall be dissolved and shall commence winding up its affairs upon the first to occur of the following. The Members shall cooperate in taking any necessary corporate steps under the Companies Act to attain the purpose of this Section 11:

(a) the expiration of the term of the Company pursuant to Section 2.4 (Term; Extension);

(b) the agreement of the Members to dissolve the Company pursuant to Section 11.2 (Dissolution by Agreement);

(c) the election of the Nondefaulting Member pursuant to Section 11.3 (Dissolution Upon Event of Default);

(d) the first anniversary of the receipt by either Member of a Deadlock Dissolution Notice submitted with respect to a failure of the Members to approve and agree upon a Business Plan pursuant to Section 10.3 (Dispute Resolution; Deadlock) if either (i) the Responding Member declines to exercise its right to purchase the Interests of the Initiating Member or fails to respond to such Deadlock Dissolution Notice, or (ii) both Members submit Deadlock Dissolution Notices with respect to such failure to agree;

(e) **[**Intentionally omitted.**]**

(f) the bankruptcy, dissolution, expulsion or incapacity of a Member or the occurrence of any other event which terminates the membership of a Member in the Company ("Bankruptcy Event"); or

(g) the election of the Notifying Party to dissolve the Company pursuant to Section 11.5 (Dissolution Upon Notice) unless the Notified Party elects to purchase the Interests of the Notifying Party pursuant to Section 11.5 (Dissolution Upon Notice).

11.2 Dissolution by Agreement. The Company may be dissolved at any time by the unanimous written consent of the Members.

11.3 Dissolution Upon Event of Default. During the occurrence and continuation of an Event of Default (other than a Bankruptcy Event) with respect to a Member, the Nondefaulting Member may elect, by written notice to the Defaulting Member, to dissolve the Company, in which event the Company shall be dissolved and the Members shall take all actions necessary to wind up the affairs of the Company in accordance with Section 11.7 (Winding Up). This Section 11.3 shall not be construed to limit the rights of the Nondefaulting Member under Section 10.4 (Remedies Upon Event of Default) or to seek damages from the Defaulting Member or any other Person for the breach of its obligations under any of the FF Operative Documents.

11.4 **[**Intentionally omitted.**]**

11.5 Dissolution upon Notice. At any time between April 1, 2017 and March 31, 2018, any Member (the "Notifying Party") may elect, by giving notice to all other Members (the "Notified Party"), to dissolve the Company, in which event the Company will be dissolved and, within the one (1) year period following the giving of such notice, the Members shall mutually agree upon a plan for winding up the affairs of the Company in accordance with Section 11.7 (Winding Up), unless the Notified Party, directly or through any of its Affiliates, elects in writing within three (3) months of receiving such notice, to purchase from the Notifying Party all of its Interests for a cash payment, by wire transfer of immediately available Japanese Yen, in an amount equal to the [***] as of the date of such transaction multiplied by the Notifying Party's Percentage as of such date.

11.6 Financing Defaults.

(a) If pursuant to Section 6.3(a)(i) of the Master Agreement either Party, as the Investing Party, exercises its election to terminate this Agreement, the Members shall cooperate in good faith to effect the purchase by Toshiba (or its designated Affiliate) and sale by SanDisk of all of SanDisk's Interests, at a price equal to SanDisk's percentage Interest of the outstanding Interests in the Company multiplied by the [***] as of the date such transaction is closed (with estimated [***] as agreed by the Members in good faith paid on the closing of such transaction and any true-up payment made by the appropriate Party promptly after determination of the actual [***] as of the closing of such purchase and sale transaction).

(b) [***]

(c) If pursuant to Section 6.12(d)(ii) of the Master Agreement either Party, as the Non-Defaulting Party, exercises its election to terminate this Agreement, the Non-Defaulting Party shall have the same rights as provided in Section 11.6(a) and the Members shall cooperate in good faith to effect the purchase by the Non-Defaulting Party (or its designated Affiliate) and sale by the Defaulting Party of all of the Defaulting Party's Interests.

11.7 Winding Up.

(a) Upon the dissolution of the Company, the Members shall proceed as promptly as practicable to (i) wind-up the affairs of the Company and cause the Company to satisfy the Company's liabilities, (ii) dispose of the Company's assets as quickly as possible consistent with obtaining the full fair market value of the Company, preferably, to the extent it is commercially practicable to do so, by selling the Company as a going concern (provided, however, no Member shall be under any obligation to extend the terms of any FF Operative Document or to offer to enter into any other agreement with a prospective purchaser of the Company for the purchase or sale of goods or services or the use of facilities or any other business arrangement), and (iii) distribute any net proceeds to the Members in accordance with Section 11.8 hereof and applicable Law. In connection with a sale of the Company's assets under clause (ii), each Member or any of their respective Affiliates shall have a right of first offer to acquire the Company's tangible personal property in the liquidation process and may also acquire such property through participation at auction except in the event of a dissolution pursuant to Section 11.3 (Dissolution Upon Event of Default), in which event the Defaulting Member and its Affiliates shall not have such right of first offer to acquire the Company's tangible personal property. Each of the Members shall be furnished with a statement setting forth the assets and liabilities of the Company as of the date of the complete liquidation of the

Company. The Accountants shall review the final accounting and shall render their opinion with respect thereto.

(b) During the period of winding-up, the Company shall continue to operate and all the provisions of this Agreement shall remain in effect, except as otherwise expressly provided herein. The Company shall notify all known creditors and claimants of the dissolution of the Company in accordance with applicable law.

11.8 Liquidation Proceeds.

(a) In the case of the dissolution and liquidation of the Company, the Company may make a distribution in kind. Any cash and all distributions in kind that are to be distributed shall be distributed to the Members, on a pro rata basis based upon the respective Percentages of the Members as of the date of such distribution.

(b) Unless otherwise agreed by the Members, and to the extent permitted under any agreements with third parties, all assets to be distributed upon the dissolution and liquidation of the Company shall be distributed as follows:

(i) first, to creditors, including Members who are creditors, to the extent permitted by law, in satisfaction of liabilities of the Company, other than for distributions to Members pursuant to Section 6.2 (Distributions); and

(ii) second, to the Members on a pro rata basis based upon the respective Percentages of the Members as of the date of such distribution.

For purposes of this Section 11.8, instruments of transfer and other documents reasonably requested by the distributee shall be executed by the Company or the other Member, or both.

(c) Any distribution made pursuant to this Section 11.8 shall be made as soon as practicable under and in accordance with applicable Japanese law.

**12. Indemnification and Insurance**

12.1 Indemnification.

(a) Subject to Section 12.1(c), the Company shall indemnify each Person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (including an action by or in the right of a Member or the Company), by reason of the fact that such Person is or was a Member or is or was or has agreed to become an Executive Officer or is or was serving or has agreed to serve at the request of the Company as an Executive Officer, officer, employee or agent of the Company or of another partnership, corporation, joint venture, trust or other enterprise, arising from any action alleged to have been taken in any such capacity or by reason of any liability or obligation of the Company, against any and all losses, damages, liabilities, costs, charges, expenses (including interest, penalties and reasonable attorneys' fees and expenses), judgments, fines and amounts paid in settlement (collectively, "Losses") actually and reasonably incurred by him or on his behalf in connection with such action, suit or proceeding and any appeal therefrom. Without limiting the generality of the foregoing, any of such Losses shall be deemed to arise out of a Company liability or obligation if it arises out of or is based upon the conduct of the business of the Company (or any of its Subsidiaries) or the ownership of the property of the Company (or any of its Subsidiaries).

(b) The indemnification provided under this Section 12.1 shall inure to the benefit of the successors, heirs and personal representatives of any Person entitled to the benefit of such indemnification. Such indemnification shall be a contract right and shall include the right to be paid advances of reasonable expenses incurred by any such Person in connection with such action, suit or proceeding.

(c) The indemnification provided under this Section 12.1 shall not inure to the benefit of any Person in respect of Losses to the extent that such Losses (i) arise out of or are based upon the gross negligence or willful misconduct of such Person or (ii) constitute a tax, levy or similar governmental charge not imposed upon the Company (or any of its Subsidiaries) or on their respective properties. The indemnification provided under this Section 12.1 shall also not be available to any Person in respect of any Losses if a judgment or other final adjudication adverse to such Person establishes (x) that such Person's acts were committed in bad faith or were the result of active and deliberate dishonesty and were material to the cause of action so adjudicated or (y) that such Person gained in fact a financial profit or other advantage to which such Person was not legally entitled. It is understood and agreed that, for the purposes of this Section 12.1, Losses shall be deemed not to arise out of or be based upon the gross negligence or willful misconduct of a Person solely because it arises out of or is based upon the gross negligence, willful misconduct, bad faith or active and deliberate dishonesty of an Executive Officer, officer or employee of such Person if at the time of such gross negligence, willful misconduct, bad faith or active and deliberate dishonesty, such Executive Officer, officer or employee was also a member of the SanDisk Team or an Executive Officer acting in his capacity as such.

(d) The termination of any action, suit or proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the indemnified Person did not meet the standard set forth in Section 12.1(c) (Indemnification).

12.2 Insurance. The Company may, to the fullest extent permitted by law, purchase and maintain insurance against any liability that may be asserted against any Person entitled to indemnity pursuant to Section 12.1.

12.3 Indemnification by the Members.

(a) Each Member agrees to, and does hereby, indemnify and hold harmless the Company and the other Member from and against any and all Losses arising out of, or based upon, the gross negligence or willful misconduct of such Member under this Agreement or such Member exceeding its authority under this Agreement.

(b) The provisions of this Section 12.3 shall survive each of the termination of this Agreement, the dissolution of the Company and the withdrawal of any Member.

12.4 Assertion of Claims.

(a) In the event that a Person (the "Indemnified Party") desires to assert its right to indemnification from a Person (an "Indemnifying Party") required to indemnify such Indemnified Party under this Section 12, the Indemnified Party will give the Indemnifying Party prompt notice of the claim giving rise thereto (a "Claim"), and the Indemnifying Party shall undertake the defense thereof (unless the Claim is asserted against or related to or results from any action or failure to take action by such Indemnifying Party). The failure to promptly notify the Indemnifying Party hereunder

shall not relieve the Indemnifying Party of its obligations hereunder, except to the extent that the Indemnifying Party is actually prejudiced by the failure to so notify promptly.

(b) The Indemnified Party shall not settle or compromise any Claim without the written consent of the Indemnifying Party unless the Indemnified Party agrees in writing to forego any and all claims for indemnification from the Indemnifying Party with respect to such Claim. However, if the Indemnifying Party, within a reasonable time after notice of any such Claim, fails to defend such Claim, the Indemnified Party shall have the right to undertake the defense, compromise or settlement of such Claim on behalf of and for the account and risk of the Indemnifying Party, subject to the right of the Indemnifying Party to assume the defense of such Claim at any time prior to settlement, compromise or final determination thereof.

(c) IF THE INDEMNIFYING PARTY HAS UNDERTAKEN THE DEFENSE OF A CLAIM AND (I) IF THERE IS A REASONABLE EXPECTATION THAT (X) A CLAIM MAY MATERIALLY AND ADVERSELY AFFECT THE INDEMNIFIED PARTY OTHER THAN AS A RESULT OF MONEY DAMAGES OR OTHER MONEY PAYMENTS OR (Y) THE INDEMNIFIED PARTY OR MEMBERS MAY HAVE LEGAL DEFENSES AVAILABLE TO IT OR THEM THAT ARE DIFFERENT FROM OR ADDITIONAL TO THE DEFENSES AVAILABLE TO THE INDEMNIFYING PARTY, OR (II) IF THE INDEMNIFYING PARTY SHALL NOT HAVE EMPLOYED COUNSEL REASONABLY SATISFACTORY TO THE INDEMNIFIED PARTY, THE INDEMNIFIED PARTY SHALL NEVERTHELESS HAVE THE RIGHT, AT THE INDEMNIFYING PARTY'S COST AND EXPENSE, TO DEFEND SUCH CLAIM.

**13. Miscellaneous**

13.1 Governing Law. Notwithstanding anything to the contrary in Appendix A, this Agreement shall in all respects be governed by and construed in accordance with the laws of Japan, without regard to the conflict of laws principles.

13.2 Effectiveness. This Agreement shall be effective as of the date first written above and shall remain in effect until the Termination Date. Sections 1, 7, 11.7, 11.8 and 13 shall survive the termination of this Agreement.

IN WITNESS WHEREOF, this Agreement has been executed and delivered each party as of the date first above written.

TOSHIBA CORPORATION

By: /s/ Kiyoshi Kobayashi
Name: Kiyoshi Kobayashi
Title: President and CEO
Semiconductor Company
Corporate Senior Vice President

SANDISK FLASH B.V.

By: /s/ Sanjay Mehrotra
Name: Sanjay Mehrotra
Title: Director

[Signature Page to Flash Forward Operating Agreement]

Schedule 5.3

Management and Operating Reports

[***]

Schedule 6.1

Capital Contributions

[***]

Schedule 8.3

Monthly Reports

[***]

**Exhibit 10.17**

CERTAIN CONFIDENTIAL PORTIONS HAVE BEEN REDACTED FROM THIS EXHIBIT BECAUSE THEY ARE BOTH (i) NOT MATERIAL AND (ii) WOULD BE COMPETITIVELY HARMFUL IF PUBLICLY DISCLOSED. INFORMATION THAT HAS BEEN OMITTED HAS BEEN IDENTIFIED IN THIS DOCUMENT WITH A PLACEHOLDER IDENTIFIED BY THE MARK "[***]".

Execution Version

**FFL COMMITMENT AND EXTENSION AGREEMENT**

This FFL COMMITMENT AND EXTENSION AGREEMENT (this "Agreement") is made as of December 12, 2017, by and among Toshiba Memory Corporation, a Japanese corporation ("TMC"), Western Digital Corporation, a Delaware corporation ("WD"), SanDisk LLC, a Delaware limited liability company ("SanDisk") and SanDisk Flash B.V., a company organized under the laws of the Netherlands ("SanDisk BV" and, together with WD, SanDisk and TMC, the "Parties").

WHEREAS, Toshiba Corporation ("Toshiba"), SanDisk and SanDisk B.V. entered into that certain Flash Forward Master Agreement on July 13, 2010 (as amended, the "FF Master Agreement"), and the other FF Operative Documents, which collectively provide for the management and operation of Flash Forward Limited, a Japanese *godo kaisha* ("Flash Forward") and which by their terms are set to expire as of December 31, 2025;

WHEREAS, on May 12, 2016, SanDisk Corporation, together with its Subsidiaries, became wholly owned indirect Subsidiaries of WD and SanDisk Corporation subsequently converted from a Delaware corporation to a Delaware limited liability company that is now known as SanDisk LLC;

WHEREAS, on even date herewith, WD, Toshiba, and TMC entered into the Parent Guarantee and Undertaking as to Collaboration, which sets forth, among other things, certain rights and obligations of the parties thereto with respect to WD's participation in activities related to the Collaboration (as defined therein), including those contemplated by the FF Operative Documents;

WHEREAS, Toshiba and TMC claim that, effective as of April 1, 2017, Toshiba completed a corporate demerger by operation of law that transferred to TMC, Toshiba's wholly-owned Subsidiary, substantially all of the assets and liabilities of Toshiba's memory business, and that TMC has assumed Toshiba's position as a party to the FF Operative Documents;

WHEREAS, following the execution of the Confidential Settlement and Mutual Release Agreement, dated as of even date herewith, by and among the Toshiba, TMC, WD, SanDisk, and certain of SanDisk's Subsidiaries, Toshiba intends to transfer certain other assets and liabilities related to Toshiba's memory business to TMC, including Toshiba's equity ownership interests in Flash Forward; and

WHEREAS, the Parties desire to extend the term of Flash Forward, the FF Master Agreement and the other FF Operative Documents, and to specify the terms and conditions on which such extension is hereby agreed;

NOW, THEREFORE, on the terms and subject to the conditions and limitations set forth in this Agreement, with reference to Section 2.1 of Appendix A to the FF Operative Documents and Section 2.4 of the FF Operating Agreement, the Parties hereby agree as follows:

**1. RELATION TO FF OPERATIVE DOCUMENTS**

1.1 Application of Appendix A. Appendix A to the FF Operative Documents, as amended by this Agreement ("Appendix A"), shall apply to this Agreement. The capitalized terms used but not defined in this Agreement shall have the respective meanings assigned to them in Appendix A (or, if not defined in Appendix A, the respective meanings assigned to them in the FF Master Agreement) and the rules of construction and documentary conventions set forth in Appendix A shall apply to this Agreement as if set forth herein.

1.2 Effect of this Agreement. Except as expressly set forth in this Agreement, the FF Operative Documents shall be unaffected by this Agreement, and this Agreement shall be governed by and subject to the terms of the FF Operative Documents as amended hereby. From and after the date of this Agreement, each reference in any FF Operative Document to "this Agreement," "hereof," "hereunder" or words of like import, and all references to such FF Operative Document in any and all agreements, instruments, documents, notes, certificates and other writings of every kind of nature (other than in this Agreement or as otherwise expressly provided) shall be deemed to mean such FF Operative Document, as amended by and giving effect to this Agreement, whether or not such amendment is expressly referenced.

1.3 Addition to FF Operative Documents. This Agreement shall be deemed to be an FF Operative Document and the definition of "FF Operative Documents" as set forth in Appendix A is hereby amended so as to include this Agreement.

**2. EXTENSION**

2.1 FFL Term Extended. Section 2.4 ("Term; Extension") of the FF Operating Agreement is hereby amended and restated in its entirety as follows:

"Term; Extension. The Company shall be terminated on December 31, 2027, unless extended by mutual written agreement of all the Members or earlier terminated in accordance with Section 11 (Dissolution). Any such extension shall be effective only upon the written agreement of all of the Members and shall be on such terms and for such period as set forth in such agreement. The Members agree to meet, no later than December 31, 2026, to discuss the possible extension of the term of the Company."

2.2 Flash Forward Articles of Incorporation. Promptly following the date hereof, the Parties shall cause Article 4 of the Articles of Incorporation of Flash Forward to be amended to extend the term of Flash Forward to December 31, 2027.

**3. OTHER COVENANTS AND AMENDMENTS**

3.1 Material Breach. Section 9.1 ("Termination") of the FF Master Agreement is hereby amended to add the following provision as a new Section 9.1(l) thereof:

"(l) The Parties agree and acknowledge that in the event of a final determination by an arbitral tribunal under Section 2.5 of Appendix A that a Party has committed or is

committing a continuing material breach of any of [***] of this Agreement that would reasonably be expected to cause material damage to Flash Forward or the non-breaching Party (any such breach, a "Material Breach"), and the breaching Party fails to cure such breach within [***] after such determination, then the non-breaching Party shall have as a remedy for Material Breach the termination of Flash Forward and of this Agreement and the FF Operative Documents, in addition to all other legal and equitable remedies available to such Party. Notwithstanding anything to the contrary in Appendix A, any such termination shall constitute an "Event of Default" of the breaching Party for all purposes of this Agreement and of that certain FFL Commitment and Extension Agreement dated as of December 12, 2017.

In the event that a Party asserts a Material Breach in a written notice to the other Party, the dispute shall proceed as specified in Section 2.5 of Appendix A, provided, however, that

(i) no matters other than the existence of such Material Breach (and counterclaims and defenses directly related to the conduct or circumstances underlying the asserted Material Breach) shall be submitted to or determined by the arbitral tribunal;

(ii) the Parties shall use their respective reasonable best efforts to complete and finalize the Terms of Reference within [***] following such assertion of Material Breach; and

(iii) the Parties shall instruct the arbitral tribunal, with the full assistance and cooperation of the Parties, to endeavor to submit its draft award on the existence of the Material Breach to the Court of Arbitration of the ICC for approval within [***] following the effective date of the Terms of Reference, provided, that any failure to issue an award in such time period shall not be considered a defense or objection to the enforcement of such award.

The Parties agree to attempt in good faith to resolve any potential claim for Material Breach."

3.2 Restructuring Costs. Section 9.1(j) of the FF Master Agreement is hereby amended and restated in its entirety as follows:

"In connection with any termination of Flash Forward, the FF Master Agreement and/or the FF Operating Agreement:

(i) the Parties shall exercise their respective reasonable best efforts to plan such termination in advance with the goal of minimizing related costs;

(ii) with respect to employees of TMC and employees of WD or any of its Subsidiaries working at the Y5 Facility, (A) in the case of those that are employees of TMC, TMC shall use its reasonable best efforts to retrain or relocate such individuals to other TMC facilities, and (B) in the case of those that are employees of WD or any of its Subsidiaries, WD shall use its reasonable best efforts to retrain or relocate such individuals to other WD facilities, in each case to the maximum extent possible;

(iii) [***]; and

(iv) [***].

(v) [***].

3.3 Consequences of Deadlock Termination. Section 9.1(f)(i) of the FF Master Agreement is hereby amended and restated in its entirety as follows:

" (i) there shall be no capacity ramp-down rights or obligations,".

**4. MISCELLANEOUS**

4.1 Term. This Agreement shall continue in full force and effect until the latest of (a) the termination of the FF Master Agreement, (b) the completion of the dissolution, liquidation and winding up of Flash Forward, and (c) the date on which a single Party owns all of the Interests.

4.2 Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of California applicable to agreements made and to be performed entirely within such state without regard to the conflict of laws principles of such state, except where application of Japanese law is mandatory.

4.3 Further Assurances. Each Party shall from time to time, and shall cause its Affiliates who are party to any FF Operative Document from time to time to, at the reasonable request of the other Parties, and without further consideration (unless otherwise provided for under the FF Operative Documents), execute and deliver such instruments, cooperate and take any other actions as may be reasonably necessary to effectuate (i) the provisions of this Agreement and (ii) the transactions contemplated herein.

4.4 Other Terms. Further to Section 1.1 above, the general, miscellaneous, interpretive, non-disclosure and other terms and conditions provided in Appendix A shall apply to this Agreement as if set forth herein.

4.5 No Admission. Nothing in this Agreement shall constitute or be used as an admission, acquiescence, acknowledgement, or agreement by anyone as to the merit of any claims or defenses, whether or not asserted in any arbitration or other litigation, except to enforce the provisions of this Agreement or any part of any other agreement expressly amended herein. In addition, nothing in this Agreement shall constitute or be used as an admission in any arbitration, litigation, or other proceeding regarding the interpretation of any other agreement.

**[**The remainder of this page is intentionally left blank.**]**

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective duly authorized representatives as of the date first written above.

**WESTERN DIGITAL CORPORATION**

By: /s/ Michael C. Ray
Name: Michael C. Ray
Title: Executive Vice President, Chief Legal Officer and Secretary

**TOSHIBA MEMORY CORPORATION**

By: /s/ Yasuo Naruke
Name: Yasuo Naruke
Title: President and Chief Executive Officer

**SANDISK LLC**

By: /s/ Michael C. Ray
Name: Michael C. Ray
Title: Sole Manager

**SANDISK FLASH B.V.**

By: /s/ Michael C. Ray
Name: Michael C. Ray
Title: Director

**Exhibit 10.18**

CERTAIN CONFIDENTIAL PORTIONS HAVE BEEN REDACTED FROM THIS EXHIBIT BECAUSE THEY ARE BOTH (i) NOT MATERIAL AND (ii) WOULD BE COMPETITIVELY HARMFUL IF PUBLICLY DISCLOSED. INFORMATION THAT HAS BEEN OMITTED HAS BEEN IDENTIFIED IN THIS DOCUMENT WITH A PLACEHOLDER IDENTIFIED BY THE MARK "[***]".

Execution Version

**FFL SECOND COMMITMENT AND EXTENSION AGREEMENT**

This FFL SECOND COMMITMENT AND EXTENSION AGREEMENT (this "Agreement") is made as of May 15, 2019, by and among Toshiba Memory Corporation, a Japanese corporation ("TMC"), Toshiba Memory Iwate Corporation, a Japanese corporation ("TMI"), Western Digital Corporation, a Delaware corporation ("WD") (together with TMC, the "Parent Parties"), SanDisk LLC, a Delaware limited liability company ("SanDisk LLC"), SanDisk (Cayman) Limited, a company organized under the laws of the Cayman Islands ("SanDisk Cayman"), SanDisk (Ireland) Limited, a company organized under the laws of the Republic of Ireland ("SanDisk Ireland"), SanDisk Flash B.V., a company organized under the laws of the Netherlands ("SanDisk Flash," and together with SanDisk LLC, SanDisk Cayman, and SanDisk Ireland, "SanDisk"), Flash Partners, Ltd., a Japanese *tokurei yugen kaisha* ("FPL"), Flash Alliance, Ltd., a Japanese *tokurei yugen kaisha* ("FAL"), and Flash Forward, Ltd., a Japanese *godo kaisha* ("FFL," and together with FPL and FAL, the "JVs," and collectively with TMC, TMI, WD, SanDisk, FPL, FAL and FFL, the "Parties").

WHEREAS, TMC, SanDisk LLC and SanDisk Flash are parties to that certain Flash Forward Master Agreement dated July 13, 2010 (as amended from time to time, the "FF Master Agreement"), and the other FF Operative Documents, which collectively provide for the management and operation of FFL and which by their terms are set to expire as of December 31, 2025;

WHEREAS, the Parties entered into the FFL Commitment and Extension Agreement (the "Extension Agreement") on December 12, 2017, with respect to FFL;

WHEREAS, the Parties, among others, are engaged in the joint development and manufacture of BiCS Products and NAND Flash Memory Products;

WHEREAS, some or all of the Parties, among others, are concurrently entering into this Agreement, the K1 Facility Agreement, dated May 15, 2019, by and among TMC, TMI, WD, SanDisk and the JVs (the "K1 Facility Agreement"), and the other New Agreements (as defined in the K1 Facility Agreement);

WHEREAS, TMC intends to conduct certain activities at the Kitakami Facility through TMI, TMC's wholly-owned Subsidiary;

WHEREAS, the Parties intend to restructure the JV operations such that FFL will wind down its activities at the Yokkaichi Facility and FFL will be the Parent Parties' primary vehicle for joint investments in tools for the Kitakami Facility, and, from the date hereof, FPL and FAL will be the Parent Parties' primary vehicles for joint investments in tools for the Yokkaichi Facility and such investments by FPL and FAL for the Y5 Facility will be on substantially the same terms and conditions that apply to FFL's investments in tools for the Y5 Facility immediately prior to giving effect to the transactions contemplated by this Agreement;

WHEREAS, in connection with such restructuring of the JV operations, the Parties desire to make certain amendments to the Master Operative Documents as described herein;

WHEREAS, in reliance on the other Parties' commitment to complete such restructuring of the JV operations, and to finalize and enter into such amendments, each Party desires to further extend the term of FFL, the FF Master Agreement and the other FF Operative Documents, to December 31, 2034 and to specify the terms and conditions on which such extension is hereby agreed;

NOW, THEREFORE, on the terms and subject to the conditions and limitations set forth in this Agreement, with reference to Section 2.1 of Appendix A to the FF Operative Documents and Section 2.4 of the FF Operating Agreement, the Parties hereby agree as follows:

**1. RELATION TO FF OPERATIVE DOCUMENTS**

1.1 Application of Appendix A. Appendix A to the FF Operative Documents, as amended by this Agreement ("Appendix A"), shall apply to this Agreement. The capitalized terms used but not defined in this Agreement shall have the respective meanings assigned to them in the K1 Facility Agreement (or, if not defined in the K1 Facility Agreement, the respective meanings assigned to them in Appendix A, and if not defined in Appendix A, the respective meanings assigned to them in the FF Master Agreement) and the rules of construction and documentary conventions set forth in Appendix A shall apply to this Agreement as if set forth herein.

1.2 Effect of this Agreement. Except as expressly set forth in this Agreement, the FF Operative Documents shall be unaffected by this Agreement, and this Agreement shall be governed by and subject to the terms of the FF Operative Documents as amended hereby. From and after the date of this Agreement, each reference in any FF Operative Document to "this Agreement," "hereof," "hereunder" or words of like import, and all references to such FF Operative Document in any and all agreements, instruments, documents, notes, certificates and other writings of every kind of nature (other than in this Agreement or as otherwise expressly provided) shall be deemed to mean such FF Operative Document, as amended by and giving effect to this Agreement, whether or not such amendment is expressly referenced.

1.3 Addition to FF Operative Documents. This Agreement shall be deemed to be an FF Operative Document and the definition of "FF Operative Documents" as set forth in Appendix A is hereby amended so as to include this Agreement.

**2. EXTENSION**

2.1 FFL Term Extended. Section 2.4 ("Term; Extension") of the FF Operating Agreement is hereby amended and restated in its entirety as follows:

"Term; Extension. The Company shall be terminated on December 31, 2034, unless extended by mutual written agreement of all the Members or earlier terminated in accordance with Section 11 (Dissolution). Any such extension shall be effective only upon the written agreement of all of the Members and shall be on such terms and for such period as set forth in such agreement. The Members agree to meet, no later than December 31, 2033, to discuss the possible extension of the term of the Company."

2.2 FFL Articles of Incorporation. Promptly following the date hereof, the Parties shall cause the Articles of Incorporation of FFL to be amended to extend the term of FFL to December 31, 2034.

**3. RESTRUCTURING OF JV OPERATIONS**

3.1 FFL as Primary Investment Vehicle. From the date hereof, FPL and FAL shall be the Parent Parties' primary vehicles for joint investments in tools for the Yokkaichi Facility, and the Parties shall, to the maximum extent feasible, cause investments for BiCS Expansions, BiCS Conversions, and BiCS Technology Transitions of JV Products at the Yokkaichi Facility to be made solely through FPL or FAL, other than with respect to BiCS Conversions and BiCS Technology Transitions of FFL's then-existing JV Capacity at the Yokkaichi Facility prior to the Cessation Date (as defined below).

3.2 FFL Yokkaichi Tools. Following the date hereof, for each tool located at the Yokkaichi Facility that is owned or leased by FFL (each, an "FFL YOK Tool"), the Parent Parties shall negotiate in good faith and agree on whether:

(a) such FFL YOK Tool or FFL's leasehold interest in such FFL YOK Tool, as the case may be, shall be sold to FPL or FAL [***]; or

(b) such FFL YOK Tool shall be removed from the Yokkaichi Facility, whether in furtherance of a K1 Capacity Transfer or otherwise.

[***], the Parties shall cause such FFL YOK Tool or leasehold interest in such FFL YOK Tool to be assigned to FPL or FAL (in the case of clause (a)), or cause such FFL YOK Tool to be removed from the Yokkaichi Facility (in the case of clause (b)), in each case, as agreed by the Parent Parties and following the date of such agreement by the Parent Parties, but in any event no later than December 31, 2027.

3.3 Reallocation and Relocation of FFL Capacity at YOK. The Parties shall cause FFL's JV Capacity at the Yokkaichi Facility (as reflected in the CTLO for the Yokkaichi Facility) to be reallocated to FPL and/or FAL[***], or to be transferred to the K1 Facility [***], in each case, following the date of this Agreement, but in any event no later than December 31, 2027.

3.4 Cessation of FFL Yokkaichi Activities.

(a) The Parties shall cause FFL's JV Capacity, and manufacturing and other material operations, at the Yokkaichi Facility to be wound down in an orderly manner in accordance with a schedule to be mutually agreed by the Parent Parties, but in any event no later than December 31, 2027.

(b) The Cessation Date (as defined below) shall be no later than December 31, 2027, and FFL shall have no JV Capacity, or manufacturing or other material operations, at the Yokkaichi Facility following December 31, 2027.

(c) As used herein, "Cessation Date" shall mean the date on which: (a) there are no longer any FFL YOK Tools, and (b) FFL no longer has JV Capacity at the Yokkaichi Facility (as reflected in the CTLO for the Yokkaichi Facility).

**4. COVENANTS AND OTHER AMENDMENTS**

4.1 FF Master Agreement. Any reference in the FF Master Agreement to the FFL Commitment and Extension Agreement dated as of December 12, 2017 shall hereby be amended to also include a reference to this Agreement.

4.2 Certain Identified Amendments. Each amendment to the Master Operative Documents set forth in Exhibit A shall be effective as of the date hereof.

4.3 [***].

4.4 Conflicts. To the extent any provision in the FP Operative Documents or the FA Operative Documents that pertains to the Y5 Facility expressly conflicts with any provision in the FF Operative Documents, such provision in the FF Operative Documents shall control as to such conflict except as expressly stated herein [***].

**5. MISCELLANEOUS**

5.1 Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of California applicable to agreements made and to be performed entirely within such state without regard to the conflict of laws principles of such state, except where application of Japanese law is mandatory.

5.2 Other Terms. Further to Section 1.1 above, the general, miscellaneous, interpretive, non-disclosure and other terms and conditions provided in Appendix A shall apply to this Agreement as if set forth herein.

5.3 No Admission. Nothing in this Agreement shall constitute or be used as an admission, acquiescence, acknowledgement, or agreement by anyone as to the merit of any claims or defenses, whether or not asserted in any arbitration or other litigation, except to enforce the provisions of this Agreement or any part of any other agreement expressly amended herein. In addition, nothing in this Agreement shall constitute or be used as an admission in any arbitration, litigation, or other proceeding regarding the interpretation of any other agreement.

*[Signature page follows]*

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective duly authorized representatives as of the date first written above.

**WESTERN DIGITAL CORPORATION**

By: /s/ Siva Sivaram
Name: Siva Sivaram
Title: Executive Vice President, Silicon Technology

**SANDISK LLC**

By: /s/ Siva Sivaram
Name: Siva Sivaram
Title: Chief Executive Officer

**SANDISK (CAYMAN) LIMITED**

By: /s/ Stephanie Wells
Name: Stephanie Wells
Title: Director

**SANDISK (IRELAND) LIMITED**

By: /s/ Stephanie Wells
Name: Stephanie Wells
Title: Director

**SANDISK FLASH B.V.**

By: /s/ Stephanie Wells
Name: Stephanie Wells
Title: Director

**TOSHIBA MEMORY CORPORATION**

By: /s/ Yasuo Naruke
Name: Yasuo Naruke
Title: President and Chief Executive Officer

**TOSHIBA MEMORY IWATE CORPORATION**

By: /s/ Akimichi Yonekura
Name: Akimichi Yonekura
Title: President and Chief Executive Officer

**FLASH PARTNERS, LTD.**

By: /s/ Shinichi Nitta
Name: Shinichi Nitta
Title: President and Chief Executive Officer

**FLASH ALLIANCE, LTD.**

By: /s/ Shinichi Nitta
Name: Shinichi Nitta
Title: President and Chief Executive Officer

**FLASH FORWARD, LTD.**

By: /s/ Shinichi Nitta
Name: Shinichi Nitta
Title: President and Chief Executive Officer

*[Signature Page to FFL Second Commitment and Extension Agreement]*

**Exhibit A**

**Certain Identified Amendments**

**1. APPENDIX A**

Appendix A to the FF Master Agreement shall be amended as follows:

1.1 Certain Definitions. The following defined terms are hereby added to the "Definitions" of Appendix A to the FF Master Agreement:

"FFL Second Extension Agreement" has the meaning set forth in the K1 Facility Agreement.

"K1 Facility" has the meaning set forth in the K1 Facility Agreement

"K1 Facility Agreement" means the K1 Facility Agreement, dated May 15, 2019, among Toshiba Memory Corporation, Toshiba Memory Iwate Corporation, Western Digital Corporation, SanDisk LLC, SanDisk (Cayman) Limited, SanDisk (Ireland) Limited, SanDisk Flash B.V., Flash Partners, Ltd., Flash Alliance, Ltd., and Flash Forward, Ltd.

"Kitakami Facility" has the meaning set forth in the K1 Facility Agreement.

"TMI" has the meaning set forth in the K1 Facility Agreement.

"WD" has the meaning set forth in the K1 Facility Agreement.

"Cessation Date" has the meaning set forth in the FFL Second Extension Agreement.

"Y5 Facility" or "Y5" means the facility known by the Parties as "Y5."

1.2 Section 2.15. Section 2.15 is hereby amended by adding the following sentence to the end of the Section:

"Any capitalized term used, but not defined, herein shall have the meaning set forth for such term in the K1 Facility Agreement."

**2. Y5 MASTER FRAMEWORK**

2.1 Framework. The Parties acknowledge and agree that, except as otherwise stated in this Agreement or the K1 Facility Agreement:

(a) the rights and obligations of FFL in the FF Master Agreement, New Y2 Agreement and the Y6 Agreement (in each case, as amended) relating to all aspects of the Y5 Facility, including but not limited to (i) capacity for, the manufacture of, and the acquisition of NAND Flash Memory Products and BiCS Products in the Y5 Facility, (ii) investments in the Y5 Facility, (iii) the installation of tools for the manufacture of NAND Flash Memory Products and BiCS Products in the Y5 Facility and (iv) any other activities in the Y5 Facility (collectively, the

"Y5-Related Activities"), are hereby extended to FPL and FAL with respect to theY5-Related Activities;

(b) the terms and conditions set forth in the FF Master Agreement, the New Y2 Agreement and the Y6 Agreement (in each case, as amended) that apply to FFL's Y5-Related Activities shall and hereby do apply to FPL's and FAL's Y5-Related Activities;

(c) WD and SanDisk shall have the same rights and obligations set forth in the FF Master Agreement, the New Y2 Agreement and the Y6 Agreement (in each case, as amended) with respect to FPL's and FAL's Y5-Related Activities as they would have if FPL and FAL, respectively, were FFL, and SanDisk Cayman and SanDisk Ireland were SanDisk Flash;

(d) TMC shall have the same rights and obligations set forth in the FF Master Agreement, the New Y2 Agreement and the Y6 Agreement (in each case, as amended) with respect to FPL's and FAL's Y5-Related Activities as it would have if FPL and FAL, respectively, were FFL;

in each case, as if the FF Master Agreement, the New Y2 Agreement and the Y6 Agreement contemplated FPL's and FAL'sY5-Related Activities on such terms.

2.2 Amendments. In furtherance of the foregoing, the FF Master Agreement, the New Y2 Agreement and the Y6 Agreement shall be, and hereby is, amended to effect the result set forth in Section 2.1 of this Exhibit A and to be consistent withSections 4.3(b)(i), (v), (vi) and (vii), including but not limited to the following provisions of the FF Master Agreement:

(a) Section 3.1 Purpose;

(b) Section 3.2 Products;

(c) Section 3.3(a) JV Space;

(d) Section 5.1(a) Performance of Obligations;

(e) Section 5.2 Public Announcements;

(f) Section 6.1 Tool Acquisition;

(g) Section 6.2 Technology Transfers;

(h) Section 6.6 Capacity Sharing Arrangement;

(i) Section 6.7 SanDisk Reservation Option;

(j) Section 6.8 Engineering Wafers and Development Expense;

(k) Section 6.10 Y5 Headcount Plan and Working Group;

(l) Section 7.3 Adjustment Payment;

(m) Section 7.4 Cost Terms;

(n) Section 7.5 Negative Impacts;

(o) Section 8.2 Y5 Facility;

(p) Section 8.3 FF Foundry Agreement;

(q) Section 8.4 FF Purchase and Supply;

(r) Section 8.6 Other Matters;

(s) Schedule 6.2(a) Technology Transfer Costs; and

(t) Schedule 7.4(a) Fixed Manufacturing Costs and Variable Manufacturing Costs.

**3. FLASH FORWARD MASTER AGREEMENT**

The FF Master Agreement is hereby amended as follows:

3.1 Parties to FF Master Agreement. TMC, SanDisk LLC and SanDisk Flash acknowledge and agree that SanDisk Cayman and SanDisk Ireland shall be, and hereby are, added as parties to the FF Master Agreement (as amended) and shall be fully bound by, and subject to, all of the covenants, conditions and agreements thereunder that are required to be performed, observed, or satisfied by SanDisk Flash with respect to the Y5 Facility or Y5-Related Activities, and may exercise all of the rights thereunder that may be exercised by SanDisk Flash with respect to the Y5 Facility or Y5-Related Activities, in each case, as though an original party thereto in the same manner and to the same extent as if SanDisk Cayman and SanDisk Ireland were SanDisk Flash.

3.2 Escalation.

(a) Matters related to the Y5 Facility contemplated to be escalated or referred to FFL's Management Representatives shall be escalated or referred to FPL's Management Committee (for such matters related to FPL), FAL's Management Committee (for such matters related to FAL), and FFL's Management Representatives (for such matters related to FFL).

(b) Matters related to the Y5 Facility contemplated to be escalated or referred to FFL's Board of Executive Officers shall be escalated or referred to FPL's Board of Directors (for such matters related to FPL), FAL's Board of Directors (for such matters related to FAL), and FFL's Board of Executive Directors (for such matters related to FFL).

3.3 Section 6.10. Section 6.10 is hereby amended as follows:

(a) The title for Section 6.10(a) is hereby amended from "Flash Forward Headcount Plan and Working Group" to "Y5 Headcount Plan and Working Group".

(b) Section 6.10(a)(i) is hereby deleted and replaced in its entirety as follows:

"The Parties will meet and mutually agree on an overall headcount plan for [***], which will incorporate [***] (the "Y5 Headcount Plan")

(c) All references to "FF Headcount Plan" is hereby replaced with "Y5 Headcount Plan."

3.4 Section 8.1. Section 8.1 (Flash Forward Management) is hereby deleted and replaced in its entirety as follows:

"8.1 Y5 Representatives; Y5 Operating Committee

(a) SanDisk and Toshiba shall have an Operating Committee for Y5 Facility operations (the "Y5 Operating Committee"') consisting of a senior executive designated by each of SanDisk Corporation and Toshiba (each such individual the "SanDisk Representative" and the "Toshiba Representative," respectively, and each of SanDisk Corporation and Toshiba for purposes of this Section 8.1, a "Designating Party") each of whom shall represent the relevant Designating Party on a day-to-day basis at the Y5 Facility. Each Designating Party shall notify the other Designating Party in advance of any replacement of its representative. If a Designating Party requests in good faith that the other Designating Party's representative be replaced with another person from the other Designating Party's organization, the other Designating Party shall consider and discuss in good faith with the requesting Designating Party such request, provided that such replacement, if any, shall be determined solely by such other Designating Party. [***].

(b) The Y5 Operating Committee's purpose is to give SanDisk and Toshiba the ability to influence the day to day operating decisions of the Y5 Facility. The Y5 Operating Committee is intended to be a collaborative body with real-time communications, respectful consultation and dispute resolution and shall work together with the goal of making the Y5 Facility the most advanced and competitive (cost and technology) memory fabrication facility in the world. The Y5 Operating Committee shall have the authority to determine all matters concerning the day-to-day operations of the Y5 Facility (including staffing matters as provided in Section 6.10(a)(iii) of the Master Agreement), subject to those matters reserved to the Board of Executive Officers or Board of Executive Directors, as applicable, of the JVs or the Parties under the JV Operating Agreements, as well as to the requirements of this Agreement, the Articles of Incorporation of the JVs and the Companies Act. The Y5 Operating Committee shall communicate on a day-to-day basis with respect to the status of Y5 Facility operations and any other issues that may arise, and shall meet in person no less than two (2) times per week, or such other times and frequency as may be agreed upon by all members of such committee. If the members of the Y5 Operating Committee are unable to agree on any issue after [***] (by agreement of its two members), they shall submit such matter together with their respective recommendations to the Board of Executive Officers or Board of Executive Directors of the applicable JV(s) which shall endeavor to immediately resolve the issue. Special meetings of the Board of Executive Officers or Board of Executive Directors of the applicable JV(s) may be noticed for issues requiring urgent resolution. The Parties contemplate that while a special meeting of the Board of Executive Officers or Board of Executive Directors of the applicable JV(s) is being noticed, their respective management teams will discuss any issues that the Y5 Operating Committee could not resolve. If the Board of Directors or Board of Executive Officers of the applicable JV(s) are unable to agree on any such issue after [***] (by unanimous agreement), such issue shall be submitted to the Management Committee or the Management Representatives of the applicable JV(s) for final resolution. This Agreement, the FP Master Agreement and the FA Master Agreement separately provide for procedures if the Management Committee or the Management Representatives, as applicable, are unable to reach agreement on such issue.

(c) The Y5 Operating Committee shall hold a monthly review meeting in English at the Yokkaichi Facility on [***] of each calendar month, unless otherwise agreed by the Parties or the Y5 Operating Committee. The Y5 Operating Committee shall prepare and distribute to the Parties (at least three (3) Business Days in advance of the monthly review meetings) monthly reports in English with respect to the engineering activities, operations and financial affairs of the applicable JV(s) and the Y5 Facility.

(d) Upon the request of either SanDisk Corporation or Toshiba, the Y5 Operating Committee shall provide the Parties with (i) any management or operation reports of the JVs related to the Y5 Facility (which no Designating Party shall have an obligation to translate) and (ii) simultaneously in Japanese and English, those management and operating reports identified on Schedule 5.3 of the FF Operating Agreement as mutually agreed upon from time to time by the Parties. The Y5 Operating Committee and the K1 Operating Committee (as defined in the K1 Facility Agreement) will cooperate to obtain any information relating to K1 Facility management or operations necessary for such reports. Upon reasonable request from SanDisk Corporation, Toshiba employees shall explain such reports to SanDisk's employees and respond to questions from SanDisk's employees; provided, however, that SanDisk acknowledges and agrees that Toshiba shall not be responsible for SanDisk's failure to understand any such reports."

3.5 Section 9.1(j). Section 9.1(j) is hereby deleted and replaced in its entirety as follows:

"(j) In connection with any termination of Flash Forward, the FF Master Agreement and/or the FF Operating Agreement:

(i) the Parties shall exercise their respective reasonable best efforts to plan such termination in advance with the goal of minimizing related costs;

(ii) with respect to employees of TMC and employees of WD or any of its Subsidiaries working at the K1 Facility, (A) in the case of those that are employees of TMC or any of its Subsidiaries, TMC will use its reasonable best efforts to retrain or relocate such individuals to other TMC facilities, and (B) in the case of those that are employees of WD or any of its Subsidiaries, WD will use its reasonable best efforts to retrain or relocate such individuals to other WD facilities, each to the maximum extent possible;

(iii) [***]; and

(iv) [***].

(v) [***].

3.6 Section 10.1. Section 10.1 is hereby amended by adding the following sentence at the end of such Section:

"The provisions of this Agreement and the FF Operative Documents that relate to rights and obligations with respect to the Y5 Facility (other than those rights and obligations that are intended to apply only to FFL), including the production of NAND Flash Memory Products and/or BiCS Products within the Y5 Facility, pricing of such products produced within the Y5 Facility, or cost allocation with respect to the Y5 Facility, shall survive the termination or expiration this Agreement for so long as: (A) Flash Partners has JV Capacity in, or has lots at the Yokkaichi Facility that are processed in, the Y5 Facility and the FP Master Agreement remains in effect or (B) Flash Alliance has JV Capacity in, or has lots at the Yokkaichi Facility that are processed in, the Y5 Facility and the FA Master Agreement remains in effect."

3.7 Financing. The terms and conditions with respect to the financing necessary to enable committed or agreed capacity expansions or other investment in FPL or FAL for JV

Capacity at the Y5 Facility shall be as follows: (i) in the case of FAL, as set forth in Section 6.12 of the FAL Master Agreement as if such investment were in the Y4 Facility and (ii) in the case of FPL, as set forth in Section 6.10 of the FPL Master Agreement as if such investment were in the Y3 Facility.

**4. FLASH FORWARD OPERATING AGREEMENT**

The FF Operating Agreement is hereby amended as follows:

4.1 Escalation. Matters related to the Y5 Facility contemplated to be escalated or referred to FFL's Management Representatives shall be escalated or referred to FPL's Management Committee (for such matters related to FPL), FAL's Management Committee (for such matters related to FAL), and FFL's Management Representatives (for such matters related to FFL).

4.2 Y5 Representatives; Y5 Operating Agreement. Section 5.3 is hereby deleted in its entirety.

**5. NEW Y2 AGREEMENT**

The New Y2 Agreement is hereby amended as follows:

5.1 Section 14.1. Section 14.1 shall be amended by deleting the Section in its entirety and replacing it with the following:

"14.1 Term. This Agreement shall continue in full force and effect until the later of (a) the date on which (i) there are no longer tools owned or leased by FFL at the Yokkaichi

Facility, and (ii) FFL no longer has JV Capacity at the Yokkaichi Facility (as reflected in the CTLO for the Yokkaichi Facility), (b) the termination of the FPL Master Agreement, and (c) the termination of the FAL Master Agreement, unless earlier terminated as hereinafter provided. The term of this Agreement may be extended by mutual agreement of both Parent Parties."

**6. Y6 AGREEMENT**

The Y6 Agreement is hereby amended as follows:

6.1 Section 15.1. Section 15.1 shall be amended by deleting the Section in its entirety and replacing it with the following:

"15.1 Term. This Agreement shall continue in full force and effect until the later of (a) the date on which (i) there are no longer tools owned or leased by FFL at the Yokkaichi Facility, and (ii) FFL no longer has JV Capacity at the Yokkaichi Facility (as reflected in the CTLO for the Yokkaichi Facility, (b) the termination of the FPL Master Agreement, and (c) the termination of the FAL Master Agreement, unless earlier terminated as hereinafter provided. The term of this Agreement may be extended by mutual agreement of both Parent Parties."

**7. JV FOUNDRY AGREEMENTS**

The FPL Foundry Agreement and FAL Foundry Agreement are hereby amended as follows:

7.1 FPL Foundry Agreement and FAL Foundry Agreement Framework.

(a) [***], the Parties acknowledge and agree that, except as otherwise set forth in this Agreement or the K1 Facility Agreement, the terms and conditions set forth in the FPL Foundry Agreement and FAL Foundry Agreement that apply to the purchases of Products (as defined therein) by FPL and FAL from TMC shall hereby apply to the purchases of JV Y5 NAND Flash Memory Products and JV Y5 BiCS Products by FPL and FAL from TMC as if the FPL Foundry Agreement and FAL Foundry Agreement contemplated the purchase of JV Y5 NAND Flash Memory Products and JV Y5 BiCS Products by FPL and FAL from TMC.

(b) In furtherance of the foregoing, the FPL Foundry Agreement and FAL Foundry Agreement shall be, and hereby are, amended to effect the result set forth in Section 6.1(a) of this Exhibit A [***].

**8. PURCHASE AND SUPPLY AGREEMENTS**

Toshiba Memory's and SanDisk's FPL Purchase and Supply Agreement and FAL Purchase and Supply Agreement are hereby amended as follows:

8.1 FPL Purchase and Supply Agreement and FAL Purchase and Supply Agreement Framework.

(a) [***], the Parties acknowledge and agree that, except as otherwise set forth in this Agreement or the K1 Facility Agreement, the terms and conditions set forth in Toshiba Memory's and SanDisk's FPL Purchase and Supply Agreement and FAL Purchase and Supply Agreement that apply to the purchases of Products (as defined therein) by Toshiba Memory, WD and SanDisk from FPL and FAL shall hereby apply to the purchases of JV Y5 NAND Flash Memory Products and JV Y5 BiCS Products by Toshiba Memory, WD and SanDisk from FPL and FAL as if Toshiba Memory's and SanDisk's FPL Purchase and Supply Agreement and FAL Purchase and Supply Agreement contemplated the purchase of JV Y5 NAND Flash Memory Products and JV Y5 BiCS Products by Toshiba Memory, WD and SanDisk from FPL and FAL.

(b) In furtherance of the foregoing, the Toshiba Memory's and SanDisk's FPL Purchase and Supply Agreement and FAL Purchase and Supply Agreement shall be, and hereby are, amended to effect the result set forth in Section 8.1(a) of this Exhibit A [***].

8.2 [***].

8.3 [***].

**9. JOINT VENTURE RESTRUCTURE AGREEMENT**

The JVRA is hereby amended as follows:

9.1 Section 5.1 (a)(ii). Section 5.1(a)(ii) shall be amended by deleting the Section in its entirety and replacing it with the following:

"(ii) For the Toshiba Capacity in the Y3, Y4 and Y5 Facility, Toshiba will provide to the applicable JV [***], including but not limited to [***]. Notwithstanding the foregoing, Toshiba shall have sole discretion over the use and disposition of the equipment representing the Toshiba Capacity, provided [***]."

**Exhibit B**

[***]

**EXHIBIT 10.19**

CERTAIN CONFIDENTIAL PORTIONS HAVE BEEN REDACTED FROM THIS EXHIBIT BECAUSE THEY ARE BOTH (i) NOT MATERIAL AND (ii) A TYPE THE REGISTRANT TREATS AS PRIVATE OR COFIDENTIAL. INFORMATION THAT HAS BEEN OMITTED HAD BEEN IDENTIFIED IN THIS DOCUMENT WITH A PLACEHOLDER IDENTIFIED BY THE MARK "[***]".

# FLASH PARTNERS MASTER AGREEMENT

Dated as of September 10, 2004

by and among

TOSHIBA CORPORATION,

SANDISK CORPORATION

and

SANDISK INTERNATIONAL LIMITED

Table of Contents

This FLASH PARTNERS MASTER AGREEMENT, dated as of September 10, 2004, is entered into by and among, on one side, TOSHIBA CORPORATION, a Japanese corporation ("Toshiba"), and, on the other side, SANDISK CORPORATION, a Delaware corporation ("SanDisk Corporation"), and SANDISK INTERNATIONAL LIMITED, a company organized under the laws of the Cayman Islands ("SanDisk International", and collectively with SanDisk Corporation, "SanDisk," and SanDisk together with Toshiba, the "Parties").

WHEREAS, pursuant to that certain New Master Agreement between SanDisk Corporation and Toshiba, dated as of April 10, 2002, as amended by that certain Amendment to New Master Agreement between the Parties dated as of August 13, 2002 (the "FVC Japan Master Agreement"), and the agreements referenced therein, the Parties have had a collaboration for development and manufacture of FVC Japan NAND Flash Memory Products (as hereinafter defined);

WHEREAS, the Parties desire to extend their collaboration to encompass additional joint development and manufacture of Y3 NAND Flash Memory Products (as hereinafter defined) to be produced at the wafer fabrication facility known as "Y3"; and

WHEREAS, in order to realize these goals, the Parties desire to consummate or cause to be consummated the transactions described in this Agreement, and any other transactions which the Parties may from time to time consider necessary or appropriate to carry out the intent of the Parties as expressed herein.

NOW, THEREFORE, the Parties agree as follows:

1. DEFINITIONS AND INTERPRETATION.

1.1 Certain Definitions.

(a) Capitalized terms used but not defined in this Agreement shall have the respective meanings assigned to them in Appendix A (Definitions, Rules of Construction and General Terms and Conditions).

(b) As used herein, the term "Agreement" means this Flash Partners Master Agreement together with any Exhibits, Schedules, Appendices and Attachments hereto.

1.2 Additional Definitions. The following capitalized terms used in this Agreement shall have the respective meanings assigned in this Agreement:

| TERM | DEFINED IN |
|---|---|
| Acquiring Party | Section 8.1(d) |
| Alternative Use | Section 6.3(c)(i) |
| Amendment No. 3 to Patent Cross License Agreement | Section 2.1(c)(iii) |
| Appointing Party | Section 6.7(b)(i) |
| [***] | Section 6.3(c)(ii)(B) |
| Closing | Section 2.1(a) |
| Committee Representatives | Section 6.7(b)(i) |
| Common R&D Agreement | Section 2.1(c)(i) |
| Common R&D Development Expenses | Section 6.6(a)(i) |
| Costs | Section 6.3(c)(i) |
| Cross License Agreement | Section 2.1(c)(iii) |
| Defaulting Party | Section 6.10(d) |
| Excess Capacity Party/EC Party | Section 6.5(b)(i) |
| Embedded NAND Product | Section 6.5(c)(ii) |
| Employer | Section 6.8(g) |
| Environmental Indemnification Agreement | Section 2.1(b)(vii) |
| Equipment | Section 6.3(c)(i) |
| Evaluation Wafers | Section 6.6(a)(iii) |
| Financing | Section 6.10(b)(iii) |
| Flash Partners | Section 2.1(b) |

| TERM | DEFINED IN |
|---|---|
| FP Foundry Agreement | Section 2.1(b)(iv) |
| FP Operating Agreement | Section 2.1(b)(ii) |
| FP Operative Documents | Section 2.1(b) |
| FP Patent Indemnification Agreement | Section 2.1(b)(vi) |
| FP Secondees | Section 6.8 |
| FP Termination Date | Section 8.1(b) |
| FP Units | Section 4.2(a) |
| FVC Japan Master Agreement Recitals FVC Japan Operative Documents | Section 2.3 |
| FVC Japan NAND Flash Memory Products | Section 3.3(a) |
| Ics | Section 3.2 |
| Intellectual Property | Section 4.7 |
| Investing Party | Section 6.3(c)(i) |
| Joint Operative Documents | Section 2.1(c) |
| Lease Agreement | Section 2.1(b)(viii) |
| Management Committee | Section 6.7 |
| Minimum RUP Commitment | Section 6.3(c)(i) |
| Master Operative Documents | Section 2.2 |
| NAND Flash Memory Integrated Circuits | Section 6.11 |
| NAND Flash Memory Products | Section 3.2 |
| NAND Process Technology | Section 6.1(a) |
| Non-Defaulting Party | Section 6.10(d) |
| Non-Investing Party | Section 6.3(c)(i) |
| Non-Originating Party | Section 6.5(e) |
| Originating Party | Section 6.5(e) |
| Parties Heading Product Development Agreement | Section 2.1(c)(ii) |
| Proprietary NAND Flash Memory Products | Section 6.5(d) |
| Purchase and Supply Agreements | Section 2.1(b)(v) |
| Qualification Wafers | Section 6.6(a)(iv) |
| Ramp-Up Plan | Section 6.3(b) |
| Requesting Party | Section 8.1(d)(i) |
| [***] | Section 6.3(c)(ii) |
| [***] | Section 6.3(c)(ii) |
| SanDisk Heading SanDisk Corporation Heading SanDisk Financing | Section 6.10(b)(iii) |
| SanDisk International | Heading |

| TERM | DEFINED IN |
|---|---|
| SanDisk Purchase and Supply Agreement | Section 2.1(b)(v) |
| SanDisk Termination Capacity | Section 8.1(e)(i) |
| Selling Party | Section 8.1(d) |
| Start-Up Costs | Section 6.2 |
| Termination Capacity | Section 8.1(d)(i) |
| Third Party Sale | Section 6.3(c)(i) |
| Toshiba Heading Toshiba Financing | Section 6.10(b)(iii) |
| Toshiba Foundry NAND Flash Memory Products | Section 3.3(a) |
| Toshiba Purchase and Supply Agreement | Section 2.1(b)(v) |
| Toshiba-SanDisk Services Agreement | Section 2.1(c)(iii) |
| [***] | Section 6.3(c)(ii)(A) |
| Unit Purchase Agreement | Section 2.1(b)(i) |
| Y3 Direct R&D Development Products | Section 6.6(a)(ii) |
| Y3 Facility | Section 3.1 |
| Y3 Facility Target Capacity | Section 7.3(b) |
| Y3 NAND Flash Memory Products | Section 3.3(a) |
| [***] | Section 7.4(c)(i) |

1.3 Rules of Construction and Documentary Conventions. The rules of construction and documentary conventions and general terms and conditions set forth in Appendix A shall apply to this Agreement.

1.4 Precedence. The terms and provisions of this Agreement are binding on the Parties; provided, however, that to the extent that a description in this Agreement of another agreement (whether an Operative Document or otherwise) conflicts with or differs from the provisions of that agreement, then the provisions of that agreement shall control as to such conflict or difference.

2. CLOSING AND POST-CLOSING TRANSACTIONS

2.1 Closing Transactions.

(a) Closing. The Parties shall effect the transactions set forth in this Section 2.1, all of which shall be considered to occur on the date hereof unless otherwise stipulated (the effecting of such transactions, collectively, the "Closing").

(b) Flash Partners Documents. Unless otherwise indicated in this Section 2.1(c), as of the Closing Date, the Parties shall enter into or cause to be entered into or otherwise become effective the following agreements and documents (collectively with this Agreement, the "FP Operative Documents") to apply to their joint development, manufacture and selling of Y3 NAND Flash Memory Products by

and through Flash Partners, Ltd., a Japanese yugen kaisha ("Flash Partners") (the description of each document below is for reference only and shall not be used in interpreting any such document):

(i) a Unit Purchase Agreement between Toshiba and SanDisk International, dated as of the date hereof, in the form of Exhibit A1 (the "Unit Purchase Agreement"), and which concerns the sale by Toshiba and purchase by SanDisk International at the Closing of 49.9% of the FP Units;

(ii) an Operating Agreement between Toshiba and SanDisk International, dated as of the date hereof, in the form of Exhibit A2 (the "FP Operating Agreement"), and which concerns governance of Flash Partners;

(iii) Articles of Incorporation of Flash Partners in the form of Exhibit A to the FP Operating Agreement;

(iv) a Foundry Agreement, dated as of the date hereof, between Flash Partners and Toshiba in the form of Exhibit A3 (the "FP Foundry Agreement");

(v) a Purchase and Supply Agreement, dated as of the date hereof, by and between Flash Partners and SanDisk International in the form of Exhibit A4-1 (the "SanDisk Purchase and Supply Agreement") and a Purchase and Supply Agreement, dated as of the date hereof, between Flash Partners and Toshiba in the form of Exhibit A4-2 (the "Toshiba Purchase and Supply Agreement" and together with the SanDisk Purchase and Supply Agreement, the "Purchase and Supply Agreements"), and which concern the forecasting and purchase commitments by SanDisk and Toshiba, respectively, of Y3 NAND Flash Memory Products;

(vi) a Patent Indemnification Agreement between SanDisk Corporation and Toshiba, dated as of the date hereof, in the form of Exhibit A5 (the "FP Patent Indemnification Agreement"), and which concerns patent indemnification obligations of Toshiba in favor of SanDisk and certain contribution obligations of SanDisk with respect to Y3 NAND Flash Memory Products;

(vii) a Mutual Contribution and Environmental Indemnification Agreement between SanDisk Corporation and Toshiba, dated as of the date hereof, in the form of Exhibit A6 (the "Environmental Indemnification Agreement"), and which concerns indemnification obligations of the Parties in favor of one another with respect to Flash Partners and the Yokkaichi Facility; and

(viii) a Lease Agreement between Flash Partners and Toshiba, as owner of the Yokkaichi Facility, dated as of the date hereof, in the form of Exhibit A7 (the "Lease Agreement"), and which concerns the leasing of Flash Partners' equipment to Toshiba as owner of the Yokkaichi Facility.

(c) Joint Operative Documents. The Parties acknowledge and agree that the following agreements shall remain in force or be amended or executed as indicated below

and shall apply generally to the Parties' collaboration with respect to NAND Flash Memory Products and related products (collectively, the "Joint Operative Documents"):

(i) the Amended and Restated Common R&D and Participation Agreement, dated as of the date hereof, between SanDisk Corporation and Toshiba (the "Common R&D Agreement"), a copy of which is Exhibit B1 and which concerns collaboration between the Parties with respect to research and development activities;

(ii) the Amended and Restated Product Development Agreement, dated as of the date hereof, between the SanDisk Corporation and Toshiba (the "Product Development Agreement"), a copy of which is Exhibit B2 and which concerns collaboration between the Parties with respect to product development activities;

(iii) an Amendment No. 3 to Patent Cross License Agreement, dated as of the date hereof, between SanDisk Corporation and Toshiba (the "Amendment No. 3 to Patent Cross License Agreement"), a copy of which is Exhibit B3, amending that certain Patent Cross License Agreement between SanDisk Corporation and Toshiba, dated as of July 30, 1997 (as amended by Amendment No. 1 to Patent Cross License Agreement, dated as of May 9, 2000, and Amendment No. 3 to Patent Cross License Agreement, dated as of April 10, 2002, the "Cross License Agreement"), and which concerns certain patent licenses granted by SanDisk Corporation and Toshiba to one another; and an Amendment No. 1 to Services Agreement, dated as of the date hereof, between SanDisk Corporation and Toshiba ("Toshiba-SanDisk Services Agreement"), a copy of which is Exhibit B4, amending that certain Toshiba-SanDisk Services Agreement, dated as of July 1, 2002, which concerns Toshiba's provision of certain services to SanDisk and SanDisk's payment to Toshiba for such services.

2.2 Further Assurances. Following the Closing, each Party shall, and shall cause its Affiliates and Flash Partners to, take all reasonable actions necessary or appropriate to effectuate the transactions contemplated by this Agreement, the FP Operative Documents and the Joint Operative Documents (collectively, the "Master Operative Documents"), and to obtain (and cooperate with the other Party in obtaining) any Governmental Action or third party consent required to be obtained or made by it in connection with any of the transactions contemplated by the Master Operative Documents; provided, that no Burdensome Condition shall be made to exist with respect to such Party or any of its Affiliates in connection therewith.

2.3 Continuation of FVC Japan Documents. The Parties agree that unless otherwise expressly stated herein (A) the FVC Japan Operative Documents shall not affect the interpretation of this Agreement or the governance or operation of Flash Partners or the Y3 Facility and (B) the FP Operative Documents shall not affect the interpretation of the FVC Japan Master Agreement or the governance operation of FVC Japan or the FVC Japan Equipment. The Parties further

acknowledge that their agreement concerning the relationship between the FVC Japan Operative Documents and FP Operative Documents is stated in a letter agreement between Toshiba and SanDisk, dated as of the date hereof (which is not itself either an FVC Japan Operative Document or FP Operative Document).

3. PURPOSE OF FLASH PARTNERS

3.1 Purpose. The Parties acknowledge and agree that the purpose of the Master Operative Documents and Flash Partners is the manufacture, including by subcontract to Toshiba pursuant to the FP Foundry Agreement, and sale to the Parties of NAND Flash Memory Products manufactured at the facility of the Flash Partners known by the Parties as "Y3" (the "Y3 Facility"), which is a part of the Yokkaichi Facility (defined in Appendix A).

3.2 NAND Flash Memory Products. "NAND Flash Memory Products" are NAND (both binary and MLC Flash Memory) Flash Memory Integrated Circuits ("ICs"), excluding any products with process design rules generally greater than .25 microns. Embedded IC's incorporating NAND Flash Memory Products shall be considered to constitute "NAND Flash Memory Products" if the main function and value of such IC is flash memory, but shall not be considered to constitute "NAND Flash Memory Products" if the main function and value of such IC is logic. For the purpose of the foregoing, the "main function and value" of any product shall be considered to be flash memory if (x) the total NAND flash memory array area is greater than [***] of the total die area or (y) the product is a cut-down or derivative of a standard NAND Flash Memory Product.

3.3 Products.

(a) NAND Flash Memory Products manufactured at the Y3 Facility are referred to as "Y3 NAND Flash Memory Products," NAND Flash Memory Products manufactured for FVC Japan using the FVC Japan Equipment are referred to as "FVC Japan NAND Flash Memory Products" and NAND Flash Memory Products manufactured at the Toshiba Foundry Facility (defined in Appendix A) are referred to as "Toshiba Foundry NAND Flash Memory Products".

(b) Each Party shall be permitted to market and sell all NAND Flash Memory Products to any third party in any form, including chips, packaged devices, wafers, die and cards.

4. REPRESENTATIONS AND WARRANTIES OF THE PARTIES

Except as may be disclosed in disclosure schedules attached to this Agreement, each Party represents and warrants to the other Party, as of the Closing, as follows:

4.1 Organization, Ownership Interest, etc.

(a) It and each of its Affiliates that is a party to any Master Operative Document is duly organized, validly existing and in good standing under the laws of its

jurisdiction of organization or incorporation and has the power and authority to carry on its business as conducted on the date hereof, to own or hold under lease its properties and to enter into and perform its obligations under each Master Operative Document to which it is a party.

(b) It and each of its Affiliates that is a party to any Master Operative Document is duly qualified to own or lease its properties and generally to conduct its business as currently, or proposed under the Master Operative Documents to be, conducted in each jurisdiction necessary for purposes of the transactions contemplated by the Master Operative Documents, except where failure to so qualify would not have a material adverse effect on either Party or Flash Partners.

4.2 Authorization; No Conflict.

(a) It and each of its Affiliates has duly authorized by all necessary action (i) the execution, delivery and performance of each Master Operative Document to which it or any of its Affiliates is a party and (ii) the exercise of its rights as a holder of units (shusshi mochibun) of Flash Partners (the "FP Units") to approve the execution, delivery and performance by Flash Partners of each Master Operative Document to which it is a party and for which the approval of the holders of FP Units is required.

(b) Its and each of its Affiliates' execution and delivery of each Master Operative Document to which it is a party, its and each of its Affiliates' consummation of the transactions contemplated thereby and its and each of its Affiliates' compliance therewith does not and will not (i) require any approval of its or any of such Affiliates' stockholders or any approval or consent of any trustee or holder of any of its or any of such Affiliates' Indebtedness or obligations, (ii) contravene any Governmental Rule applicable to or binding on it or any of such Affiliates or any of its or their properties if such contravention would have a material adverse effect on it or any of such Affiliates or on its or their ability to perform any of its or any of such Affiliates' obligations under any Master Operative Document, (iii) contravene or result in any breach of, or constitute any default, with or without the passage of time, the giving of notice or both, under its charter or by-laws, or contravene or result in any breach of or constitute any default under, or result in the creation of any Lien (other than Permitted Liens) upon any of its or any of such Affiliates property or the property of Flash Partners under, any material indenture, mortgage, chattel mortgage, deed of trust, conditional sales contract, loan or credit agreement, non-compete agreement, license agreement, partnership or joint venture agreement or other material agreement or document to which it or any of such Affiliates is a party or by which it or any of such Affiliates or any of its or their properties is or is intended to be bound or by which Flash Partners or any of its properties is or is intended to be bound, (iv) require any negotiation with, or notice to, any labor union or violate, or require any procedure to be followed under, any collective bargaining or other agreement with employees or (v) require any Governmental Action (other than immaterial Governmental Actions such as routine qualifications to do business intended to be obtained as needed or Governmental Actions needed in connection

with the construction and operation of the Y3 Facility), except, in each case described in clauses (i) through (v) above, such as have been duly obtained, made, taken or otherwise accomplished and which are in full force and effect. All consents and approvals of any Governmental Authority (other than immaterial Governmental Actions such as routine qualifications to do business intended to be obtained as needed or Governmental Actions needed in connection with the operation of the Y3 Facility) or other third Person necessary or advisable for such Party or any of its Affiliates to consummate in all material respects the transactions contemplated by the Master Operative Documents have been obtained. No Burdensome Condition exists with respect to such Party, any of its Affiliates or Flash Partners in connection with the transactions contemplated by the Master Operative Documents.

4.3 Enforceability.

(a) It has duly executed and delivered this Agreement and, upon the execution and delivery of this Agreement by the other Party, this Agreement will constitute its legal, valid and binding obligation, enforceable against it in accordance with its terms except as enforceability may be limited by bankruptcy, insolvency, fraudulent conveyance or similar laws affecting the enforcement of creditors' rights generally or the availability of equitable remedies (regardless of whether enforceability is considered in a proceeding at law or in equity).

(b) It and each of its Affiliates have duly executed and delivered each other Master Operative Document to which it or any such Affiliate is a party and, upon the execution and delivery of each such other Master Operative Document by each other party thereto, each such other Master Operative Document will constitute its legal, valid and binding obligation, enforceable against it or its Affiliates in accordance with its terms except as enforceability may be limited by bankruptcy, insolvency, fraudulent conveyance or similar laws affecting the enforcement of creditors' rights generally or the availability of equitable remedies (regardless of whether enforceability is considered in a proceeding at law or in equity).

4.4 Proceedings. There are no actions, claims, investigations or proceedings pending, or to its knowledge threatened, by or before any Governmental Authority that, if adversely determined, would have a material adverse effect on it or any of its Affiliates that is a party to any Master Operative Document or, on the conduct of the business of Flash Partners following the Closing as contemplated in the Master Operative Documents or on it or any of its Affiliates' ability to perform any material obligation under any Master Operative Document.

4.5 Litigation; Decrees. Except as set forth in Schedule 4.5, there are no lawsuits, arbitrations or other legal proceedings pending, or to its knowledge threatened, by or against or affecting it or any of its Affiliates or any of their respective properties that (i) are reasonably likely, based on information known to it as of the date hereof, to have a material adverse effect on the conduct of the business of Flash Partners following the Closing as contemplated by the Master Operative Documents or (ii) relate to any of the transactions contemplated by the Master

Operative Documents in a manner which is material to it, any of its Affiliates' or Flash Partners ability of it to carry out the transactions contemplated hereby and in the FP Operative Documents or which could have a material adverse effect on the conduct of the business of Flash Partners following the Closing as contemplated in the Master Operative Documents.

4.6 Compliance with Other Instruments. Neither it nor any of its Affiliates that is a party to any Master Operative Document is in default in any material respect in the performance of any material obligation, agreement, instrument or undertaking to which it or any of its Affiliates is a party or by which it or any of its Affiliates or any of its of their properties is bound, and there is no such obligation, agreement, instrument or undertaking to which it or any of its Affiliates is a party or by which it or any of its Affiliates or any of its or their properties is bound, in each case which is reasonably likely to have a material adverse effect on the conduct of the business of Flash Partners following the Closing as contemplated by the Master Operative Documents.

4.7 Patents and Proprietary Rights. Except as set forth in Schedule 4.7, to its knowledge, it owns or possesses sufficient legal rights to all patents, utility models, trademarks, service marks, trade names, copyrights, applications for any of the foregoing, mask works, software, trade secrets, licenses, information and proprietary rights and processes (collectively, "Intellectual Property") necessary (i) to carry out its or any of its Affiliates' obligations under the Master Operative Documents and (ii) for the conduct of the business of Flash Partners following the Closing as contemplated in the Master Operative Documents, without any conflict with or infringement of the rights of others, except as will not have a material adverse effect on either (i) or (ii) above. Except with respect to items referenced in Schedule 4.7, it has not received any communications alleging that its Intellectual Property violates, or by its or any of its Affiliates entering into the transactions contemplated by the Master Operative Documents, would violate the Intellectual Property of any other Person or entity, which violation could reasonably be expected to have a material adverse effect on either (i) or (ii) above.

4.8 Compliance with Laws. It and each of its Affiliates has complied and is complying in all material respects with all laws, statutes, permit requirements, licensing requirements, rules and regulations and judicial or administrative decisions, except where the failure to so comply would not have a material adverse effect on its or any of its Affiliates ability to perform its or their obligations hereunder or under any other Master Operative Document or on the conduct of the business of Flash Partners following the Closing as contemplated by the Master Operative Documents.

4.9 Patent Cross Licenses. Except as set forth on Schedule 4.9, with respect to (a) Toshiba, there are no patent cross licenses between it and any third party that would require Flash Partners to make any payment pursuant to Section 10 of the Cross License Agreement, and (b) SanDisk, there are no patent cross licenses between it and any third party that would require Flash Partners to make any payment pursuant to Section 8 of the Cross License Agreement.

5. COVENANTS

5.1 Covenants of the Parties. Each Party agrees that, during the term of this Agreement:

(a) Performance of Obligations. It and each of its Affiliates shall fully and faithfully carry out (i) all its obligations under each Master Operative Document to which it or any Affiliate is a party, and (ii) once agreed, each applicable Business Plan (as defined in the FP Operating Agreement).

(b) Ownership Interest. Except as otherwise expressly permitted by the FP Operating Agreement and this Agreement, it shall not Transfer or permit any of its Affiliates to Transfer all or any portion of its FP Units (or all or any portion of its interest in any Affiliate through which it beneficially owns its FP Units), to any Person without the consent of the other Party.

5.2 Public Announcements.

(a) At or following the Closing, neither Party shall, nor shall it permit any of its Affiliates to, without the prior written consent of the other Party:

(i) issue any public release, announcement or other document, or otherwise publicly disclose any information or make any public statement, concerning the operations of Flash Partners or that refers to the other Party or any of its Affiliates in connection therewith (other than a general reference to affiliation with Flash Partners) that (A) concerns the financial condition or results of operations of Flash Partners other than as required by any Governmental Rule, Japanese GAAP, Japanese GAAS, US GAAP or US GAAS, with respect to the financial disclosure obligations of either Party or (B) disparages either Party, or Flash Partners' performance or reflects negatively on either Party's commitment to either of Flash Partners; or

(ii) other than as may be required in connection with filings required to be made with Governmental Authorities with respect to the transactions contemplated by the FP Operative Documents pursuant to the Japanese Foreign Exchange and Foreign Trade Law and related regulations, (A) publicly file all or any part of any Master Operative Document or any description thereof or (B) issue or otherwise make publicly available any press release, announcement or other document that contains Confidential Information belonging to the other Party (or its Affiliates) or Flash Partners, except as may be required by any applicable Governmental Rule, in which case such Party shall (or shall cause the Person required to make such filing to) cooperate with the other Party, to the extent reasonable and practicable, in obtaining any confidential treatment for such filing requested by the other Party.

(b) Each Party shall use commercially reasonable efforts to grant or deny any approval required under this Section 5.2 within five (5) days of receipt of written request by the other Party; provided, however, a Party's failure to respond within said time period shall not be deemed to constitute such Party's approval or consent.

5.3 Expenses. Each Party shall bear its own expenses in connection with the negotiation, execution and delivery of the Master Operative Documents.

5.4 Undertaking as to Affiliate Obligations. Each Party shall cause all covenants, conditions and agreements to be performed, observed or satisfied by each of its Affiliates that is a party to any Master Operative Documents to be fully and faithfully observed, performed and satisfied by such Affiliate, and shall not cause or permit to exist (i) an Event of Default with respect to such Affiliate or (ii) except as otherwise permitted by the FP Operating Agreement, any event of dissolution of Flash Partners caused by such Affiliate. Nothing in Section 5.1 or in this Section 5.4 shall be construed to create any right in any Person other than the Parties. Without limiting the generality of the foregoing, SanDisk hereby guarantees the obligations of SanDisk International hereunder and under any Master Operative Document to which SanDisk International is a party.

5.5 Continuity and Maintenance of Operations. During the term of this Agreement, each Party agrees on behalf of itself and each of its Affiliates that is a party to any Master Operative Document to use all reasonable efforts consistent with past practice and policies to (i) preserve intact in all material respects its and their present business operations, (ii) keep available the services of its and their key employees as a group, and (iii) preserve its relationships with suppliers, licensors, licensees, and others having business relationships with it or them, each to the extent necessary to allow it and such Affiliates to perform its and their obligations under the Master Operative Documents and to allow Flash Partners to conduct its business as contemplated in its most recently approved Business Plan.

5.6 Certain Deliveries and Notices. Each Party shall promptly inform in writing the other Party of (i) any event or occurrences which could be reasonably expected to have a material adverse effect on its or any of its Affiliates' ability to perform its or their obligations under any of the Master Operative Documents or the ability of Flash Partners to conduct its business as contemplated in its most recently approved Business Plan, or (ii) any breach or failure to satisfy any condition or covenant contained herein or in any other Master Operative Document by such Party or any of its Affiliates.

6. COVENANTS CONCERNING NAND FLASH MEMORY PRODUCTS BUSINESS

6.1 Technology Transfers.

(a) Toshiba will make available to Flash Partners its 90 nanometer [***] process technology applicable to the manufacturing and testing of NAND Flash Memory Products ("NAND Process Technology") on the fastest practicable

schedule. All process integration for new processes will be led by Toshiba employees at the Yokkaichi Facility to the extent reasonably possible. Toshiba will cause its employees, including its advanced microelectronics center

employees, to cooperate in achieving an efficient transition from development module to operating process and volume production. Flash Partners will establish a pilot line where (unless impracticable) substantially all tests for 300 millimeter NAND technology will be conducted.

(b) Whenever a technology transfer is required hereunder, Toshiba shall deliver such level of NAND Process Technology to the Y3 Facility as would be normal practice by the Toshiba Semiconductor Company whenever it transfers a technology to a new manufacturing facility or transfers a new or advanced technology to an existing manufacturing facility in order to achieve successful implementation of the newly transferred technology.

(c) A technology transfer hereunder shall be deemed complete when the transferred technology passes a reasonable qualification procedure to be mutually agreed upon by the Parties.

(d) [***]

(e) [***]

6.2 Start-Up Services for Y3. The Parties acknowledge that either or both of the Parties and Flash Partners have incurred or will incur costs in connection with developing Flash Partners and the Y3 Facility and preparing the Y3 Facility for production, including personnel costs, materials costs and other operating expenses, that are properly allocable to Flash Partners and for which each Party has the obligation ultimately to bear 50% of the responsibility ("Start-Up Costs"). The Parties shall discuss in good faith and agree upon theStart-Up Costs, the allocation to Flash Partners ofStart-Up Costs borne by either Party and the means and timing of each Party being reimbursed or credited for having incurred more than 50% of the Start-Up Costs or of making payments due to having incurred less than 50% of the Start-Up Costs.

6.3 Y3 Facility Ramp-Up Plan.

(a) Equal Participation and Purchase Price Per Unit. The Parties intend to meet demand for increased capacity by equally investing in, and jointly building, and sharing, on equal or substantially equal terms, equal amounts of new capacity for Y3 NAND Flash Memory Products, except as they may otherwise agree as contemplated herein. [***]

(b) Ramp-Up Plan. The Parties acknowledge that they intend to expand their Y3 NAND Flash Memory Product manufacturing capacity through development of the Y3 Facility according to volumes and timing set forth in Schedule 6.3(b) (including to [***] L/M, the "Ramp-Up Plan"). The Parties will discuss in good

faith whether the production capacity of Y3 should be expanded by the Parties toward the Y3 Facility's targeted capacity of approximately [***] L/M.

(c) Ramp-Up Plan Commitments and Changes. The Parties agree as follows concerning theRamp-Up Plan:

(i) The initial 600 L/M in aggregate increases in production capacity of the Y3 Facility identified on theRamp-Up Plan shall be considered firmly committed by each Party (i.e., 300 L/M each) as of the times specified in the Ramp-Up Plan and in accordance with this Section 6.3(c)(i) (the "Minimum RUP Commitment"). The Parties shall agree upon one or more Business Plans that provide for implementing the Minimum RUP Commitment. [***]

6.4 Capacity.

(a) Priority.

(i) SanDisk's manufacturing capacity for, and purchased supply of, NAND Flash Memory Products shall be sourced by SanDisk and its Subsidiaries from, and in, the following priority:

(A) from Flash Partners,

(B) [***]

(C) [***]

(D) from [***] and/or from other third parties (so long as [***], and SanDisk shall have fulfilled its 50% share of the Ramp-Up Plan for the Y3 Facility).

(ii) [***]

(iii) In no event will [***] SanDisk [***] source NAND Flash Memory Products from a source other than Flash Partners if the effect of such sourcing is the diversion of resources or other (intended or collateral) effects which reduce the economic or other efficiency of the Y3 Facility (including not fully executing the Ramp-Up Plan).

(b) [***]

(c) Technology Transfer. If the Parties mutually agree to secure external manufacturing sources other than the Yokkaichi Facility through joint investment, Flash Partners and Toshiba, as applicable, will jointly transfer the applicable manufacturing technology and know-how to such source. Flash Partners (with respect to 300 millimeter wafers) and FVC Japan (with respect to 200 millimeter wafers) will conduct all negotiations with the external manufacturing source; provided, however, the terms and conditions of any agreement shall be subject to prior consultation with and the approval of Toshiba. In connection with any technology transfer to such external source, Toshiba will be reimbursed its mutually agreed transfer costs for assisting in the transfer of manufacturing technology and know-how. If the new capacity secured at such external manufacturing source is requested by only one of the Parties, such Party will pay the transfer costs and be entitled to purchase the full output of NAND Flash Memory Products purchased by FVC Japan or Flash Partners, as applicable, from such external manufacturing source. If both Parties request such new external capacity, then FVC Japan or Flash Partners, as applicable, will pay the transfer costs to Toshiba. Neither Party shall have the right to grant manufacturing licenses to such external manufacturing source or to disclose or transfer to any such external manufacturing source, manufacturing know-how related to the manufacture of NAND Flash Memory Products, except through FVC Japan or Flash Partners.

6.5 Capacity Sharing Arrangement.

(a) Equal right to capacity. Subject to Section 6.3(c), each of the Parties will have the right and obligation, through Flash Partners, to utilize 50% of the wafers produced

at the Y3 Facility based on a measure of equivalent lots out per week with the equivalency being weighed based on the process complexity factors (as calculated by a formula to be mutually determined by the Parties) of the Y3 NAND Flash Memory Products.

(b) Alternative use of allotted capacity.

(i) If a Party is unable to utilize its allotted manufacturing capacity for Y3 NAND Flash Memory Products (such Party, an "Excess Capacity" or "EC Party"), it may do any of the following:

(A) An EC Party may request the other Party to negotiate the terms of transfer of its capacity shortfall to the other Party, which may choose whether to accept such additional capacity and on what terms in its sole discretion.

(B) An EC Party may use its capacity for Embedded NAND Products, as defined in and subject to Section 6.5(c).

(C) An EC Party may use its capacity for Proprietary NAND Flash Memory Products and non-Proprietary NAND Flash Memory Products, in accordance with and subject to Sections 6.5(d) and (e).

If an EC Party is not able to utilize or transfer its allotted capacity pursuant to Section 6.5(b), it shall pay the incremental cost increase to the Party not experiencing a shortfall (or pay to Flash Partners an under-utilization fee in accordance with a formula to be mutually determined by the Parties).

(ii) If both Parties are EC Parties because demand for both Parties' Y3 NAND Flash Memory Products are significantly below expectations, the Parties will discuss in good faith whether to permit products which are not Y3 NAND Flash Memory Products to be produced at the Y3 Facility; provided that (A) the inability of the Parties so to agree shall not constitute a Deadlock (as defined in the FP Operating Agreement) and (B) the foregoing shall not limit either Party's rights in the remainder of this Section 6.5.

(c) Either Party shall have the right use a portion of its total allocated capacity with respect to the Y3 Facility to run a memory product which is not a Y3 NAND Flash Memory Product (solely because the NAND flash memory array area is equal to or less than [***] of the total die area ("Embedded NAND Product")) so long as such Embedded NAND Product [***]. If a Party exercises its option to run Embedded NAND Products, it must [***]. The conditions stated in Sections 6.5(d) and (e) do not apply to Embedded NAND Products.

(d) Each Party may use a portion of its total allocated capacity to cause to be manufactured NAND Flash Memory Products which are proprietary to that Party ("Proprietary NAND Flash Memory Products") and which need not be shared with the other Party. Proprietary NAND Flash Memory Products may be produced at the Y3 Facility so long as such products [***]. If a Party exercises such option, it must [***]. No such Proprietary NAND Flash Memory Products may be run if doing so [***]. Each Party shall give the other Party at least ninety (90) days' advance written notice of its intention to use a portion of its allocated capacity to manufacture Proprietary NAND Flash Memory Products and the Parties shall refer the matter to the Board of Directors for consultation and planning, with the intention to minimize the impact of such allocation. Such notifying Party will limit the output volume of such Proprietary NAND Flash Memory Products to [***] of such Party's total allocated output at the Y3 Facility unless it receives the consent of the other Party to an increase in such output volume above such limit.

(e) Each Party (the "Originating Party") shall inform the other (the "Non-Originating Party") of the development plans by the Originating Party to develop NAND Flash Memory Products, and the Originating Party and the Non-Originating Party shall each refer such matter to the Coordinating Committee (as defined in the Product Development Agreement). If the Coordinating Committee unanimously decides that such planned development shall be undertaken jointly, then the cost

of such joint development shall be borne by each Party in accordance with the Product Development Agreement, and the NAND Flash Memory Products manufactured following such joint development shall be considered non-Proprietary NAND Flash Memory Products for purposes of Section 6.5(d); provided, however, the NAND Flash Memory Products set forth in Exhibit A to the Product Development Agreement shall be deemed to be non-Proprietary NAND Flash Memory Products without any action by the Coordinating Committee. Subject to the foregoing, if the Coordinating Committee does not unanimously decide that such planned development shall be undertaken jointly, then the Originating Party may, at its sole discretion, either (i) transfer to the Non-Originating Party the technology, including the items in Exhibit C to the Product Development Agreement relating to such technology, used to manufacture such NAND Flash Memory Products on a royalty-free basis, whereupon such NAND Flash Memory Products shall be considered non-Proprietary NAND Flash Memory Products, or (ii) treat such NAND Flash Memory Products as Proprietary NAND Flash Memory Products for purposes of Section 6.5(d). In the event the Originating Party elects to treat any NAND Flash Memory Products as Proprietary NAND Flash Memory Products in accordance with the preceding sentence, but thereafter the Coordinating Committee unanimously determines that such Proprietary NAND Flash Memory Products should be developed jointly, the Originating Party shall transfer to the other Party the technology used to manufacture such NAND Flash Memory Products on reasonable terms and conditions to be mutually agreed upon by the Parties, whereupon such Proprietary NAND Flash Memory Products shall be treated as non-Proprietary NAND Flash Memory Products.

6.6 Engineering Wafers and Development Expense. Each Party will have full access to all operational and engineering data and reports related to engineering wafers manufactured at Y3.

(a) Engineering wafers and development expenses are further and more completely defined in four categories: Common R&D Development Expenses, Y3 Direct R&D Development Products, Evaluation Wafers, and Qualification Wafers (each as defined below).

(i) “Common R&D Development Expenses” means [***]. The Parties agree to set up pilot-line(s) [***]. The Parties confirm their intent that [***]. Notwithstanding the foregoing, the Parties shall meet from time to time [***]. The Parties shall meet at the end of each quarter to determine if any engineering activities performed during the quarter [***], whether agreed in advance or not [***]. If any activities performed [***] are agreed by the parties to [***].

(ii) [***].

(iii) "Evaluation Wafers" are those wafers manufactured [***]. Both parties are entitled to receive evaluation wafers [***]. The cost of Evaluation Wafers is [***].

(iv) "Qualification Wafers" are those wafers [***]. The Parties will discuss and agree on the appropriate quantity of Qualification Wafers required for each Y3 NAND Flash Memory Product. [***].

(b) [***].

6.7 Creation of Management Committee. The management committee established by the Parties pursuant to the FVC Japan Master Agreement to facilitate management of the operations of FVC Japan (the "Management Committee") shall do the same for Flash Partners, as detailed in this Section 6.7.

(a) Authority. The Management Committee shall have the authority to (i) advise Flash Partners with respect to policy and operating matters common to Toshiba and SanDisk as well as on such other matters as Flash Partners may refer to the Management Committee from time to time, (ii) hear and seek to resolve any disputes regarding operational matters or alleged breaches of any Master Operative Documents (including dispute resolution), and (iii) take the actions specified to be taken by the Management Committee in this Agreement or any Master Operative Document, including in this Section 6.7 and in Section 6.1.

(b) Members of the Management Committee; Voting; etc.

(i) The Management Committee shall consist of six members (the "Committee Representatives"), three of whom shall be appointed by Toshiba, and three of whom shall be appointed by SanDisk (for such purpose, each of the Parties is referred to in this Section 6.7 as an "Appointing Party"). Each Appointing Party shall be entitled to appoint an alternate Committee Representative to serve in the place of any Committee Representative appointed by such Appointing Party should any such Committee Representative be unable to attend a meeting. Each Party shall be entitled to invite a reasonable numbers of observers to all Management Committee meetings.

(ii) Each Committee Representative or alternate Committee Representative shall serve at the pleasure of the designating Appointing Party and may be removed as such, with or without cause, and his successor designated, by the designating Appointing Party. Each Appointing Party shall have the right to designate a replacement Committee Representative in the event of any vacancy among such Appointing Party's appointees.

(iii) Each Appointing Party shall bear any cost and expense incurred by any Committee Representative or alternate Committee Representative designated by such Appointing Party to serve on the Management Committee, and no Committee Representative or alternate Committee

Representative shall be entitled to compensation from Flash Partners for serving in such capacity.

(iv) Each Appointing Party shall notify the other Appointing Party and Flash Partners in writing of the name, business address and business telephone and facsimile numbers of each Committee Representative and each alternate Committee Representative that such Appointing Party has been appointed to the Management Committee. Each Appointing Party shall promptly notify the other Appointing Party and Flash Partners of any change in such Appointing Party's appointments or of any change in any such address or number.

(v) For purposes of any approval or action taken by the Management Committee, each Committee Representative shall have one vote. All of the votes eligible to be cast at any meeting must be voted in favor of any action to be taken by the Management Committee at such meeting.

(vi) At any meeting of the Management Committee, a Committee Representative, in the absence of one or more other Committee Representatives appointed by the same Appointing Party or an alternate Committee Representative, may cast the vote such absent Committee Representatives would otherwise be entitled to cast.

(vii) The quorum necessary for any meeting of the Management Committee shall be those Committee Representatives entitled to cast all of the votes held by the members of the Management Committee. A quorum shall be deemed not to be present at any meeting for which notice was not properly given under Section 6.7(c), unless the Committee Representative or Committee Representatives as to whom such notice was not properly given attend(s) such meeting without protesting the lack of notice or duly execute(s) and deliver(s) a written waiver of notice or a written consent to the holding of such meeting.

(viii) Each appointment by an Appointing Party to the Management Committee shall remain in effect until the Appointing Party making such appointment notifies the other Appointing Party and Flash Partners in writing of a change in such appointment. The resignation or removal of a Committee Representative shall not invalidate any act of such Committee Representative taken before the giving of such written notice of the removal or resignation of such Committee Representative (or alternate Committee Representative).

(c) Meetings, Notice, etc.

(i) Meetings of the Management Committee shall be held at such location or locations as may be selected by the Management Committee from time to time.

(ii) Regular meetings of the Management Committee shall be held on such dates and at such times as shall be determined by the Management Committee and shall be held as required or as requested by the Board of Directors.

(iii) Notice of any regular meeting or special meeting pursuant to Section 6.7(c)(iv) shall be given to each Committee Representative at least ten (10) Business Days prior to such meeting in the case of a meeting in person or at least five (5) Business Days prior to such meeting in the case of a meeting by conference telephone or similar communications equipment pursuant to Section 6.7(c)(vi), which notice shall state the purpose or purposes for which such meeting is being called and include any supporting documentation relating to any action to be taken at such meeting.

(iv) Special meetings of the Management Committee may be called by any Committee Representative by notice given in accordance with the notice requirements set forth in this Section 6.7, which notice shall state in reasonable detail the purpose or purposes for which such meeting is being called; provided, that, the Committee Representatives appointed by the Appointing Party that is not represented by the Committee Representative calling such special meeting shall be entitled to in good faith select a convenient location for the meeting and to suggest an alternative time or times if the designated time is not convenient for them. Except as set forth in Section 6.7(c)(vi), no action may be taken and no business may be transacted at such special meeting which is not identified in such notice unless (A) such action or business is incidental to the action or business for which the special meeting is called or (B) such action or business does not materially adversely affect the Parties, any of their respective Affiliates which are parties to any of the Master Operative Documents or Flash Partners. Minutes of each Management Committee meeting shall be sent by facsimile to all Committee Representatives within ten (10) Business Days after such meeting. Material to be presented at any Management Committee meeting shall be sent by facsimile, electronic mail or delivered in hard copy to all Committee Representatives together with the notice described in Section 6.7(c)(vi).

(v) The actions taken by the Management Committee at any meeting, however called and noticed, shall be as valid as though taken at a meeting duly held after regular call and notice if (but not until), either before, at or after the meeting, any Committee Representative as to whom such meeting was improperly held duly executes and delivers a written waiver of notice or a written consent to the holding of such meeting; provided, however, any Committee Representative who is present at a meeting and does not protest the failure of notice shall be deemed to have received adequate notice thereof. A vote of the Management Committee may be taken only either in a meeting of the members thereof duly called and held or by the execution by the Committee Representatives eligible to cast all

the votes on the Management Committee without a meeting of a consent setting forth the action so taken, and identified as a consent of the Committee Representatives pursuant to this Section 6.7.

(vi) Upon the consent of all Committee Representatives, a meeting of the Management Committee may be held by conference telephone or similar communications equipment by means of which all Committee Representatives participating in the meeting can hear and be heard by all other participants, provided, that, such communications equipment continues to be operational throughout the meeting. Any Committee Representative may elect to participate in a meeting by conference telephone or similar communications equipment upon sufficient advance notice to permit arrangements therefor to be made. At any meeting, the Management Committee shall consider (A) any items added to the Management Committee agenda for discussion by the Parties and (B) such other matters as the Management Committee decides to review.

(vii) The Management Committee shall, from time to time, elect one of its members to preside at its meetings, which presiding member shall alternate annually if requested by either Party. The Management Committee may establish reasonable rules and regulations to (A) require officers to call meetings and perform other administrative duties, (B) limit the number and participation of observers, if any, and require them to observe confidentiality obligations and (C) otherwise provide for the keeping and distribution of minutes and other internal Management Committee governance matters not inconsistent with the terms of this Agreement.

6.8 FP Secondees. SanDisk will have the right (after consultation with Toshiba) to second employees to Flash Partners ("FP Secondees"), provided that the numbers and responsibilities of such FP Secondees will be discussed by the Parties in advance of seconding such employees. [***]:

(a) [***]

(b) [***]

(c) [***]

(d) [***]

(e) [***]

(f) [***]

(g) All FP Secondees will remain employees of SanDisk. Each Party will indemnify the other Party and Flash Partners from any claim by any of such Party's employees, consultants or agents (such Party being the "Employer") (i) based on other than willful misconduct of such Employer, its employees, consultants or

agents; or (ii) that he or she has rights, or is owed obligations, as an employee of the Party that is not the Employer.

6.9 Non-solicitation of Employees. So long as the business of Flash Partners continues, each Party (and each of its respective Affiliates) shall not, without the prior written consent of the other Party, directly recruit or solicit any employee or director of Flash Partners to leave his or her employment with Flash Partners prior to the period ending twenty-four (24) months after the FP Termination Date; provided, however, that placement of employment advertisements or other general solicitation for employees not specifically targeted to the employees or directors of Flash Partners shall not constitute direct recruitment. In the event of the dissolution and liquidation of Flash Partners, either Party (or any Affiliate of either Party) may solicit any former employee of such dissolved and liquidated company, but neither Party (nor any of its Affiliates) shall be required to employ any such Person. If all of the FP Units held by one Party are purchased by the other Party or its designee, if requested by the acquiring Party the Parties shall reach agreement on a reasonable transition plan (without profit to the seller) in connection with the services provided to Flash Partners, as applicable, by employees and contractors of the selling Party.

6.10 Debt and Lease Financing.

(a) [***]

(b) The Parties currently intend, but are not obligated, to structure the financing for equipment purchases by Flash Partners necessary to implement the Ramp-Up Plan as follows:

(i) Flash Partners will enter into equipment lease or loan agreements and pledge the financed equipment as collateral;

(ii) Flash Partners will secure external financing for approximately 50% of the initial purchase price of its tools and each Party will provide equity capital contributions and loans (on a subordinated basis) for the remaining cash requirements of Flash Partners necessary to execute the Ramp-Up Plan;

(iii) each Party will severally and not jointly and through separate arrangements guarantee as close as possible to 50% of Flash Partners' obligations under such lease or loan agreements (any financing separately guaranteed or provided by Toshiba for Flash Partners or otherwise for investment in the Y3 Facility, "Toshiba Financing", any such financing separately guaranteed or provided by SanDisk for Flash Partners or otherwise for investment in the Y3 Facility "SanDisk Financing" and the Toshiba Financing and SanDisk Financing, each a "Financing"); and

(iv) the Parties will attempt to obtain the foregoing financing from the same financial institution, but under separate agreements that expressly disclaim any joint and several liability of the Parties.

(c) With respect to any Toshiba Financing or SanDisk Financing, the following shall apply:

(i) [***].

(ii) Unless otherwise expressly agreed by both Parties in writing in each case, all Toshiba Financing and all SanDisk Financing shall create only several obligations of the Parties and no joint and several obligations or liability. Toshiba (with respect to Toshiba Financing) and SanDisk (with respect to SanDisk Financing) hereby indemnifies and holds harmless the other Party and its Indemnified Parties from any claims by any financial institution or other Person that the other Party has any liabilities or obligations with respect to, respectively, any Toshiba Financing or SanDisk Financing (unless joint liability has been agreed pursuant to the first sentence of this Section 6.10(c)(ii)).

(iii) Flash Partners will use commercially reasonable efforts to comply with the requirements of any financing sources. Flash Partners will make available to each Party one-half of its assets (with as near as practicable cost, collateral value and type) to secure such Party's Financing (whether external or loans from a Party or its Affiliates).

(d) If the lender under the Financing for either Party (as the "Defaulting Party") takes significant actions to enforce its right in the collateral, then the other Party (as the "Non-Defaulting Party") shall have the right, but not the obligation, to cure the default giving rise to the lender's enforcement action. If the Non-Defaulting Party exercises such cure right, then theNon-Defaulting Party's rights in any subject collateral shall be superior to the Defaulting Party's and the Non-Defaulting Party may exercise one of the following options:

(i) the Non-Defaulting Party (A) shall have a claim against the Defaulting Party for reimbursement of any payments made by theNon-Defaulting Party on the Defaulting Party's behalf (which will be subordinate to the lender's claims and bear interest at a rate 500 basis points in excess of the rate being charged by the lender to the Defaulting Party) and (B) shall have the right, until and unless the Defaulting Party pays in full the

obligation to the Non-Defaulting Party under foregoing clause (A), to take over the increment of production of the Y3 Facility represented by the collateral with respect to which the lender took significant actions to enforce its rights; or

(ii) the Non-Defaulting Party shall have the right to terminate the Operating Agreement pursuant to Section 11.6 thereof (Foreclosure Default).

6.11 Other Activities. Except as expressed in Section 5.6 and in the Common R&D Agreement, neither Party nor any of their respective Affiliates shall: (i) fabricate NAND Flash Memory Integrated Circuits at any location other than the Yokkaichi Facility or any other fabrication facility agreed upon by the Parties in writing; (ii) have any third party fabricate NAND Flash Memory Integrated Circuits; or (iii) have any right to fabricate NAND Flash Memory Integrated Circuits beyond the capacity as limited pursuant to this Section 6, as such capacity limitations may be amended from time to time in accordance with this Section 6. For the avoidance of doubt, nothing contained in the foregoing shall restrict the Parties from engaging in any other activities, including, without limitation, (i) designing any NAND Flash Memory Product; (ii) selling any NAND Flash Memory Product to any customer; (iii) entering into any equipment purchase or material supply agreements; or (iv) entering into any patent licensing arrangement; and nothing in the foregoing shall restrict Toshiba from installing any manufacturing line in the Toshiba Foundry Facility subject to the capacity limitations set forth in Section 6 of the FVC Japan Master Agreement and as provided herein, as such capacity limitations may be amended from time to time in accordance with this Section 6. For purposes of this Section 6.11, "NAND Flash Memory Integrated Circuits" means ICs included in the definition of NAND Flash Memory Products pursuant to Section 3.2.

6.12 Protection of Intellectual Property. Both Parties recognize that it is important for the success of the Y3 NAND Flash Memory Products business to promote the adoption of such Y3 NAND Flash Memory Products with a wide variety of customers and applications, whether for card use or non-card use, and with such recognition, each Party shall use reasonable efforts to protect and enhance the value of Y3 NAND Flash Memory Products. Further, where feasible, each Party shall share with Flash Partners internally prepared analyses of competitive products prepared by either Party so as to allow Flash Partners to respond to such information and remain competitive in the marketplace; provided, that neither Party warrants as to the accuracy or completeness of any such analysis so provided.

6.13 Tools.

(a) All tools for the Y3 Facility shall be purchased by Flash Partners (or a lessor for Flash Partners' benefit as contemplated by Section 6.10(a)) and all such purchases shall be agreed upon by the Parties. Toshiba shall, from the Toshiba Semiconductor Company headquarters and at its own expense, provide Flash Partners with tool purchase service support and negotiate with vendors on Flash

Partners' behalf. SanDisk shall have the right to participate in such negotiations or other tool purchase activities of Toshiba, at SanDisk's own expense.

(b) All purchases of replacement tools for Flash Partners, to the extent the procedures or requirements therefor are not set forth in a Master Operative Document, shall be done only by agreement of the Parties.

7. OTHER AGREEMENTS

To supplement their agreement as expressed in certain of the Master Operative Documents, the Parties agree as set forth in this Section 7. To the extent of any conflict between this Section 7 and any other Master Operative Document referenced in this Section 7, the other Master Operative Document shall prevail.

7.1 Flash Partners Management.

(a) As contemplated by the FP Operating Agreement, the Y3 Operating Committee's purpose is to give both Parties the ability to influence the day to day operating decisions of Flash Partners and the Y3 Facility. The Y3 Operating Committee is intended to be a collaborative body with real-time communications, respectful consultation and dispute resolution with the goal of making the Y3 Facility the most competitive (cost and technology) memory fabrication facility in the world.

(b) If the Y3 Operating Committee is unable to decide an issue (by agreement of its two members) such issue shall be referred to the Board of Directors. Special meetings of the Board of Directors may be noticed for issues requiring urgent resolution. The Parties contemplate that while a special meeting of the Board of Directors is being noticed, their respective management teams will discuss any issue that the Y3 Operating Committee could not resolve.

(c) If the Board of Directors is unable to decide an issue (by unanimous agreement), such issue shall be referred to the Management Committee for resolution, which shall be vested with final decision making authority. This Agreement separately provides for procedures if the Management Committee is unable to reach agreement on such issue.

7.2 Y3 Facility. Toshiba has designed and is constructing the Y3 Facility at its sole cost and expense. The Y3 Facility is scheduled to be completed by [***], provided that Toshiba shall have no liability to SanDisk, any SanDisk Affiliate or Flash Partners if completion is not achieved by such time. The depreciation charges for Y3 will be passed on to Flash Partners as further described in Section 7.3(d).

7.3 FP Foundry Agreement. Flash Partners and Toshiba shall enter into the FP Foundry Agreement at the Closing. The FP Foundry Agreement provides for ordering procedures, prices, delivery, cost reporting and other specific terms and conditions for the manufacture by Toshiba and supply to Flash Partners of Y3 NAND Flash Memory Products, which shall be consistent with the following basic terms:

(a) Facilities, Equipment and Raw Materials. The manufacturing facilities will be located at the Y3 Facility and die sort will be located [***] or such other place as the Parties may agree upon. Flash Partners and Toshiba will enter into an exclusive lease agreement with respect to the Y3 Facility and Flash Partners' manufacturing equipment located in the Y3 Facility to be used in the manufacture of Y3 NAND Flash Memory Products by Toshiba. Toshiba shall be responsible for obtaining the raw materials and services to be used in the manufacture of Y3 NAND Flash Memory Products.

(b) Production. Toshiba will manufacture Y3 NAND Flash Memory Products at the Y3 Facility for Flash Partners ordered by Toshiba and SanDisk under the terms and conditions of the FP Purchase and Supply Agreements. Flash Partners and Toshiba (from the Yokkaichi Facility) will use their best efforts to achieve the Ramp-Up Plan manufacturing capacity (the "Y3 Facility Target Capacity"). Wafers will be sorted between the Parties such that aggregate yield losses will be shared on an equal basis.

(c) Operating Relationship. Toshiba shall provide all employees necessary for the manufacturing of the Y3 NAND Flash Memory Products.

(d) Consideration to be Paid to Toshiba. Toshiba will be compensated by Flash Partners as provided in Section 4 of the FP Foundry Agreement.

(e) No Duplication of Costs or Expenses. It is the intent of the Parties that any payments made by SanDisk under or pursuant to any Master Operative Documents or FVC Japan Operative Documents shall not be duplicative and SanDisk shall in no event be required to pay or contribute more than once for any service or product provided under such agreements, if such service is provided under more than one agreement. In addition, if SanDisk makes a direct payment for any service provided under any such agreement, the cost incurred by Toshiba (from the Yokkaichi Facility), FVC Japan or Flash Partners, as the case may be, in connection with the provision of such service shall not be included in the applicable wafer price charged to SanDisk.

(f) Exclusivity. The Yokkaichi Facility shall be Flash Partners' exclusive manufacturing source for output of Y3 NAND Flash Memory Products. Flash Partners may seek external manufacturing sources for output in excess of the Yokkaichi Facility's capacity upon unanimous approval by the Management Committee.

7.4 FP Purchase and Supply Agreements. Flash Partners and each of the Parties or their respective Affiliates will enter into substantially identical FP Purchase and Supply Agreements providing for specific terms and conditions for the purchase by the Parties of Y3 NAND Flash Memory Products from Flash Partners, which shall be consistent with the following basic terms:

(a) Manufacturing. Flash Partners shall manufacture or cause to be manufactured Y3 NAND Flash Memory Products as contemplated by Section 7.3.

(b) Purchase Commitment. Except as contemplated in Section 6.3(c)(ii), each Party shall (itself or through Affiliates) purchase one half (based on a measure of equivalent lots out per week with the equivalency being weighed based on the process complexity factors (as calculated by a formula to be mutually determined by the Parties) of the Y3 NAND Flash Memory Products) of the total L/M of Y3 NAND Flash Memory Products. The foregoing purchase commitment of each Party shall not be subject to reduction unless agreed in writing by the other Party, which may grant or withhold such approval in its sole discretion.

(c) Sales Price for Y3 NAND Flash Memory Products Purchased by the Parties. The sales price charged by Flash Partners to the Parties for wafers manufactured at Y3 shall be the sum of:

[***]

(d) Other Cost Items. Other items related to the manufacture of Y3 NAND Flash Memory Products will be charged on a monthly basis from Flash Partners to the Parties and will include the following:

[***]

7.5 Other Matters.

(a) Forecasts/Production Planning. Each Party will submit forecasts, on a rollingsix-month basis, directly to Flash Partners, as further provided in the Purchase and Supply Agreements. The one-time cost necessary for [***] will be borne by SanDisk, which, together with theone-time production control cost described in Section 7.5(b) is to be approximately [***]. Flash Partners production planning will hold a monthly production planning meeting with representatives of each Party, as further provided in the Purchase and Supply Agreements. At such meetings, the Parties will agree on a production plan for [***] which plan will be final (and the related forecast will be deemed to be covered by a binding purchase order).

(b) Production Control. Flash Partners will provide [***] on a non-discriminatory basis to SanDisk with respect to [***], provided that the actual, one-time cost necessary for establishing a new system to provide [***] to SanDisk will be borne by SanDisk, which, together with theone-time forecast submission system cost described in Section 7.5(a), is estimated to be [***]. Each Party (through the Y3 Management Committee) will have the right to discuss the production schedule, planned wafer starts and [***].

(c) Operating Reports. SanDisk will have full access to any management or operation reports related to Flash Partners or Flash Partners' business through the Y3 Operating Committee (as defined in the FP Operating Agreement). Management and operating reports related to Flash Partners or Flash Partners' business as mutually agreed from time to time will be simultaneously made

available in Japanese and English to each Party. Upon request, Toshiba employees will explain such reports to SanDisk's employees and respond to questions from SanDisk's employees, but Toshiba will not be responsible for SanDisk's failure to understand such reports.

(d) Insurance. Toshiba shall maintain or arrange property insurance covering assets owned or leased by Flash Partners and business interruption insurance in respect of the business of Flash Partners, the scope and amounts of which shall be consistent with Toshiba's practices at the Yokkaichi Facility and as required by any lender. This coverage shall provide basically full replacement value of all Flash Partners owned and leased equipment, subject to valuation as part of Toshiba's annual insurance policy renewal, and shall name Flash Partners as a beneficiary in respect of assets owned or leased by it and Flash Partners' employee expenses covered by business interruption insurance. On an annual basis, or when requested by either Party, the Y3 Operating Committee shall discuss and review the current insurance coverage and/or the need for any additional property or business interruption insurance in respect of Flash Partners' assets or business. Further, SanDisk reserves the right to seek to arrange additional property or business interruption insurance for its own account in respect of Flash Partners' assets or business. If SanDisk seeks such additional property or business interruption insurance, Toshiba shall cooperate in good faith to provide such information and access as is reasonably necessary for SanDisk to arrange such insurance. If Toshiba makes a recovery from a third party (other than an insurer per the above) in respect of both assets of Flash Partners and other assets, then Toshiba shall allocate to Flash Partners a share of the net amount of such recovery in proportion to the losses suffered by Flash Partners and total losses suffered by Flash Partners and Toshiba.

8. TERMINATION

8.1 Termination.

(a) Termination of any Master Operative Document by either Party shall be done only in good faith.

(b) This Agreement shall be terminated automatically upon the earlier of the Transfer of all of a Party's FP Units to the other Party (or its Affiliate) or upon completion of the dissolution and liquidation of Flash Partners pursuant to Section 11

(Dissolution) of the FP Operating Agreement (the date of such Transfer or dissolution and liquidation, the "FP Termination Date").

(c) Upon termination of this Agreement resulting from an event of dissolution of Flash Partners due to the expiration of Flash Partners pursuant to Section 11.1(a) (Expiration) of the FP Operating Agreement:

(i) the Parties shall further amend the Cross License Agreement, as then in effect, to specify that each Party's patents issued or issuing on patent applications entitled to an effective filing date prior to the FP Termination Date are licensed on a royalty-free basis for the duration of such patents. The scope of the licenses as amended pursuant to this Section 8.1(c)(i) shall not be greater than the scope of those granted under the Cross License Agreement, as in effect as of the FP Termination Date.

(ii) Toshiba shall grant to SanDisk, effective upon the FP Termination Date, anon-exclusive, non-transferable (except to Affiliates of SanDisk), non-sub-licensable, fully paid up, royalty-free license to make, have made, use, sell and have sold NAND Flash Memory Products anywhere in the world utilizing the NAND technology transferred to and/or utilized at the Yokkaichi Facility, and SanDisk shall have full access to all such know-how at the Yokkaichi Facility which has been transferred to the Yokkaichi Facility prior to the FP Termination Date.

(d) Upon a termination of this Agreement resulting from (i) an event of dissolution of Flash Partners or (ii) one Party's acquisition of all of the other Party's FP Units (the acquirer thereof referred to hereinafter as the "Acquiring Party" and the seller thereof referred to hereinafter as the "Selling Party") pursuant to Section 11.5 (Dissolution Upon Notice) of the FP Operating Agreement:

(i) Toshiba or the Acquiring Party, as the case may be, will, upon the request, prior to the FP Termination Date, of (A) SanDisk (such request to be made at the time of its notice pursuant to Section 11.5 of the FP Operating Agreement) in the case of the dissolution of Flash Partners or (B) the Selling Party (each, a "Requesting Party"), as the case may be, continue to manufacture NAND Flash Memory Products for the Requesting Party (not to exceed the Requesting Party's capacity allocation available from Flash Partners under this Agreement as of the FP Termination Date (the "Termination Capacity")) for a period of eighteen (18) months following the Termination Date in the following ramp-down manner:

(A) During the first six months following the FP Termination Date: 100% of the Termination Capacity

(B) During the 7th through the 12th month following the FP Termination Date: 75% of the Termination Capacity

(C) During the 13th through the 18th month following the FP Termination Date: 50% of the Termination Capacity.

(ii) Toshiba and SanDisk and their respective Affiliates shall have a perpetual, fully paid-up, royalty-free right to use technology previously transferred to one another during the term of this Agreement.

(iii) The Parties shall further amend the Cross License Agreement to specify that each Party's patents issued or issuing on patent applications entitled to an effective filing date prior to the FP Termination Date are licensed on a royalty free basis for the duration of such patents. The scope of the licenses as amended pursuant to this Section 8.1(d)(iii) shall not be greater than the scope of those granted under the Cross License Agreement, as in effect as of FP Termination Date.

(iv) Upon termination of this Agreement resulting from an event of dissolution of Flash Partners caused by Toshiba's election to withdraw from Flash Partners pursuant to the FP Operating Agreement, Toshiba hereby grants to SanDisk, effective upon the FP Termination Date, a non-exclusive, non-transferable (except to Affiliates of SanDisk), non-sub-licensable, fully paid-up, royalty-free license to make, have made, use, sell and have sold NAND Flash Memory Products anywhere in the world utilizing the NAND technology transferred to and/or utilized at the Yokkaichi Facility, and SanDisk shall have full access to all such know-how at the Yokkaichi Facility which has been transferred to the Yokkaichi Facility prior to the FP Termination Date.

(e) Upon termination of this Agreement resulting from an event of dissolution of Flash Partners or Toshiba's acquisition of SanDisk's FP Units pursuant to Section 11.4 (Dissolution By Unilateral Option) of the FP Operating Agreement:

(i) From the Yokkaichi Facility, Toshiba will, upon request of SanDisk given within sixty (60) days of the notice given by SanDisk pursuant to Section 11.4 of the FP Operating Agreement, continue to manufacture products for SanDisk for a period of eighteen (18) months following the FP Termination Date in accordance with the following ramp-down manner; provided, however, such capacity allocation for SanDisk shall not exceed its capacity allocation available from Flash Partners under this Agreement as of the FP Termination Date (the "SanDisk Termination Capacity"):

(A) During the first six months following the FP Termination Date: 100% of the SanDisk Termination Capacity

(B) During the 7th through the 12th month following the FP Termination Date: 75% of the SanDisk Termination Capacity

(C) During the 13th through the 18th month following the FP Termination Date: 50% of the SanDisk Termination Capacity.

(ii) The Parties and their respective Affiliates shall have a perpetual, fully paid-up, royalty-free right to use technology previously transferred to one another during the term of this Agreement.

(iii) The Parties shall further amend the Cross License Agreement to specify that, with respect only to Y3 NAND Flash Memory Products and any other Licensed Products defined in the License Agreement and manufactured with 300mm wafers at any facility, each Party's patents issued or issuing on patent applications entitled to an effective filing date prior to the FP Termination Date are licensed at the royalty rates specified in Schedule 8.1(e) until March 31, 2013; provided, that after such five (5) year period, such license shall be on a royalty free basis and provided, further, that at any time during such five year period, both Parties shall negotiate in good faith for up to one hundred and eighty (180) days as requested by either Party to mutually agree on royalty rates for patents filed by each Party after the FP Termination Date. The scope of the licenses as amended pursuant to this Section 8.1(e)(iii) shall not be greater than the scope of those granted under the Cross License Agreement, as in effect as of the FP Termination Date.

(f) Upon termination of this Agreement resulting from an event of dissolution of Flash Partners or one Party's acquisition of the other Party's FP Units following a Deadlock (as defined in the FP Operating Agreement) pursuant to Section 10.3 (Dispute Resolution; Deadlock) of the FP Operating Agreement:

(i) In the case of one Party's acquisition of the other Party's FP Units pursuant to Section 10.4(e) of the FP Operating Agreement, the Acquiring Party shall continue to manufacture products for the other Party (not to exceed the other Party's Termination Capacity) for a period of eighteen (18) months following the FP Termination Date in accordance with the following ramp down manner:

(A) During the first six months following the FP Termination Date: 100% of the Termination Capacity

(B) During the 7th through the 12th month following the FP Termination Date: 75% of the Termination Capacity

(C) During the 13th through the 18th month following the FP Termination Date: 50% of the Termination Capacity.

(ii) The Parties and their respective Affiliates shall have a perpetual, fully paid-up, royalty-free right to use technology previously transferred to one another during the term of this Agreement.

(iii) The Parties shall further amend the Cross License Agreement to specify that, with respect only to Y3 NAND Flash Memory Products and any other Licensed Products defined in the License Agreement and manufactured with 300mm wafers at any facility, each Party's patents issued or issuing on patent applications entitled to an effective filing date prior to the FP Termination Date are licensed: (x) at the royalty rates specified in Schedule 8.1(f) until March 31, 2012; (y) at the royalty rates specified in Schedule 8.1(e) from April 1, 2012 through December 31,

2014; and (z) thereafter, on a royalty-free basis. Both Parties shall negotiate in good faith for up to one hundred and eighty (180) days upon request of either Party at any time during the five-year period after the FP Termination Date to agree on royalty rates for patents filed by each Party after the FP Termination Date. The scope of the licenses as amended pursuant to this Section shall not be greater than the scope of those granted under the Cross License Agreement, as in effect as of the FP Termination Date.

(g) Upon termination of this Agreement resulting from an event of dissolution of Flash Partners or a Party's acquisition of the other Party's FP Units described in Section 11.3 (Dissolution Upon Event of Default) of the FP Operating Agreement:

(i) The Parties shall further amend the Cross License Agreement to specify that, with respect only to Y3 NAND Flash Memory Products and any other Licensed Products defined in the License Agreement and manufactured with 300mm wafers at any facility, each Party's patents issued or issuing on patent applications entitled to an effective filing date prior to the FP Termination Date are licensed at the royalty rates specified in Schedule 8.1(g) for seven (7) years after the FP Termination Date or until the end of calendar 2019, whichever comes first, and thereafter such licenses shall be on a royalty-free basis.

(ii) In the event that Toshiba or an Affiliate of Toshiba is the Defaulting Party, Toshiba shall grant to SanDisk, effective upon such date of termination, a non-exclusive, non-transferable (except to Affiliates of SanDisk), non-sub-licensable, fully paid-up, royalty-free license to make, have made, use, sell and have sold NAND Flash Memory Products anywhere in the world utilizing the NAND technology transferred to and/or utilized at the Yokkaichi Facility, and SanDisk shall have full access to all such know-how at the Yokkaichi Facility which has been transferred to the Yokkaichi Facility prior to the FP Termination Date.

(h) Upon termination of this Agreement resulting from an event of dissolution described in Section 11.1(f) (Bankruptcy Event) of the FP Operating Agreement:

(i) If such termination is caused by a Bankruptcy Event in respect of Toshiba, (x) the license granted to SanDisk under Toshiba Licensed Patents pursuant to the Cross License Agreement shall continue on a royalty-free basis, and (y) Toshiba shall grant to SanDisk, effective upon such date of termination, a non-exclusive, non-transferable (except to Affiliates of SanDisk), non-sub-licensable, fully paid-up, royalty-free license to make, have made, use, sell and have sold NAND Flash Memory Products anywhere in the world utilizing the NAND technology transferred to and/or utilized at the Yokkaichi Facility, and SanDisk shall have full access to all such know-how at the Yokkaichi Facility which has been transferred to the Yokkaichi Facility prior to the Termination Date.

(ii) If such termination is caused by a Bankruptcy Event in respect of SanDisk, the license granted to Toshiba under SanDisk Licensed Patents (as defined in the Cross License Agreement) pursuant to the Cross License Amendment shall continue on a royalty-free basis.

(i) Upon a termination of this Agreement resulting from a purchase and sale transaction described in Section 11.6 (Financing Default) of the FP Operating Agreement, there shall be no capacity ramp-down rights or obligations and:

(i) If such termination is caused by a financing default in respect of Toshiba, (x) the Parties shall further amend the Cross License Agreement to specify that, with respect only to Y3 NAND Flash Memory Products and any other Licensed Products defined in the License Agreement and manufactured with 300mm wafers at any facility, Toshiba's patents issued or issuing on patent applications entitled to an effective filing date prior to the FP Termination Date are licensed to SanDisk on a royalty-free basis, and (y) Toshiba shall grant to SanDisk, effective upon such date of termination, a non-exclusive, non-transferable (except to Affiliates of SanDisk), non-sub-licensable, fully paid-up, royalty-free license to make, have made, use, sell and have sold NAND Flash Memory Products anywhere in the world utilizing the NAND technology transferred to and/or utilized at the Yokkaichi Facility, and SanDisk shall have full access to all such know-how at the Yokkaichi Facility which has been transferred to the Yokkaichi Facility prior to the Termination Date.

(ii) If such termination is caused by a financing default in respect of SanDisk, the Parties shall further amend the Cross License Agreement to specify that, with respect only to Y3 NAND Flash Memory Products and any other Licensed Products defined in the License Agreement and manufactured with 300mm wafers at any facility, SanDisk's patents issued or issuing on patent applications entitled to an effective filing date prior to the FP Termination Date are licensed to Toshiba on a royalty-free basis.

(j) Termination of this Agreement shall not affect any surviving rights or obligations of either Party set forth in the Product Development Agreement and the Common R&D Agreement.

9. MISCELLANEOUS

9.1 Survival. Sections 1.3, 6.9, 6.10(d), 8 and 9 and Appendix A shall survive the termination or expiration of this Agreement.

9.2 Entire Agreement. This Agreement, together with the exhibits, schedules, appendices and attachments thereto, constitutes the agreement of the Parties to this Agreement with respect to the subject matter hereof and supersedes all prior written and oral agreements and understandings with respect to such subject matter.

9.3 Governing Law. This Agreement shall in all respects be governed by and construed in accordance with the internal laws of the State of California applicable to agreements made and to be performed entirely within such state without regard to the conflict of laws principles of such state. Each Master Operative Document shall be governed in accordance with its governing law provision and, in the absence of any such provision, by the first sentence of this Section 9.3.

9.4 Assignment. Neither Party may transfer this Agreement or any of its rights hereunder (except for any transfer to an Affiliate or in connection with a merger, consolidation or sale of all or substantially all the assets or the outstanding securities of such party, which transfer shall not require any consent of the other party) without the prior written consent of the other Party (which consent may be withheld in such other Party's sole discretion), and any such purported transfer without such consent shall be void.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, this Agreement has been executed and delivered by the Parties as of the date first above written.

TOSHIBA CORPORATION

By: /s/ Masashi Muromachi
Name: Masashi Muromachi
Title: President and CEO
Semiconductor Company
Corporate Vice President

SANDISK CORPORATION

By: /s/ Eli Harari
Name: Eli Harari
Title: President and CEO

SANDISK INTERNATIONAL LIMITED

By: /s/ Eli Harari
Name: Eli Harari
Title: President

[Signature page to Flash Partners Master Agreement]

APPENDICES

| | | |
|---|---|---|
| Appendix A | - | Definitions, Rules of Construction and General Terms and Conditions |

EXHIBITS

| | | |
|---|---|---|
| (Flash Partners Documents) | | |
| Exhibit A1 | - | Unit Purchase Agreement |
| Exhibit A2 | - | FP Operating Agreement |
| Exhibit A3 | - | FP Foundry Agreement |
| Exhibit A4-1 | - | SanDisk Purchase and Supply Agreement |
| Exhibit A4-2 | - | Toshiba Purchase and Supply Agreement |
| Exhibit A5 | - | FP Patent Indemnification Agreement |
| Exhibit A6 | - | Mutual Environmental Indemnification Agreement |
| Exhibit A7 | - | Lease Agreement |
| (Joint Operative Documents) | | |
| Exhibit B1 | - | Common R&D and Participation Agreement |
| Exhibit B2 | - | Product Development Agreement |
| Exhibit B3 | - | Amendment No. 3 to Cross License Agreement |
| Exhibit B4 | - | Amendment No. 1 to Toshiba-SanDisk Services Agreement |

SCHEDULES

| | | |
|---|---|---|
| Schedule 4.5 | - | Litigation; Decrees |
| Schedule 4.7 | - | Patents and Proprietary Rights |
| Schedule 4.9 | - | Cross License Payment Obligations |
| Schedule 6.1 | - | Technology Transfer Costs |
| Schedule 6.3(b) | - | Ramp-Up Plan |
| Schedule 6.8 | - | SanDisk FP Secondees |
| Schedule 8.1(d) | - | Royalty in case of SanDisk Unilateral Termination |
| Schedule 8.1(e) | - | Royalty in case of Deadlock Termination |
| Schedule 8.1(f) | - | Royalty in case of Event of Default Termination |

SCHEDULE 4.5

LITIGATION, DECREES

[***]

SCHEDULE 4.7
PATENTS AND PROPRIETARY RIGHTS

[***]

SCHEDULE 4.9
CROSS LICENSE PAYMENT OBLIGATIONS

[***]

SCHEDULE 6.1
TECHNOLOGY TRANSFER COSTS

[***]

SCHEDULE 6.3(b)
RAMP-UP PLAN

[***]

SCHEDULE 6.8

SANDISK FP SECONDEES

[***]

SCHEDULE 8.1(e)

ROYALTY IN CASE OF SANDISK UNILATERAL TERMINATION

[***]

SCHEDULE 8.1(f)

ROYALTY IN CASE OF DEADLOCK TERMINATION

[***]

SCHEDULE 8.1(g)

ROYALTY IN CASE OF EVENT OF DEFAULT TERMINATION

[***]

APPENDIX A

DEFINITIONS, RULES OF CONSTRUCTION AND
DOCUMENTARY CONVENTIONS

The following shall apply unless otherwise required by the main body of the agreement into which this Appendix A is being incorporated (as used herein, "this Agreement"):

Definitions

The following terms shall have the specified meanings:

"Accountants" means such firm of internationally recognized independent certified public accountants for Flash Partners as is appointed pursuant to the FP Operating Agreement from time to time. Initially, the Accountants shall be Shin Nihon & Company, an affiliate of Ernst & Young LLP.

"Affiliate" of any Person means any other Person which directly or indirectly controls, is controlled by or is under common control with, such Person; provided, however, that the term Affiliate, (a) when used in relation to Flash Partners or any Subsidiary of Flash Partners, shall not include SanDisk Corporation or Toshiba or any Affiliate of either of them, and (b) when used in relation to SanDisk Corporation or Toshiba or any Affiliate of either of them, shall not include Flash Partners or any Subsidiary of Flash Partners.

"Articles" means the Articles of Incorporation of Flash Partners.

"Bankruptcy Event" means, with respect to any Person, the occurrence or existence of any of the following events or conditions: such Person (1) is dissolved; (2) becomes insolvent or fails or is unable or admits in writing its inability generally to pay its debts as they become due; (3) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (4) institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding up or liquidation and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition (A) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding up or liquidation or (B) is not dismissed, discharged, stayed or restrained in each case within 60 days of the institution or presentation thereof; (5) has a resolution passed by its governing body for its winding-up or liquidation; (6) seeks or becomes subject to the appointment of an administrator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets (regardless of how brief such appointment may be, or whether any obligations are promptly assumed by another entity or whether any other event described in this clause (6) has occurred and is continuing); (7) experiences any event which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (1) through (6) above; or (8) takes any action in

furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

"Board of Directors" means the board of directors of Flash Partners.

"Burdensome Condition" means, with respect to any proposed transaction, any action taken, or credibly threatened, by any Governmental Authority or (except if such action or threat is frivolous) other Person to challenge the legality of such proposed transaction, including (i) the pendency of a governmental investigation (formal or informal) in contemplation of the possible actions described in clauses (ii)(A), (ii)(B) or (ii)(C) below, (ii) the institution of a suit or the written threat thereof (A) seeking to restrain, enjoin or prohibit the consummation of such transaction or material part thereof, to place any material condition or limitation upon such consummation or to invalidate, suspend or require modification of any material provision of any Operative Document, (B) challenging the acquisition by either Toshiba or SanDisk International of its Units or (C) seeking to impose limitations on the ability of either Toshiba or SanDisk International effectively to exercise full rights as Unitholder of Flash Partners, including the right to act on all matters properly presented to the parties pursuant to the FP Operating Agreement, or (iii) an order by a court of competent jurisdiction having any of the consequences described in (ii)(A), (ii)(B) or (ii)(C) above, or placing any conditions or limitations upon such consummation that are unreasonably burdensome in the reasonable judgment of the applicable Person.

"Business Day" means any day (other than a day which is a Saturday, Sunday or legal holiday in the State of California or Japan) on which commercial banks are open for business in the State of California or Tokyo, Japan.

"Business Plan" means the Initial Business Plan and each subsequent business plan, including budgets and projections for Flash Partners for each relevant period, approved in accordance with Section 3.4(c) of the FP Operating Agreement and complying with Section 3.4(b) of the FP Operating Agreement.

"Capital Contribution" means the capital contribution made by or allocated to a Party by virtue of its ownership of Units, as indicated on Schedule 6.1 to the FP Operating Agreement.

"Change of Control" with respect to a Person means a transaction or series of related transactions as a result of which (i) more than 50% of the beneficial ownership of the outstanding common stock or other ownership interests of such Person (representing the right to vote for the board of directors or similar organization of such Person) is acquired by another Person or affiliated group of Persons, whether by reason of stock acquisition, merger, consolidation, reorganization or otherwise or (ii) the sale or disposition of all or substantially all of a Person's assets to another Person or affiliated group of Persons.

"Closing" means the closing of the transactions described in Sections 2.1 of the Master Agreement.

"Closing Date" means the date of the Closing.

"Code" means the Internal Revenue Code of 1986, as amended from time to time, or any successor statute. Any reference to a particular provision of the Code or a treasury regulation promulgated pursuant to the Code means, where appropriate, the corresponding provision of any successor statute or regulation.

"Common R&D Agreement" means the Amended and Restated Common R&D and Participation Agreement, dated as of the Effective Date, between Toshiba and SanDisk Corporation.

"Control" (including its correlative meanings "controlled by" and "under common control with") means possession, directly or indirectly, of power to direct or cause the direction of management or policies (whether through ownership of securities or partnership or other ownership interests, by contract or otherwise).

"Cross License Agreement" has the meaning given in the Master Agreement.

"Effective Date" means September 10, 2004.

"Environmental Indemnification Agreement" means the Mutual Contribution and Environmental Indemnification Agreement, dated as of the Effective Date, between Toshiba and SanDisk Corporation.

"Event of Default" means, with respect to a Party, the occurrence or existence of any of the following events or conditions which remains uncured for sixty (60) days following receipt by such Party of written notice thereof:

(a) a Bankruptcy Event in respect of such Party or any Person of which such Party is a Subsidiary; or

(b) the breach by such Party of its covenant in Section 9.1 of the FP Operating Agreement or the breach by such Party of its covenant in Section 5.1(b) of the Master Agreement, provided that a Change of Control of a Party shall not be deemed an Event of Default.

"Fiscal Quarter" means, unless changed by the Board of Directors, a calendar quarter.

"Fiscal Year" means the one year period commencing on April 1 of each year.

"Flash Partners" means Flash Partners, Ltd., a Japanese limited liability company (yugen kaisha).

"FP Foundry Agreement" means the Foundry Agreement, dated as of the Effective Date, between Flash Partners and Yokkaichi.

"FP Operating Agreement" means the Operating Agreement, dated as of the Effective Date, between Toshiba and SanDisk International.

"FP Operative Documents" has the meaning given in the Master Agreement.

"FP Secondee" means an employee of SanDisk or any of its Affiliates who is assigned to work at Flash Partners or any of its Subsidiaries by SanDisk or such Affiliate as contemplated by Section 6.8 of the Master Agreement.

"FVC Japan" means FlashVision Ltd., a Japanese limited liability company (yugen kaisha).

"FVC Japan Equipment" means any equipment which is or will, from time to time, be owned or leased by FVC Japan.

"FVC Japan Master Agreement" means the Master Agreement between Toshiba and SanDisk dated as of April 10, 2002, as amended and restated as of the Effective Date.

"FVC Japan Operative Documents" means the FVC Japan Master Agreement as amended to date, the New Operating Agreement between the Parties, dated as of April 10, 2002, as amended to date, the Foundry Agreement between FVC Japan and Toshiba, dated as of April 10, 2002, the SanDisk Foundry Agreement between the Parties, dated as of April 10, 2002, the Purchase and Supply Agreement between FVC Japan and SanDisk, dated as of April 10, 2002, the Purchase and Supply Agreement between FVC Japan and Toshiba, dated as of April 10, 2002, and the Services Agreement between FVC Japan and Toshiba dated as of April 1, 2002.

"FVC Japan NAND Flash Memory Products" has the meaning given in Section 3.3 of the Master Agreement.

"Governmental Action" means any authorization, consent, approval, order, waiver, exception, variance, franchise, permission, permit or license of, or any registration, filing or declaration with, by or in respect of, any Governmental Authority.

"Governmental Authority" means any United States or Japanese federal, state, local or other political subdivision or foreign governmental Person, authority, agency, court, regulatory commission or other governmental body, including the Internal Revenue Service and the Secretary of State of any State.

"Governmental Rule" means any statute, law, treaty, rule, code, ordinance, regulation, license, permit, certificate or order of any Governmental Authority or any judgment, decree, injunction, writ, order or like action of any court or other judicial or arbitration tribunal.

"Indebtedness" of any Person means, without duplication:

(a) all obligations (whether present or future, contingent or otherwise, as principal or surety or otherwise) of such Person in respect of borrowed money or in respect of deposits or advances of any kind;

(b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments;

(c) all obligations of such Person upon which interest charges are customarily paid, except for trade payables;

(d) all obligations of such Person under conditional sale or other title retention agreements relating to property or assets purchased by such Person;

(e) all obligations of such Person issued or assumed as the deferred purchase price of property or services (other than with respect to the purchase of personal property under standard commercial terms);

(f) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such Person, whether or not the obligations secured thereby have been assumed;

(g) all guarantees by such Person of Indebtedness of others;

(h) all obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property (or a combination thereof), which obligations would be required to be classified and accounted for as capital leases on a balance sheet of such Person prepared in accordance with Japanese GAAP or US GAAP, as applicable;

(i) all obligations of such Person (whether absolute or contingent) in respect of interest rate swap or protection agreements, foreign currency exchange agreements or other interest or exchange rate hedging arrangements; and

(j) all obligations of such Person as an account party in respect of letters of credit and bankers' acceptances.

The Indebtedness of any Person shall include the Indebtedness of any partnership in which such Person is a general partner.

"Indemnified Parties" means the Party being indemnified's officers, directors, employees, agents, contractors, subcontractors, and transferees permitted pursuant to the FP Operating Agreement and the Master Agreement.

"Japan Act" means the Japanese Limited Liability Company Act (yugenkaisha-ho), as in effect from time to time.

"Japanese GAAP" means generally accepted accounting principles in Japan as in effect from time to time, consistently applied.

"Japanese GAAS" means generally accepted auditing standards in Japan as in effect from time to time.

"License Agreement" means the Patent Cross License Agreement dated July 30, 1997 by and between Toshiba and SanDisk, [***]

"Lien" means, with respect to any asset, (a) any mortgage, deed of trust, lien, pledge, encumbrance, charge or security interest in or on such asset, (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement relating to such asset and (c) in the case of securities, any purchase option, call or similar right with respect to such securities.

"L/M" means lots per month.

"Management Committee" has the meaning given in the Master Agreement.

"Master Agreement" means the Flash Partners Master Agreement, dated as of the Effective Date, by and among Toshiba, SanDisk and SanDisk International.

"Material" means, with respect to any Person, an event, change or effect which is or, insofar as reasonably can be foreseen, will be material to the condition (financial or otherwise), properties, assets, liabilities, capitalization, licenses, businesses, operations or prospects of such Person and, in the case of Flash Partners, the ability of Flash Partners to carry out its then-current Business Plan.

"NAND Flash Memory Products" has the meaning given in Section 3.2 of the Master Agreement.

"Net Book Value" means, with respect to any Person, the total assets of such Person less the total liabilities of such Person, in each case as determined in accordance with Japanese GAAP or US GAAP, as applicable.

"Patent Indemnification Agreement" means the Patent Indemnification Agreement dated as of the Effective Date between Toshiba and SanDisk Corporation.

"Percentage" means, with respect to any Unitholder (as defined in the FP Operating Agreement), the percentage of such Unitholders' ownership interest in Flash Partners. For the avoidance of doubt, as of the date hereof, Percentage means with respect to Toshiba or its Affiliate, 50.1%, and with respect to SanDisk International or its Affiliate, 49.9%; provided, however, if either Unitholder transfers all of its Units to any Affiliate in accordance with the FP Operating Agreement, its Percentage shall be 0% and such Affiliate transferee shall receive the entire Percentage of the transferring Unitholder.

"Permitted Liens" means (a) the rights and interests of Flash Partners, either Party or any Affiliate of any such Person as provided in the FP Operative Documents, and (b) Liens for Taxes which are not due and payable or which may after contest be paid without penalty or which are being contested in good faith and by appropriate proceedings and so long as such proceedings shall not involve any substantial risk of the sale, forfeiture or loss of any part of any relevant asset or title thereto or any interest therein.

"Person" means any individual, firm, company, corporation, limited liability company, unincorporated association, partnership, trust, joint venture, Governmental Authority or other entity, and shall include any successor (by merger or otherwise) of such entity.

"Product Development Agreement" means the Amended and Restated Product Development Agreement, dated as of the Effective Date, between Toshiba and SanDisk Corporation.

"SanDisk Corporation" means SanDisk Corporation, a Delaware corporation.

"SanDisk International" means SanDisk International Limited, a company organized under the laws of the Cayman Islands.

"SanDisk Purchase and Supply Agreement" means the Purchase and Supply Agreement, dated as of the Effective Date, between SanDisk International and Flash Partners.

"Subsidiary" of any Person means any other Person:

(i) more than 50% of whose outstanding shares or securities (representing the right to vote for the election of directors or other managing authority) are, or

(ii) which does not have outstanding shares or securities (as may be the case in a partnership, joint venture or unincorporated association), but more than 50% of whose ownership interest representing the right to make decisions (equivalent to those generally reserved for the board of directors of a corporation) for such other Person is,

now or hereafter owned or controlled, directly or indirectly, by such Person, but such other Person shall be deemed to be a Subsidiary only so long as such ownership or control exists; provided, however, that the term Subsidiary as used in any FP Operative Document, when used in relation to a Party or any of its Affiliates, shall not include Flash Partners or any of its Subsidiaries.

"Tax" or "Taxes" means all United States or Japanese Federal, state, local or other political subdivision and foreign taxes, assessments and other governmental charges, including: (a) taxes based upon or measured by gross receipts, income, profits, sales, use or occupation and (b) value added, ad valorem, transfer, franchise, withholding, payroll, employment, excise or property taxes, together with (c) all interest, penalties and additions imposed with respect to such amounts and (d) any obligations under any agreements or arrangements with any other Person with respect to such amounts.

"Toshiba" means Toshiba Corporation, a Japanese corporation.

"Toshiba Foundry Facility" means the Yokkaichi Facility, excluding the Y3 Facility and the FVC Japan Equipment but including Toshiba's Asahi facility and Toshiba's Oita facility.

"Toshiba Foundry NAND Flash Memory Products" means NAND Flash Memory Products manufactured at a Toshiba Foundry Facility.

"Toshiba-SanDisk Services Agreement" mean Amendment No. 1 to Services Agreement, dated as of the Effective Date, between SanDisk Corporation and Toshiba.

"Toshiba Purchase and Supply Agreement" means the Purchase and Supply Agreement, dated as of the Effective Date, between Toshiba and Flash Partners.

"Transfer" means any transfer, sale, assignment, conveyance, creation of any Lien (other than a Permitted Lien), or other disposal or delivery, including by dividend or distribution, whether made directly or indirectly, voluntarily or involuntarily, absolutely or conditionally, or by operation of law or otherwise.

"Unique Activities" means production activities of Flash Partners at the request of either Unitholder to (i) implement changes in the manufacturing processes to be employed for Products to be manufactured for such Unitholder (or its Affiliates) that are not agreed to by the other Unitholder, (ii) commence manufacturing other Products for the requesting Unitholder (or its Affiliates) that the other Unitholder does not desire to have manufactured for it and which require a change in manufacturing processes or in the utilization of the Facility or production resources, or (iii) implement any other change in its operations in order to manufacture Products specifically for the requesting Unitholder (or its Affiliates).

"Unitholder" means the holder of any Units.

"Units" means the units of contribution (shussi mochibun) in Flash Partners, the par value of one Unit (shussi-hitokuchi-no-kingaku) being JPY 5,000.

"US GAAP" means generally accepted accounting principles in the United States as in effect from time to time, consistently applied.

"US GAAS" means generally accepted auditing standards in the United States as in effect from time to time.

"Y3 Facility" has the meaning given in the Master Agreement.

"Y3 NAND Flash Memory Products" has the meaning given in Section 3.3 of the Master Agreement.

"Yokkaichi Facility" means Toshiba's facilities in Yokkaichi Japan, including the FVC Japan Equipment, the Y3 Facility and Toshiba's Asahi facility.

Rules of Construction and Documentary Conventions

2.1 Amendment and Waiver. No amendment to or waiver of this Agreement shall be effective unless it shall be in writing, identify with specificity the provisions of this Agreement that are thereby amended or waived and be signed by each party hereto. Any failure of a party to comply with any obligation, covenant, agreement or condition contained in this Agreement may be waived by the party entitled to the benefits thereof only by a written instrument duly executed

and delivered by the party granting such waiver, but such waiver or failure to insist upon strict compliance with such obligation, covenant, agreement or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure of compliance.

2.2 Severability. If any provision of this Agreement or the application of any such provision is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement (except as may be expressly provided in this Agreement) or invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law, the parties hereto waive any provision of law that renders any provision of this Agreement invalid, illegal or unenforceable in any respect. The parties hereto shall, to the extent lawful and practicable, use their reasonable efforts to enter into arrangements to reinstate the intended benefits, net of the intended burdens, of any such provision held invalid, illegal or unenforceable. If the intent of the Parties for entering into the FP Operative Documents, considered as a single transaction, cannot be preserved, the FP Operative Documents shall either be renegotiated or terminated by mutual agreement of the Parties.

2.3 Assignment. Except as may otherwise be specifically provided in this Agreement, no party hereto shall Transfer this Agreement or any of its rights hereunder (except for any Transfer to an Affiliate or in connection with a merger, consolidation or sale of all or substantially all the assets or the outstanding securities of such party, which Transfer shall not require any consent of the other parties) without the prior written consent of each other party hereto (which consent may be withheld in each such other party's sole discretion), and any such purported Transfer without such consent shall be void.

2.4 Remedies.

(a) Except as may otherwise be specifically provided in this Agreement, the rights and remedies of the parties under this Agreement are cumulative and are not exclusive of any rights or remedies which the parties hereto would otherwise have.

(b) Equitable relief, including the remedies of specific performance and injunction, shall be available with respect to any actual or attempted breach of this Agreement; provided, however, in the absence of exigent circumstances, the parties shall refrain from commencing any lawsuit or seeking judicial relief in connection with such actual or attempted breach that is contemplated to be addressed by the dispute resolution process set forth in the Master Agreement and in Section 2.5 of this Appendix A until the parties have attempted to resolve the subject dispute by following said dispute resolution process to its conclusion.

(c) If the due date for any amount required to be paid under this Agreement is not a Business Day, such amount shall be payable on the next succeeding Business Day; provided that if payment cannot be made due to the existence of a banking crisis or international payment embargo, such amount may be paid within the following 30 days. If due to the occurrence of an act of God, any party is prevented from providing training, technical assistance or other similar support required to be provided to Flash Partners pursuant to this Agreement, such party shall have an additional 30 day period to make alternative arrangements to provide such support.

2.5 Arbitration. Any dispute concerning this Agreement shall be referred to the Management Committee and handled by it in accordance with the Master Agreement. If the Management Committee cannot resolve such dispute in accordance with the terms of the Master Agreement, then such dispute will be settled by binding arbitration in San Francisco, California. The dispute shall be heard by a panel of three arbitrators pursuant to the rules of the International Chamber of Commerce. The awards of such arbitration shall be final and binding upon the parties thereto. Each party will bear its own fees and expenses associated with the arbitration. Filing fees and arbitrator fees charged by the ICC shall be borne equally by the Parties.

2.6 Damages Limited. IN THE ABSENCE OF ACTUAL FRAUD, IN NO EVENT SHALL ANY PARTY BE LIABLE TO OR BE REQUIRED TO INDEMNIFY ANY OTHER PARTY OR ANY OF THEIR RESPECTIVE AFFILIATES FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL OR INDIRECT DAMAGE OF ANY KIND, (INCLUDING WITHOUT LIMITATION LOSS OF PROFIT OR DATA), WHETHER OR NOT ADVISED OF THE POSSIBILITY OF SUCH LOSS.

2.7 Parties in Interest; Limitation on Rights of Others. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their permitted successors and assigns. Nothing in this Agreement, whether express or implied, shall give or be construed to give any Person (other than the parties hereto and their permitted successors and assigns) any legal or equitable right, remedy or claim under or in respect of this Agreement, unless such Person is expressly stated in such agreement or instrument to be entitled to any such right, remedy or claim.

2.8 Table of Contents; Headings. The Table of Contents and Article and Section headings of this Agreement are for convenience of reference only and shall not affect the construction of or be taken into consideration in interpreting any such agreement or instrument.

2.9 Counterparts; Effectiveness. This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all of which counterparts shall together constitute but one and the same contract. This Agreement shall not become effective until one or more counterparts have been executed by each party hereto and delivered to the other parties hereto.

2.10 Entire Agreement. This Agreement, together with each other FP Operative Documents and the Exhibits, Schedules, Appendices and Attachments hereto and thereto, when completed, constitute the agreement of the parties to the FP Operative Documents with respect to the subject matter thereof and supersede all prior written and oral agreements and understandings with respect to such subject matter.

2.11 Construction. References in this Agreement to any gender include references to all genders, and references in this Agreement to the singular include references to the plural and vice versa. Unless the context otherwise requires, the term “party” when used in this Agreement means a party to this Agreement. References in this Agreement to a party or other Person include their respective permitted successors and assigns. The words “include”, “includes” and “including”, when used in this Agreement, shall be deemed to be followed by the phrase “without limitation”. Unless the context otherwise requires, references used in this Agreement to Articles, Sections, Exhibits, Schedules, Appendices and Attachments shall be deemed references

to Articles and Sections of, and Exhibits, Schedules, Appendices and Attachments to, this Agreement. Unless the context otherwise requires, the words "hereof", "hereby" and "herein" and words of similar meaning when used in this Agreement refer to this Agreement in its entirety and not to any particular Article, Section or provision of this Agreement. Any reference to a FP Operative Document shall include such FP Operative Document as amended or supplemented from time to time in accordance with the provisions thereof.

2.12 Official Language. The official language of this Agreement is the English language only, which language shall be controlling in all respects, and all versions of this Agreement in any other language shall not be binding on the parties hereto or nor shall such other versions be admissible in any legal proceeding, including arbitration, brought under this Agreement. All communications and notices to be made or given pursuant to this Agreement shall be in the English language.

2.13 Notices. All notices and other communications to be given to any party under this Agreement shall be in writing and any notice shall be deemed received when delivered by hand, courier or overnight delivery service, or by facsimile (if confirmed within two Business Days by delivery of a copy by hand, courier or overnight delivery service), or five days after being mailed by certified or registered mail, return receipt requested, with appropriate postage prepaid and shall be directed to the address of such party specified below (or at such other address as such party shall designate by like notice):

(a) If to SanDisk or SanDisk International:

SanDisk Corporation
140 Caspian Court
Sunnyvale, CA 94089
Telephone: (408) 542-0555
Facsimile: (408) 542-0600
Attention: President and CEO

With a copy to:

SanDisk Corporation
140 Caspian Court
Sunnyvale, CA 94089
Telephone: (408) 548-0208
Facsimile: (408) 548-0385
Attention: Vice President and General Counsel

(b) If to Toshiba:

Toshiba Corporation
Semiconductor Company
1-1 Shibaura 1-Chome
Minato-Ku, Tokyo 105-8001 Japan
Telephone: 011 81 3 3457 3362
Facsimile: 011 81 3 5444 9339
Attention: Vice President

With a copy to:

Toshiba Corporation
Semiconductor Company
Legal Affairs and Contracts Division
1-1 Shibaura 1-Chome
Minato-Ku, Tokyo 105-8001 Japan
Telephone: 011-81-3-3457-3452
Facsimile: 011-81-3-5444-9342
Attention: General Manager

(c) If to Flash Partners:

Flash Partners, Ltd.
800 Yamanoisshikicho,
Yokkaichi, Mie, Japan
Attention: President

With a copy to:

SanDisk Corporation
140 Caspian Court
Sunnyvale, CA 94089
Telephone: (408) 542-0510
Facsimile: (408) 542-0640
Attention: Chief Operating Officer

And

Toshiba Corporation
Semiconductor Company
Legal Affairs and Contracts Division
1-1 Shibaura 1-Chome
Minato-Ku, Tokyo 105-8001 Japan
Telephone: 011-81-3-3457-3452
Facsimile: 011-81-3-5444-9342
Attention: General Manager

2.14 Non Disclosure Obligations. Each party hereto agrees as follows:

(a) In this Agreement, "Confidential Information" means information disclosed in written, recorded, graphical or other tangible from which is marked as "Confidential", "Proprietary" or in some other manner to indicate its confidential nature, and/or orally or in other intangible form, identified as confidential at the time of disclosure and confirmed as confidential information in writing within thirty (30) days of its initial disclosure.

(b) For a period of [***] from the date of receipt of the Confidential Information disclosed by one Party (the "Disclosing Party") hereunder, the receiving Party (the "Receiving Party") agrees to safeguard the Confidential Information and to keep it in confidence and to use reasonable efforts, consistent with those used in the protection of its own confidential information, to prevent its disclosure to third parties, except that the Receiving Party shall not be obligated hereunder in any respect to information which:

(i) is already known to the Receiving Party at the time of its receipt from the Disclosing Party as reasonably evidenced by its written records; or

(ii) is or becomes publicly available without breach of this Agreement by the Receiving Party; or

(iii) is made available to a third party by the Disclosing Party without restriction on disclosure; or

(iv) is rightfully received by the Receiving Party from a third party without restriction and without breach of this Agreement; or

(v) is independently developed by the Receiving Party as reasonably evidenced by its written records contemporaneous with such development; or

(vi) is disclosed with the prior written consent of the Disclosing Party, provided that each recipient from the Receiving Party shall execute a confidentiality agreement prohibiting further disclosure of the Confidential Information, under terms no less restrictive that those provided in this Agreement; or

(vii) is required to be disclosed by the order of a governmental agency or legislative body of a court of competent jurisdiction, provided that the Receiving Party shall give the Disclosing Party prompt notice of such request so that the Disclosing Party has an opportunity to defend, limit or protect such disclosure; or

(viii) is required to be disclosed by applicable securities of other laws or regulations, provided that SanDisk shall, prior to any such disclosure required by the U.S. Securities and Exchange Commission, provide Toshiba with notice which includes a copy of the proposed disclosure. Further, SanDisk shall consider Toshiba's timely input with respect to the disclosure.

(c) Receiving Party shall use its reasonable best efforts to limit dissemination of the Disclosing Party's Confidential Information to such of its employees who have a need to know such information for the purpose for which such information was disclosed to it. Receiving Party understands that disclosure or dissemination of the Disclosing Party's Confidential Information not expressly authorized hereunder would cause irreparable injury to the Receiving Party, for which monetary damages would not be an adequate remedy and the Disclosing Party shall be entitled to equitable relief in addition to any remedies the Disclosing Party may have hereunder or at law.

(d) Nothing contained in this Agreement shall be construed as granting or conferring any rights, licenses or relationships by the transmission of the Confidential Information.

(e) All Confidential Information disclosed hereunder shall remain the property of the Disclosing Party. Upon request by the Disclosing Party, the Receiving Party shall return all Confidential Information, including any and all copies thereof, or certify in writing that all such Confidential Information had been destroyed.

2.15 Definitions. The definitions set forth in Article I of this Appendix A shall apply to this Article II.

**EXHIBIT 10.20**

CERTAIN CONFIDENTIAL PORTIONS HAVE BEEN REDACTED FROM THIS EXHIBIT BECAUSE THEY ARE BOTH (i) NOT MATERIAL AND (ii) A TYPE THE REGISTRANT TREATS AS PRIVATE OR COFIDENTIAL. INFORMATION THAT HAS BEEN OMITTED HAD BEEN IDENTIFIED IN THIS DOCUMENT WITH A PLACEHOLDER IDENTIFIED BY THE MARK "[***]".

# OPERATING AGREEMENT OF FLASH PARTNERS LTD.

Dated as of September 10, 2004

between

TOSHIBA CORPORATION

and

SANDISK INTERNATIONAL LIMITED

TABLE OF CONTENTS

TABLE OF CONTENTS
(continued)

OPERATING AGREEMENT of FLASH PARTNERS LTD., a Japanese limited liability company (yugen kaisha), dated as of September 10, 2004, between TOSHIBA CORPORATION, a Japanese corporation ("Toshiba"), and SANDISK INTERNATIONAL LIMITED, a company organized under the laws of the Cayman Islands ( "SanDisk").

WHEREAS, Flash Partners Ltd. (the "Company") is a Japanese limited company (yugen kaisha);

WHEREAS, pursuant to that certain Unit Purchase Agreement, dated as of the date hereof, by and between SanDisk and Toshiba, concurrently with the execution hereof, SanDisk has acquired from Toshiba 998 units par value Y5,000 per unit of contribution (shussi mochibun) in the Company ("Units"), representing 49.9% of all issued and outstanding Units;

WHEREAS, Toshiba holds the remaining 1,002 Units, representing 50.1% of all issued and outstanding Units; and

WHEREAS, SanDisk and Toshiba (each a "Unitholder") desire to enter into this Operating Agreement in order to provide, subject to the Japan Act and the Articles of Incorporation of the Company (as amended from time to time, the "Articles") for (i) the business of the Company, (ii) the conduct of the Company's affairs and (iii) the rights, powers, preferences, limitations and responsibilities of the Company's Unitholders, employees and Directors.

Accordingly, Toshiba and SanDisk agree as follows:

1. DEFINITIONS, RULES OF CONSTRUCTION AND DOCUMENTARY CONVENTIONS

1.1 Certain Definitions.

(a) Capitalized terms used but not defined in the main body of this Agreement shall have the respective meanings assigned to them in that certain Flash Partners Master Agreement, dated as of the date hereof, among SanDisk International Limited, SanDisk Corporation and Toshiba (the "Master Agreement") or in Appendix A to the Master Agreement.

(b) As used herein, the term "Agreement" means this Operating Agreement together with any Exhibits, Schedules, Appendices and Attachments hereto.

1.2 Additional Definitions. The following capitalized terms used in this Agreement shall have the respective meanings assigned in the sections indicated below:

| Term | Defined in |
|---|---|
| "Appendix A" | Recitals |
| "Articles" | Recitals |
| "Bankruptcy Event" | Section 11.1(f) |
| "Claim" | Section 12.4(a) |
| "Company" | Recitals |
| "Deadlock" | Section 10.3(c) |
| "Deadlock Dissolution Notice" | Section 10.3(e) |
| "Defaulting Unitholder" | Section 10.4 |
| "Designated Individuals" | Section 10.3(b) |
| "Director(s)" | Section 3.5(a) |
| "Executive Vice President" | Section 5.2(a) |
| "General Meeting of Unitholders" | Section 4.1(b) |
| "Indemnified Party" | Section 12.4(a) |
| "Indemnifying Party" | Section 12.4(a) |
| "Initiating Unitholder" | Section 10.3(e) |
| "Losses" | Section 12.1(a) |
| "Master Agreement" | Section 1.1(a) |
| "Nondefaulting Unitholder" | Section 10.4 |
| "Notified Party" | Section 11.5 |
| "Notifying Party" | Section 11.5 |
| "Permissible Assignee" | Section 9.1(c) |
| "Permissible Assignment Agreement" | Section 9.1(c) |
| "President" | Section 5.2(a) |
| "Responding Unitholder" | Section 10.3(e) |
| "SanDisk Representative" | Section 5.3(a) |
| "Termination Date" | Section 11.4 |
| "Toshiba Representative" | Section 5.3(a) |
| "Units" | Recitals |
| "Unitholder" | Recitals |
| "Y3 Operating Committee" | Section 5.3(a) |

1.3 Rules of Construction and Documentary Conventions. The rules of construction, documentary conventions and general terms and conditions set forth in Appendix A shall apply to, and are hereby incorporated in, this Agreement.

2. GENERAL PROVISIONS

2.1 Ownership of Units; Capital Increase.

(a) The rights and obligations of the Unitholders shall be as set forth herein, subject to the Articles and mandatory provisions of the Japan Act.

(b) The Unitholders shall effect the capital increases in the amounts and at the times stipulated in Schedule 2.1(b).

2.2 Name. The name of the Company is "Flash Partners Yugen Kaisha," which translates to "Flash Partners Ltd." in English, and all Company business shall be conducted in that name or such other name as the Unitholders shall mutually agree.

2.3 Principal Office. The principal office of the Company shall be located in Yokkaichi, Mie, or such other place as the Unitholders shall mutually agree.

2.4 Term; Extension. The Company shall be terminated on December 31, 2019, unless extended by mutual written agreement of all of the Unitholders or earlier terminated in accordance with Section 11 (Dissolution). Any such extension shall be effective only upon the written agreement of all of the Unitholders and shall be on such terms and for such period as set forth in such agreement. The Unitholders agree to meet, no later than December 31, 2018, to discuss the possible extension of the term of the Company.

2.5 Scope of Activity. The scope of activity of the Company shall be as set forth in Section 3.1 (Purpose) and 6.5 (Capacity Sharing Arrangement) of the Master Agreement.

2.6 Powers. The Company shall have all the powers now or hereafter conferred by applicable law on limited liability companies formed under the Japan Act and may do any and all acts and things necessary, incidental or convenient to the purpose specified in Section 2.5 (Scope of Activity).

2.7 Articles of Incorporation. On the date hereof and immediately following the execution of this Agreement, the Unitholders shall hold a general meeting of the Unitholders and, among other matters agreed between them, vote their Units to amend the Articles so that they will be in the form of Exhibit A. In the event of any conflict between this Agreement and the Articles, the Unitholders confirm their intent that the terms of this Agreement shall prevail, and on the request of either Unitholder, the Unitholders shall amend the Articles to conform with this Agreement to the extent legally possible; provided that the inability to implement such amendment shall not relieve any Unitholder from liability for any breach of its obligations hereunder.

2.8 Company Actions. The Unitholders hereby authorize the Company, and ratify (including for purposes of Section 4.1 (Matters Requiring the Approval of the Unitholders)) all action having been taken by or on behalf of the Company (including by its Unitholders and Directors) prior to the date hereof, to execute and deliver the FP Operative Documents to which it is a party, including all certificates, agreements and other documents required in connection therewith.

3. BUSINESS OPERATIONS

3.1 Business Dealings with the Company. Subject to Sections 4.1(a) (Matters Requiring the Approval of the Unitholders) and 5.1(d) (Matters Requiring the Approval of the Board of Directors), the Company may enter into contracts or agreements, or otherwise enter into transactions or dealings, with any Unitholder or any of their respective Affiliates, and derive and retain profits therefrom. The validity of any such contract, agreement, transaction or dealing or any payment or profit related thereto or derived therefrom shall not be affected by any relationship between the Company and any Unitholder or any of their respective Affiliates, subject to the Japan Act. The Unitholders agree that where practicable and contractually allowable (based on competitive price, availability and other material terms), the Board of Directors will consider whether to utilize any Unitholder or any of their respective Affiliates as the preferred providers of products and services that may be required in the manufacturing operations of the Company, subject to the ability of such Unitholder or Affiliate to meet the Company's manufacturing requirements on competitive terms. Unless otherwise approved by the Unitholders or otherwise expressly provided in the FP Operative Documents, all business dealings of the Company with any Unitholder or any of their respective Affiliates shall be on the most beneficial standard commercial terms and conditions, including volume, price and credit terms, currently offered or made available to unaffiliated customers by such Unitholder or Affiliate, as the case may be, with respect to the products and services to be offered and provided to the Company.

3.2 Other Activities. The provisions of Section 6.11 (Other Activities) of the Master Agreement are hereby incorporated herein by reference.

3.3 Personnel. The provisions of Section 6.8 (FP Secondees) of the Master Agreement are hereby incorporated herein by reference.

3.4 Business Plans and Related Matters.

(a) Initial and Subsequent Business Plans. The initial Business Plan of the Company, setting forth the Company's products, pricing, operating budget, capital expenditures, expense budgets, financing plans and other business activities of the Company through [***], will be agreed upon and certified by the Board of Directors as soon as practicable after the Closing.

(i) The initial Business Plan and each successive Business Plan will, at the time such Business Plan is in effect, represent the Company's then-current forecast of the proposed operations of the Company.

(ii) An updated Business Plan complying with Section 3.4(b) (Form and Scope) in respect of each successive Fiscal Year after the Fiscal year ending [***] shall be prepared under the direction of the Chief Executive Officer of the Company and submitted to the Board of Directors for review and approval not later than the [***] preceding the commencement of such Fiscal Year.

(iii) When the proposed Business Plan in respect of a Fiscal Year is approved by the Board of Directors, it shall constitute the Business Plan of the Company for such Fiscal Year and the Company and its directors and employees shall implement such Business Plan, which shall be the basis of the Company's operations for such Fiscal Year. Upon approval, the approved Business Plan shall constitute the approved operational, financing and capital expenditure budget. The Board of Directors shall have the authority pursuant to Section 5.1(d) (Matters Requiring the Approval of the Board of Directors) to amend the most recently approved Business Plan, including the operating budget contained therein, and any Unitholder may request that the Board of Directors review the Company's operating results and prospects, as well as market conditions, and consider a proposal for amendment or review of the most recently approved Business Plan at any regularly scheduled or special meeting of the Board of Directors and upon such request, the Board of Directors shall in good faith make such review and/or consider such proposal.

(b) Form and Scope. Each Business Plan shall contain a statement of long-range strategy and short-range tactics detailing quantitative and qualitative goals for the Company and relating the attainment of those goals to the Company's manufacturing objectives, and shall include such items as planned capital expenditures, planned product development, planned product output and projected product cost, sales forecasts, total headcount, total spending and revenue and profit projections, financing plans and tax planning. No Business Plan shall be deemed to be an amendment of this Agreement. Any capital commitments made in any Business Plan for a period after the Fiscal Year to which the Business Plan applies shall be considered non-binding for purposes of any FP Operative Document.

(c) Approval. Other than the initial Business Plan (which shall be approved in accordance with Section 3.4(a)), the Board of Directors shall vote upon the proposed Business Plan, with such modifications as it may deem necessary, before [***] preceding the commencement of each Fiscal Year. Subject to Sections 10.3(c), (e) and (f) (Dispute Resolution; Deadlock), pending approval by the Board of Directors of any proposed Business Plan, the most recently approved Business Plan shall continue in effect; provided, however, the Board of Directors may, by unanimous vote, adopt an amended interim business plan for the Company's operations until it is able to reach agreement on the proposed Business Plan for the forthcoming year.

3.5 Standard of Care.

(a) Each Unitholder, and each director of the Company, as defined in the Japan Act (each, a "Director"), shall be entitled to rely (unless such Person has knowledge or information concerning the matter in question that makes reliance unwarranted) on information, opinions, reports or statements, including financial statements and other financial data, if prepared or presented by:

(i) one or more managers or employees of the Company who such Unitholder or Director believes in good faith to be reliable and competent in the matters presented; or

(ii) legal counsel, public accountants or other Persons as to matters that such Unitholder or Director believes to be within such Person's professional or expert competence.

(b) Each Unitholder shall also be entitled to rely upon information, opinions, reports or statements, including financial statements and other financial data, prepared or presented by the Board of Directors pursuant to the responsibilities delegated to the Board of Directors pursuant to this Agreement.

3.6 Use of Names. Except as may be expressly provided in the FP Operative Documents, nothing in this Agreement shall be construed as conferring on the Company or any Unitholder the right to use in advertising, publicity or other promotional activities any name, trade name, trademark or other designation of any other Unitholder or any of its Affiliates, including any contraction, abbreviation or simulation of any of the foregoing.

4. ACTIONS BY THE UNITHOLDERS

4.1 Matters Requiring the Approval of the Unitholders.

(a) Notwithstanding any provision of the Articles to the contrary, no action shall be taken by or on behalf of the Company in connection with any of the following matters without the prior unanimous written approval of the Unitholders:

(i) any amendment, restatement or revocation of the Articles;

(ii) any amendment to or renewal of any FP Operative Document between the Company and any Unitholder or any of their respective Affiliates;

(iii) any change in the scope of activity or strategic direction of the Company's business;

(iv) any merger, consolidation or other business combination to which the Company or any of its Subsidiaries is a party, or any other transaction to which the Company is a party resulting in a Change of Control of the Company;

(v) any sale, lease, pledge, assignment or other disposition of assets of the Company in an amount (in terms of consideration to be received by the Company) in excess of ¥5,000,000 in one transaction or a series of related transactions, other than as expressly provided for in the FP Operative Documents or as set forth in the most recently approved Business Plan;

(vi) the approval of any transaction or agreement between the Company and any Unitholder or any of their respective Affiliates (other than transactions or agreements expressly provided for or authorized by an FP Operative Document or

the most recently approved Business Plan) or any amendment thereto (including the waiver of any material term thereof), other than any such transaction, agreement or amendment that contains generally available, arm's length commercial terms and is in an amount (in terms of payments to be made or the value of services or products to be provided or delivered) less than Y5,000,000 for any single transaction or agreement or for substantially identical transactions within a 24 month period (or a waiver that does not materially adversely affect the rights and benefits of the Company), other than as set forth in the most recently approved Business Plan;

(vii) incurring Indebtedness in an amount in excess of Y1,000,000 or an increase in aggregate Indebtedness in excess of Y1,000,000 in any calendar quarter, other than as authorized by Section 5.1(d) (Matters Requiring the Approval of the Board of Directors);

(viii) with respect to the Company or any of its Subsidiaries, (A) the voluntary commencement of any proceeding or the voluntary filing of any petition seeking relief under Japanese or foreign bankruptcy, insolvency, receivership or similar law, (B) the consent to the institution of, or the failure to contest in a timely and appropriate manner, any involuntary proceeding or any involuntary filing of any petition of the type described in clause (A) above, (C) the application for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for the Company, or for a substantial part of its property or assets, (D) the filing of an answer admitting the material allegations of a petition filed against the Company in any such proceeding described above, (E) the consent to any order for relief issued with respect to any such proceeding described above, (F) the making of a general assignment for the benefit of creditors, (G) the admission in writing of the Company's inability, or the failure of the Company generally, to pay its debts as they become due or (H) the taking of any action for the purpose of effecting any of the foregoing;

(ix) subject to Section 9.1(a) and Appendix A, the granting of consent to the transfer of any Units;

(x) the winding up, dissolution or liquidation of the Company or any of its Subsidiaries (other than the dissolution of the Company pursuant to and as contemplated by Section 11 (Dissolution));

(xi) the acquisition of any business, entry into any joint venture or partnership, or creation of any direct or indirect Subsidiary of the Company;

(xii) the commitment of the Company to any development project;

(xiii) the sale, license, assignment or other Transfer of any of the Company's intellectual property owned or in its possession (including any technology or know-how, whether or not patented, any trademark, trade name or service mark, any copyright or any software or other method or process);

(xiv) any increase or decrease in the capital amount of the Company, whether by increasing the number of the Units or increasing the par value per Unit or otherwise; and

(xv) any other matter material to the operation, staffing, business or financial condition of the Company.

(b) Each Unitholder may exercise its vote by proxy; provided, that such proxy shall submit to the Company, prior to the relevant General Meeting of Unitholders, as defined in the Japan Act (the "General Meeting of Unitholders"), a power of attorney duly signed by the Unitholder and/or other document establishing its power of representation; and provided, further, that the conferment of the power of proxy for one General Meeting of Unitholders shall not be deemed to be a conferment of the power of proxy for any subsequent General Meeting of Unitholders.

(c) Notwithstanding the requirements of Section 4.1(a) (Matters Requiring the Approval of the Unitholders) relating to agreements between the Company and any Unitholder or any of their respective Affiliates, any question regarding a material default or alleged material default (including any question regarding a breach of representation or alleged breach of representation) under any FP Operative Document between the Company and any Unitholder or any of their respective Affiliates shall be subject to the dispute resolution process set forth in Sections 10.3(a) and (b) (Dispute Resolution; Deadlock).

4.2 General Meetings of Unitholders.

(a) An annual General Meeting of Unitholders shall be held within three (3) months from the date immediately following the last day of each Fiscal Year of the Company. A special General Meeting of Unitholders may be held at any time and may be called by a resolution of the Board of Directors or in any other manner permitted by the Japan Act or the Articles. All General Meetings of Unitholders shall be called and held in accordance with the Articles and the Japan Act. The General Meetings of Unitholders may be held at the Company's principal office or at any other location, or, if all the Unitholders agree, and to the extent then permitted by the Japan Act, by telecommunications conferences by means of which all persons participating in the meeting can hear and be heard by each other, provided that such communications equipment continues to be operational throughout the meeting. To the extent then permitted by the Japan Act, the Unitholders may by unanimous written consent effect any resolution that could otherwise be resolved at a meeting of the Unitholders.

(b) Except as otherwise provided in this Agreement, each Unitholder shall be entitled to one vote for each Unit owned by such Unitholder.

(c) The minutes of every General Meeting of Unitholders shall be kept with the Company's records referred to in Section 5.5 (Records).

(d) The quorum necessary for any General Meeting of Unitholders shall be those Persons entitled to cast all of the votes held by the Unitholders. A quorum shall be deemed not to

be present at any meeting for which notice was not properly given under the Articles or the Japan Act, unless the Unitholder as to whom such notice was not properly given attends such meeting without protesting the lack of notice or duly executes and delivers a written waiver of notice or a written consent to the holding of such meeting.

4.3 Restrictions on Unitholders. No Unitholder may, without the prior written consent of the other Unitholder:

(a) confess any judgment against the Company;

(b) enter into any agreement on behalf of or otherwise purport to bind the other Unitholder or the Company;

(c) do any act in contravention of this Agreement;

(d) except as contemplated by Section 11 (Dissolution), dispose of the goodwill or the business of the Company; or

(e) assign the property of the Company in trust for creditors or on the assignee's promise to pay any Indebtedness of the Company.

5. MANAGEMENT AND OPERATIONS OF COMPANY

5.1 Meetings of the Board of Directors.

(a) General. Except as otherwise provided herein, the Board of Directors is vested with complete and exclusive power to direct and control the Company and to manage the Company as provided by the Articles and this Agreement, as it may be amended from time to time. The Board of Directors shall have the power to delegate such responsibilities as it may deem appropriate from time-to-time (including certain day-to-day responsibilities set forth in Section 5.2 (Officers; Employees) and Section 5.3 (Y3 Operating Committee)).

(b) Members of the Board of Directors; Voting; etc.

(i) The Board of Directors of the Company shall consist of six (6) Directors, three (3) of which shall be nominated by Toshiba, and the other three (3) of which shall be nominated by SanDisk; provided that the total number of Directors of the Company may be changed by mutual agreement of the Unitholders. Each Unitholder shall vote its Units to elect as Directors those persons nominated by the other Unitholder.

(ii) Directors shall be elected to serve until complete adjournment of the annual meeting of Unitholders for the fiscal year last to end within one (1) year after his or her assumption of the directorship, and shall be eligible for re-election.

(iii) Subject to the fiduciary duty of Directors under the Japan Act, each Director shall serve at the pleasure of the designating Unitholder and may be removed as such,

with or without cause, and his successor designated, by the designating Unitholder. Each Unitholder shall have the right to designate a replacement Director in the event of any vacancy among such Unitholder's appointees. Each Unitholder shall vote its Units in favor of any such removal and in favor of any such replacement Director.

(iv) Each Unitholder shall bear any cost incurred by any Director nominated by it to serve on the Board of Directors, and no Director shall be entitled to compensation from the Company for serving in such capacity.

(v) Each Unitholder shall notify the other Unitholder and the Company of the name, business address and business telephone,e-mail address and facsimile numbers of each Director that such Member has nominated to the Board of Directors. Each Unitholder shall promptly notify the other Unitholder and the Company of any change in such Unitholder's nominated or of any change in any such address or number.

(vi) For purposes of any approval or action taken by the Board of Directors, each Director shall have one vote. Unless otherwise required under Japanese law, unanimous agreement is required for valid action to be taken by the Board of Directors.

(vii) At any meeting of the Board of Directors, each Director may exercise his vote by proxy; provided, that such proxy shall submit to the Company, prior to the relevant meeting, a power of attorney duly signed by the Director and/or other document establishing its power of representation; and provided, further, that the conferment of the power of proxy for one meeting of the Board of Directors shall not be deemed to be a conferment of the power of proxy for any subsequent meeting of the Board of Directors.

(viii) The quorum necessary for any meeting of the Board of Directors shall be those Directors entitled to cast all of the votes held by the members of the Board of Directors. A quorum shall be deemed not to be present at any meeting for which notice was not properly given under Section 5.1(c) (Meetings, Notices, etc.), unless the Director or Directors as to whom such notice was not properly given attend such meeting without protesting the lack of notice or duly execute and deliver a written waiver of notice or a written consent to the holding of such meeting.

(c) Meetings, Notice, etc. Meetings of the Board of Directors shall be held at such location or locations as may be selected by the Board of Directors from time to time.

(i) Regular meetings of the Board of Directors shall be held on such dates and at such times as shall be determined by the Board of Directors and shall be held at least on a quarterly basis, unless otherwise agreed by the Directors.

(ii) Notice of any regular meeting or special meeting pursuant to Section 5.1(c)(iii) shall be given to each Director at least ten (10) Business Days prior to such meeting in the case of a meeting in person or at least five (5) Business Days prior to such meeting in the case of a meeting by conference telephone or similar communications equipment pursuant to Section 5.1(c)(vii), which notice shall state the purpose or purposes for which such meeting is being called and include any supporting documentation relating to any action to be taken at such meeting.

(iii) Special meetings of the Board of Directors may be called by any Director by notice given in accordance with the notice requirements set forth in Section 5.1(c)(ii); provided that the Directors appointed by the Unitholder that is not represented by the Director calling such special meeting shall be entitled to select a convenient location for the meeting and to suggest an alternative time or times if the designated time is not convenient for them. No action may be taken and no business may be transacted at such special meeting which is not identified in such notice unless (A) such action or business is incidental to the action or business for which the special meeting is called or (B) such action or business does not materially adversely affect any Unitholder or the Company.

(iv) Each Unitholder may invite a reasonable number of observers to all meetings of the Board of Directors.

(v) The minutes of each meeting of the Board of Directors shall be delivered to all Directors within twenty (20) calendar days after such meeting. Material to be presented at a Board of Directors meeting shall be delivered to all Directors ten (10) Business Days prior to such meeting if feasible in light of the circumstances giving rise to the need for such meeting, or in any event a minimum of five (5) Business Days prior to such meeting.

(vi) The actions taken by the Board of Directors at any meeting, however called and noticed, shall be as valid as though taken at a meeting duly held after regular call and notice if (but not until), either before, at or after the meeting, each Director as to whom such meeting was improperly held duly executes and delivers a written waiver of notice or a written consent to the holding of such meeting; provided, however, any Director who is present at a meeting and does not protest the failure of notice shall be deemed to have received adequate notice thereof. A vote of the Board of Directors may be taken only (A) at a meeting of the members thereof duly called and held or (B) without a meeting by the execution by the Directors eligible to cast all the votes on the Board of Directors of a consent setting forth the action so taken, and identified as a unanimous written consent of the Directors.

(vii) Upon the consent of all Directors, a meeting of the Board of Directors may be held by conference telephone or similar communications equipment by means of which all Directors participating in the meeting can be heard by all other participants; provided that such communications equipment continues to be operational throughout the meeting. Any Director may elect to participate in a

meeting by conference telephone or similar communications equipment upon sufficient advance notice to permit arrangements therefor to be made.

(viii) At each meeting, the Board of Directors shall consider (A) any of the items set forth in Section 5.1(d) (Matters Requiring the Approval of the Board of Directors) that may require the Board of Directors' attention, (B) any items added to the Board of Directors' agenda for discussion by any Unitholder and (C) such other matters as the Board of Directors decides to review; provided, however, that the Directors shall not be required to vote or take other action (other than carrying on discussions) on matters that were not placed on the meeting agenda at least five (5) Business Days in advance of the time set for the meeting unless such action or business is incidental to the action or business which was otherwise properly on the agenda and considered at such meeting.

(ix) The Board of Directors shall, from time to time, elect one of its members to preside at its meetings. The Board of Directors may establish reasonable rules and regulations to (A) require officers to call meetings and perform other administrative duties, (B) limit the number and participation of observers, if any, and require them to observe confidentiality obligations and (C) otherwise provide for the keeping and distribution of minutes and other internal Board of Directors governance matters not inconsistent with the terms of this Agreement.

(x) Subject to the Japan Act, the Board of Directors shall have the authority to establish subcommittees and to delegate to any such subcommittee any of the Board of Directors' responsibilities; provided, however, the power of the Board of Directors to approve the matters set forth in Section 5.1(d) (Matters Requiring the Approval of the Board of Directors) may not be delegated to a subcommittee.

(d) Matters Requiring the Approval of the Board of Directors. Notwithstanding any provision of the Articles to the contrary, no action may be taken by or on behalf of the Company in connection with any of the following matters without the unanimous written approval of the Board of Directors:

(i) any sale, lease, pledge, assignment or other disposition of assets of the Company in an amount (in terms of consideration to be received by the Company) in excess of Y1,000,000 in one transaction or a series of related transactions, other than as set forth in the most recently approved Business Plan;

(ii) the approval of any transaction or agreement between the Company and any Unitholder or any of their respective Affiliates (other than transactions or agreements expressly provided for or authorized by an FP Operative Document or the most recently approved Business Plan) or any amendment thereto (including the waiver of any material term thereof), other than any such transaction, agreement or amendment that contains generally available, arm's length commercial terms and is in an amount (in terms of payments to be made or the value of services or products to be provided or delivered) less than Y1,000,000 for any single transaction or agreement or for substantially identical transactions

within a 24 month period (or a waiver that does not materially adversely affect the rights and benefits of the Company), other than as set forth in the most recently approved Business Plan;

(iii) the purchase, lease, license or other acquisition of (A) personal property or services or (B) any list of capital equipment approved by the Unitholders, in each case in an amount (in terms of payments to be made or the value of services of products to be provided or delivered) exceeding Y1,000,000 in any one transaction or a series of related transactions, other than as provided for in the most recently approved Business Plan;

(iv) the selection of attorneys, accountants, auditors and financial advisors;

(v) the adoption of accounting and tax policies, procedures and principles;

(vi) incurring any Indebtedness;

(vii) the hiring or termination of any employees referenced in Section 5.2(a) (Officers; Employees) who are not FP Secondees, if any;

(viii) the adoption of or changes to the forms of confidentiality, assignment or disclosure of intellectual property or employment agreements to be entered into between the Company and its employees;

(ix) the adoption of or changes to any employee benefit plan, including any incentive compensation plan;

(x) the amount and timing of any distributions;

(xi) the commencement or settlement of litigation by or against the Company;

(xii) the purchase, sale or lease (as lessor or lessee) of any real property;

(xiii) any acquisition of securities or any other ownership interest in any entity;

(xiv) the making of any public announcements by or on behalf of the Company; provided, that in any case any such public announcements must otherwise comply with the requirements of Section 5.2 (Public Announcements) of the Master Agreement, if applicable;

(xv) the entry into or amendment of any collective bargaining arrangements or the waiver of any material provision or requirement thereof;

(xvi) the approval of a proposed Business Plan, or the amendment to the most recently approved Business Plan, in each case including the operating budget contained therein;

(xvii) the incurrence of capital expenditures in excess of those provided for in the most recently approved Business Plan or the commitment of the Company to any development projects other than as provided for in the most recently approved Business Plan;

(xviii) subject to Section 5.1(c)(x), the establishment of any subcommittees or delegation of authority of the Board of Directors;

(xix) the authorization and approval of any filing with, public comments to, or negotiation/discussion with, any Governmental Authority (excluding regular operating filings and other routine administrative matters);

(xx) the approval of Unique Activities to be performed by the Company at the request of any Unitholder, in connection with which the Board of Directors shall be satisfied that such Unitholder has reached agreement with the Company as to the payment by such Unitholder of all costs incurred in connection with such Unique Activities and that adequate provision has been made by such Unitholder for the funding of any additional required capital expenditures required in conjunction with such Unique Activities;

(xxi) the decision of the Company to negotiate external sources of additional wafer fabrication capacity for NAND Flash Memory Products;

(xxii) any dispute referred to the Board of Directors by the Y3 Operating Committee pursuant to Section 5.3(b); and

(xxiii) such other matters as the Board of Directors decides, in its sole discretion, to review.

5.2 Officers; Employees.

(a) Unless otherwise mutually agreed by the Unitholders, the Directors of the Company with specific titles shall be designated as: the Representative Director/President/Chief Executive Officer ("President") and the Representative Director/Executive Vice President ("Executive Vice President"). The President and Executive Vice President shall be elected by the Board of Directors and serve three successive one-year terms, with the first such set of terms ending at complete adjournment of the annual meeting of Unitholders for the fiscal year last to end within one (1) year after his or her assumption of the officership. Toshiba shall have the right to nominate the first President and SanDisk shall have the right to nominate the first Executive Vice President, and then the Unitholders will then alternate such nominating rights for each three year term for such positions. Each nominee for the President and for the Executive Vice President shall be subject to the consent of the non-nominating Unitholder, which consent shall not unreasonably be withheld. In addition to the President and Executive Vice President, the Board of Directors may appoint such other officers from time to time as it deems necessary or advisable in the conduct of the business and affairs of the Company. Any individual may hold more than one office.

(b) The President shall have the authority to retain other senior management of the Company, subject to the prior approval of the Board of Directors.

(c) The Company shall have agreements with and policies applicable to each of its officers, employees and consultants who are not FP Secondees, in forms acceptable to each Unitholder, and shall also have appropriate arrangements with its FP Secondees, in each case with respect to (i) protection of confidential information, (ii) patent and copyright assignment, (iii) invention disclosure (including improvements and advances) and assignments thereof and (iv) in respect of certain employees who are not FP Secondees, non-competition.

5.3 Y3 Representatives; Y3 Operating Committee.

(a) The Company shall have an Operating Committee for Y3 Facility operations (the "Y3 Operating Committee") consisting of the general manager of Y3 Facility, who Toshiba shall cause to be the deputy general manager of the Yokkaichi Facility (the "Toshiba Representative"), and a SanDisk representative, who shall represent SanDisk on a day-to-day basis at the Y3 Facility (the "SanDisk Representative"). SanDisk and Toshiba shall each have the sole right to appoint the SanDisk Representative and the Toshiba Representative, respectively; provided that each Unitholder shall notify the other Unitholder in advance of any replacement of its representative. If a Unitholder requests in good faith that the other Unitholder's representative be replaced with another person from the other Unitholder's organization, the other Unitholder shall consider and discuss in good faith with the requesting Unitholder such request, provided that such replacement, if any, shall be determined solely by such other Unitholder. [***]

(b) The Y3 Operating Committee shall work together and endeavor to make the Y3 Facility the most advanced and competitive memory fabrication facility in the world. The Y3 Operating Committee shall have the authority to determine all matters concerning the day-to-day operations of the Company and the Y3 Facility, subject to those matters reserved herein to the Board of Directors or the Unitholders as well as to the requirements of this Agreement, the Articles and the Japan Act. The Y3 Operating Committee shall communicate on a day-to-day basis with respect to the status of Y3 Facility operations and any other issues that may arise, and shall meet in person no less than two (2) times per week, or such other times and frequency as may be agreed upon by all members of such committee. If the members of the Y3 Operating Committee are unable to agree on any issue after thirty (30) days, they shall submit such matter together with their respective recommendations to the Board of Directors, which shall endeavor to immediately resolve the issue. If the Board of Directors is unable to agree on any such issue after ten (10) days, such issue shall be submitted to the Management Committee for final resolution.

(c) The Y3 Operating Committee shall hold a monthly review meeting in English at the Yokkaichi Facility on [***] of each calendar month, unless otherwise agreed by the Unitholders or the Y3 Operating Committee. The Y3 Operating Committee shall prepare and distribute to each Unitholder (at least three Business Days in advance of the monthly review meetings) monthly reports in English with respect to the engineering activities, operations and financial affairs of the Company and the Y3 Facility.

(d) Upon the request of either Unitholder, the Y3 Operating Committee shall provide the Unitholders with (i) any management or operation reports of the Company related to the Y3 Facility (which neither Unitholder shall have an obligation to translate) and (ii) simultaneously in Japanese and English, those management and operating reports identified on Schedule 5.3 as mutually agreed upon from time to time by the Parties. Upon reasonable request from SanDisk, Toshiba employees shall explain such reports to SanDisk's employees and respond to questions from SanDisk's employees; provided, however that SanDisk acknowledges and agrees that Toshiba shall not be responsible for SanDisk's failure to understand any such reports.

5.4 Insurance. The Company shall maintain insurance against such liabilities and other risks associated with the conduct by the Company of its business and in such amounts and against such risks as agreed by the Unitholders, and in any event as is generally maintained by companies engaged in a business similar to that of the Company.

5.5 Records. The Company shall maintain the following records at its principal office:

(a) a current list of the full name set forth in alphabetical order and last known business address of each Unitholder and Director;

(b) a copy of the Articles, and all articles of amendment thereto;

(c) a copy of this Agreement and all amendments hereto;

(d) a copy of all financial statements of the Company for the three most recent Fiscal Years;

(e) a copy of the Company's income tax or information returns and reports, if any, for the three most recent years;

(f) a copy of all indentures, loan agreements, lease agreements, guarantees, security agreements, promissory notes, licensing or other intellectual property agreements, agreements that relate to the payment or receipt by the Company of amounts in excess of Y5,000,000 or that are not terminable by the Company upon ninety (90) days notice, documents, if any, evidencing employee compensation arrangements, employee pension or other benefit arrangements, and similar documents and instruments executed and delivered by the Company;

(g) a list of all contributions made to the Company by the Unitholders; and

(h) a record of all distributions by the Company to each Unitholder.

The Unitholders and/or the Directors and/or their respective designees (which shall be limited to its employees or professional advisers subject to appropriate confidentiality obligations) shall have reasonable access to the records during normal business hours upon reasonable request. Copies of records shall be made available and delivered to the Unitholders and/or the Directors promptly after reasonable request for same, provided the requesting party pays for copy and delivery charges.

6. CAPITAL CONTRIBUTIONS; DISTRIBUTIONS

6.1 Capital Contributions.

(a) The Unitholders shall be deemed to have made Capital Contributions to the Company in the amounts set forth opposite their respective names on Schedule 6.1.

(b) Except as provided in Section 2.1(b), no Unitholder shall be obligated to make any additional Capital Contributions to the Company, unless otherwise mutually agreed upon by the Unitholders in writing, in which case such additional Capital Contributions shall be made in proportion to the Unitholders' respective Percentages as of the date of such additional Capital Contribution.

6.2 Distributions.

(a) General. Notwithstanding any provision of the Articles to the contrary, and subject to Section 11.8 (Liquidation Proceeds), unless otherwise agreed by the Unitholders, no distributions of cash (or in the case of Section 11.8, other property) shall be made by the Company to the Unitholders for a period of three (3) years from the date of this Agreement, and thereafter all distributions of cash (or, in the case of Section 11.8, other property) by the Company to the Unitholders shall be made in Japanese Yen at the times and in the amounts determined by the Board of Directors. Except as provided in Section 11.8, each distribution to the Unitholders shall be made on a pro rata basis based upon the respective Percentages of the Unitholders as of the date of such distribution.

(b) Distribution for Taxes. Notwithstanding Section 6.2(a), subject to the Japan Act and other applicable law, the Company shall make, in respect of each Fiscal Year in which SanDisk must recognize taxable income of the Company in SanDisk's US federal, state and local income and franchise tax returns, a distribution to SanDisk to the extent necessary to meet SanDisk's aggregate US tax liability with respect to such taxable income, with such liability calculated at the highest US, state and local corporate tax rates as may be then applicable to SanDisk. SanDisk will make a request upon the Company for such distribution as soon as is practicable after the filing of SanDisk's applicable US tax returns. Following receipt of such request, the Company shall make the requested distribution on the next date on which the Company is permitted to make distributions pursuant to the Japan Act. Simultaneously therewith, the Company shall also make a distribution to Toshiba in an amount equal to the amount of the per Unit distribution made to SanDisk pursuant to this Section 6.2(b). Any such prior distributions shall be taken into account upon any purchase and sale of Units under Section 10 (Certain

Agreements of the Unitholders) or dissolution of the Company under Section 11 (Dissolution) hereof. If necessary, the Board of Directors shall consider capital reductions to the extent that any such capital reduction will not adversely affect the Y3 Facility's operations.

6.3 No Interest. No interest shall be payable to the Unitholders on their Capital Contributions or otherwise in respect of the capital of the Company.

6.4 Return of Capital Contributions. Except as expressly provided herein, no Unitholder shall be entitled to the return of any part of such Unitholder's Capital Contributions.

7. ADDITIONAL CONTRIBUTIONS

No Unitholder shall be obligated under this Agreement or the Articles to contribute any additional amounts to the Company or otherwise to be liable for the debts and obligations of the Company.

8. ACCOUNTING AND TAXATION

8.1 Financial Accounting Conventions.

(a) The Company shall adopt and follow Japanese GAAP.

(b) Notwithstanding anything to the contrary in Appendix A, the first Fiscal Year shall begin on April 1, 2004 and end on March 31, 2005.

(c) The Company shall in principle (but subject to applicable Law) utilize a five-year straight line depreciation method for manufacturing equipment.

8.2 Maintenance of Books of Account. The Company shall keep or cause to be kept at its principal office, or such other location as the Board of Directors shall designate, full and complete books of account. The books of account shall be maintained in a manner that provides sufficient assurance that transactions of the Company are recorded so as to comply with all applicable laws and to permit (a) the preparation of the Company's consolidated financial statements in accordance with Japanese GAAP and (b) the Unitholders to account for their interest in the Company in accordance with Japanese GAAP.

8.3 Financial Statements.

(a) Annual Statements. As soon as practicable following the end of each Fiscal Year (and in any event not later thanfifty-two (52) days after the end of such Fiscal Year), the Company shall prepare and deliver to each Unitholder and each Director, audited consolidated and consolidating balance sheets of the Company as of the end of such Fiscal Year and the related audited consolidated and consolidating statements of operations, the Unitholders' capital accounts and cash flows of the Company for such Fiscal Year (or similar statements if such statements change as the result of changes in Japanese GAAP), together with appropriate notes to such consolidated financial

statements, and in each case setting forth in comparative form the corresponding figures for the preceding Fiscal Year and for the budget for the Fiscal Year just completed. Such financial statements shall be accompanied by (i) the report of the Accountants to the effect that such financial statements (except for the comparison to the budget) have been prepared in conformity with Japanese GAAP (except as otherwise specified in such report) and that the audit of such financial statements has been performed in accordance with Japanese GAAP and (ii) a report as to all transactions (including the nature, type and amount) between the Company and each Unitholder and their respective Affiliates. The Company shall conduct its business such that the report of the Accountants shall not contain any qualifications as to the scope of the audit or with respect to the Company's compliance with Japanese GAAP, except for changes in methods of accounting in which such Accountants concur and except that the foregoing shall not be deemed to obligate any Unitholder to contribute any capital to the Company. The Company shall also provide SanDisk with an English version of such report, which shall contain sufficient data to enable SanDisk to prepare a reconciliation of the Company's financial reports from Japanese GAAP to United States GAAP. The Company shall deliver to SanDisk, at SanDisk's request and expense, any other financial information related to the Company that is reasonably requested by SanDisk for US Federal, state, and local income or franchise tax purposes.

(b) Quarterly Statements.

(i) As soon as practicable following the end of each Fiscal Quarter (and in any event not later than ten (10) days after the end of such Fiscal Quarter), the Company shall prepare and deliver to each Unitholder and each Director unaudited consolidated and consolidating balance sheets of the Company as of the end of such Fiscal Quarter and the related unaudited consolidated and consolidating statements of operations, the Unitholders' capital accounts and cash flows of the Company for such Fiscal Quarter and for the Fiscal Year to date (or similar statements if such statements change as the result of changes in Japanese GAAP), in each case setting forth in comparative form the corresponding figures for the preceding Fiscal Quarter, for the corresponding Fiscal Quarter of the preceding Fiscal Year and for the budget for the Fiscal Quarter just completed and for the Fiscal Year to date.

(ii) The financial statements for such Fiscal Quarter shall be accompanied by a certificate of the principal accounting or financial officer of the Company to the effect that such financial statements have been prepared under such officer's supervision and that, although such financial statements do not contain the footnotes and other disclosures required to be presented in interim financial statements by Japanese GAAP, such financial statements, in such officer's judgment, fairly present the financial condition and results of operations of the Company as of the date and for the periods indicated, subject to normal recurring year-end audit adjustments. The Company shall deliver to SanDisk, at SanDisk's request and expense, any other financial information related to the Company that is reasonably requested by SanDisk for US financial reporting or Federal, state, and local income or franchise tax purposes.

(c) The Company shall obtain a professional tax audit from a qualified accountant complying with Japanese GAAP by May 22 of each year (including an English translation thereof). As part of its engagement of its auditors, the Company shall cause its auditors to provide such English language financial statements, audit reports, US GAAP reconciliations and consents as are required (or reasonably requested by SanDisk) in connection with SanDisk's filings with the United States Securities and Exchange Commission; provided that SanDisk shall pay for all the costs relating to such auditors' work. SanDisk may also request that the Company provide SanDisk with "comfort letters" in the manner customary for Japanese auditors in connection with public offerings in the United States, at SanDisk's own expense.

(d) Monthly Reports. Each month, the Company shall prepare and deliver to each Unitholder and each Director the reports and other information set forth on Schedule 8.3. Such reports and other information will become available at the respective times set forth on Schedule 8.3.

(e) Business Plan. Subject to Sections 10.3(c), (e) and (f), and provided that the most recently approved Business Plan does not provide for the next Fiscal Year, the Company shall, not later than [***] prior to the commencement of each Fiscal Year, deliver to each Unitholder a copy of the Business Plan, including the Company's monthly budgets, for the upcoming Fiscal Year, as approved by the Board of Directors.

(f) Legal Proceedings. The Company shall promptly inform each Unitholder and each Director with regard to litigation, governmental investigations, material government notices and threatened legal proceedings.

8.4 Other Reports and Inspection. The Company shall furnish promptly to each Unitholder such other reports, financial data and information relating to the Company as such Unitholder may reasonably request and shall require the Accountants to provide to each Unitholder copies of any document related to the Company in the possession of the Accountants as such Unitholder may reasonably request. The Company shall, upon reasonable prior notice and during normal business hours, make available to each Unitholder and their respective professional advisors, from time to time as requested by such Unitholder, all properties, assets, books of account, corporate records, contracts and documentation, if any, relating to employee benefits of the Company, and any other material requested by such Unitholder for inspection and, in the case of books of account, corporate records, contracts and documentation, if any, relating to employee benefits, copying, and shall use reasonable efforts to make available to such Unitholder the Accountants and the key employees of the Company for interviews to verify any information furnished or to enable such Unitholder otherwise to review the Company and its operations. The Company may condition such availability upon the entering into of reasonable and appropriate confidentiality agreements. Notwithstanding the foregoing, the Company will not make available to any Unitholder information provided to the Company on a confidential basis by any other Unitholder without the consent of such other Unitholder.

8.5 Characterization. For the purposes of US federal, state and local income and franchise taxation, the Unitholders intend that the Company shall be treated as a partnership at all times, and shall take all actions, including the execution of other documents required to be filed by the Code, as may be reasonably required to qualify for and receive treatment as a disregarded entity and as a partnership, as the case may be, for such US tax purposes. SanDisk shall bear all costs and expenses incurred by the Company or any Unitholder in connection with any action required to be taken pursuant to this Section. Notwithstanding the foregoing, the Company shall have no obligation to take any action under this Section that would have an adverse effect on it or any Unitholder under any Japanese Governmental Rule.

8.6 Deposit of Funds. All funds of the Company and its Subsidiaries not otherwise employed shall be deposited from time to time to its credit in such banks, trust companies or other depositories, or invested in such other investments held as cash equivalents, as the Board of Directors shall authorize. The funds of the Company and its Subsidiaries shall not be commingled with the funds of any Unitholder or any of their respective Affiliates.

9. UNITS OF CONTRIBUTION; DISPOSITION OF UNITS

9.1 Restrictions on Transfer of Units.

(a) No Unitholder (nor any permitted transferees of any Unitholder) may Transfer any interest in the Company, including any of such Unitholder's Units, to any Person, except by a Change of Control; provided, that any Unitholder may Transfer all of its interest in the Company, including all of its Units, to any one (1) of their respective Affiliates, with the prior written consent of every other Unitholder, which consent shall not be unreasonably withheld; and provided, further, that (i) the transferee agrees in writing to become a party hereto and assumes all the obligations of the transferring Unitholder hereunder and under each other FP Operative Document to which the transferring Unitholder is a party (except to the extent the express terms of the Patent Indemnification Agreement condition its transferability on the consent of the non-transferring Unitholder and such Unitholder has not consented to Transfer thereof), and (ii) immediately after giving effect to such Transfer, no Event of Default or an event or condition that with the giving of notice or lapse of time or both would constitute an Event of Default with respect to the transferee Unitholder shall exist. Following the effectiveness of any such Transfer, the transferring Unitholder shall no longer have the transferred right, title or interest in the Company or any rights under this Agreement and the transferee shall be substituted as a Unitholder for all purposes of this Agreement. The transferring Unitholder shall, however, remain responsible for all obligations under this Agreement and the other FP Operative Documents for any transferee which is an Affiliate of the transferring Unitholder and shall not be released or discharged from any existing liability or obligation to any Person. Any subsequent Transfer of an ownership interest in such Affiliate by the transferring Unitholder shall be deemed to constitute a Transfer of Units requiring compliance with this Section 9.1.

(b) If a Unitholder Transfers its entire interest in the Company pursuant to Section 9.1(a), the transferee shall succeed to all the rights and obligations of such Unitholder under this Agreement.

(c) Any Unitholder may agree to pay amounts equal to distributions received by such Unitholder from the Company to a third party in its sole discretion pursuant to a Permissible Assignment Agreement. "Permissible Assignment Agreement" means an agreement between a Unitholder and another Person (the "Permissible Assignee") which:

(i) provides for the grant by such Unitholder to the Permissible Assignee of the right to receive amounts equal to distributions received by such Unitholder from the Company pursuant to Section 6 or 11 of this Agreement, but does not give the Permissible Assignee any Units or any other rights whatsoever with respect to the Company;

(ii) provides that under no circumstances (including any Bankruptcy Event in respect of such Unitholder) may any claim be made by the Permissible Assignee against the Company or any such Unitholder or any Affiliate of any such Unitholder or any of their respective assets, under or in connection with such agreement, even if such Unitholder defaults in performance thereunder;

(iii) provides that the rights of the Permissible Assignee under such agreement may not be transferred without the prior written consent of each Unitholder and that any such Transfer without such consents shall be null and void;

(iv) may not be amended, nor any provision thereof waived, in a manner that would cause it not to be a Permissible Assignment Agreement, without the prior written consent of the non-assigning Unitholder;

(v) provides that the assigning Unitholder is authorized to Transfer its entire interest in the Company pursuant to Section 9.1(a) free and clear of any interest of the Permissible Assignee and without any liability on the part of the transferee thereunder to the Permissible Assignee; and

(vi) contains an express acknowledgment by the Permissible Assignee, for the benefit of thenon-assigning Unitholder and the Company, to the effect of clauses (i)-(v) above.

The assigning Unitholder shall ensure that any payment due to a Permissible Assignee pursuant to or in connection with a Permissible Assignment Agreement shall be made in full to such Permissible Assignee when due.

9.2 Admission of New Unitholders. No Person shall have the right to become a Unitholder unless and until all the following conditions are satisfied:

(a) except in the case of a Transfer of all of a Unitholder's Units to an Affiliate of such Unitholder in accordance with Section 9.1(a) (Restrictions on Transfer of Units), such Person, the terms and conditions of such Person's admission as a Unitholder and the

rights appurtenant to the Units to be issued or Transferred, as applicable, to such Person are approved by all existing Unitholders and, if applicable, the creation of any new class or group of Units in the Company having different rights, powers and duties is reflected in amendments to the Articles and to this Agreement;

(b) such Person executes a counterpart of this Agreement and such other instrument or instruments as the Company and a non-transferring Unitholder may reasonably deem appropriate to affirm that the representations and warranties contained in the Master Agreement are true and correct with respect to such Person and that such Person agrees to be bound as a Unitholder by this Agreement and all of the covenants and agreements herein; and

(c) if requested by the Company, an opinion of counsel, a purchaser representation letter or other appropriate documentation is furnished to the Company establishing that the issuance or Transfer, as applicable, of Units to the new Unitholder will comply with the Japan Act.

Except to the extent required by law, the Company shall have no obligation to recognize or to furnish information or make distributions to any new Unitholder or any transferee of a Unitholder who does not become a Unitholder in accordance with Section 9.1 (Restrictions on Transfer of Units) or this Section 9.2.

9.3 Withdrawal Prohibited. Except as otherwise expressly permitted by this Agreement, (i) no Unitholder may withdraw from the Company and (ii) no Unitholder may effect or cause a termination or dissolution of the Company without the prior written consent of all other Unitholders (which consent may be withheld in such other Unitholder's sole discretion).

9.4 Purchase of Additional Interest. At any time during the term of this Agreement and so long as SanDisk is a Unitholder, SanDisk shall have the right to purchase from Toshiba that number of Units which is equal to 0.1% of the total number of Units then issued and outstanding in the event that (i) Toshiba's patent umbrella does not adequately protect the Company or (ii) dissolution of the Company is commenced pursuant to Section 11 hereof. The purchase price of such Units shall equal [***] as of the date of such transaction.

10. CERTAIN AGREEMENTS OF THE UNITHOLDERS

10.1 Taxes and Charges; Governmental Rules. Each Unitholder shall (a) promptly pay all applicable Taxes and other governmental charges imposed against such Unitholder except to the extent any such Taxes or other charges are being contested in good faith by appropriate proceedings and (b) comply with all applicable Governmental Rules, in each case except to the extent that nonpayment or noncompliance will not have a material adverse effect on the Company.

10.2 Further Assurances. Following the Closing, each Unitholder shall, and shall cause its Affiliates and the Company to take all reasonable actions necessary or appropriate to, effectuate the transactions contemplated by this Agreement, and to obtain (and cooperate

with the other Unitholder in obtaining) any Governmental Action or third party consent required to be obtained or made by it in connection with the transactions contemplated by this Agreement; provided, that no Burdensome Condition shall be made to exist with respect to such Unitholder or any of its Affiliates in connection therewith.

10.3 Dispute Resolution; Deadlock.

(a) The Unitholders shall endeavor to settle, through their respective designees to the Board of Directors, any disputes which may arise between them, including without limitation, failure by the Board of Directors to reach agreement (or failure to take a vote) on any matter requiring Board of Directors approval pursuant to Section 5.1(d) (Matters Requiring the Approval of the Board of Directors). The Unitholders shall attempt to resolve the issue or proposed action in question, to the extent practicable, in a manner consistent with the Company's most recently approved Business Plan, unless the issue in dispute is the adoption of a new Business Plan, in which case the provisions of Sections 10.3(c), (e) and (f) shall apply.

(b) If (i) the Unitholders are unable to agree on any matter requiring the approval of the Unitholders pursuant to Section 4.1(a) (Matters Requiring the Approval of the Unitholders), (ii) the Board of Directors is unable to agree on any matter requiring the approval of the Board of Directors pursuant to Section 5.1(d) (Matters Requiring the Approval of the Board of Directors) (other than the approval of any Business Plan, with respect to which the failure to agree shall be governed by Sections 10.3(c), (e) and (f)) or (iii) the Unitholders or the Board of Directors are otherwise unable to resolve a dispute on any other item (other than the approval of any Business Plan, with respect to which the failure to agree shall be governed by Sections 10.3(c), (e) and (f)), then any Unitholder may bring the matter to the attention of the General Manager Memory Division, Semiconductor Company of Toshiba, and the Chief Operating Officer of SanDisk (the "Designated Individuals"), who will attempt to find a resolution. If the matter has not been resolved within thirty (30) days of referral to the Designated Individuals, the matter will be referred to the Management Committee for a final decision, which decision will be final and binding on the Company and the Unitholders with respect to any matter specified in Sections 10.3(b)(i) and (ii) above. If an agreement is reached by the Management Committee, the mutually agreed resolution shall be implemented by the Company. Should no solution be agreed upon within thirty (30) days after submission of the matter to the Management Committee with respect to the matters specified in (iii) above, such matter shall be submitted to arbitration in accordance with Section 2.5 of the Appendix A. Should no solution be agreed upon within sixty (60) days after submission of the matter to the Management Committee with respect to the matters specified in Sections 10.3(b)(i) and (ii) above, then the action for which approval was requested will not occur, unless it is already included in the most recently approved Business Plan.

(c) Except as provided below, if by [***] of any calendar year during the term of this Agreement, commencing [***], the Board of Directors and the Unitholders have not approved and agreed upon a Business Plan for the upcoming Fiscal Year, then any Unitholder may refer the dispute to the Management Committee for a decision, which

decision shall be final and binding on the Company and the Unitholders. If a decision is reached by agreement of the Management Committee, such decision shall be implemented by the Company. Should no decision be reached within ninety (90) days after submission of the matter to the Management Committee, and unless the Unitholders have agreed to continue operations under the most recently approved Business Plan until a new Business Plan is approved, then within ten (10) Business Days thereafter any Unitholder may elect by written notice to all other Unitholders to declare a deadlock ("Deadlock"), except with respect to any issue where the Master Agreement expressly prohibits declaration of a Deadlock.

(d) If demand for both Unitholder's NAND Flash Memory Products is significantly below expectations, they shall address the matter as contemplated in Section 6.5(b)(ii) of the Master Agreement.

(e) Within thirty (30) days after a Unitholder has notified the other Unitholder of a Deadlock, either Unitholder (the "Initiating Unitholder") may submit to the other Unitholder (the "Responding Unitholder") a written irrevocable notice (the "Deadlock Dissolution Notice") to the effect that the Initiating Unitholder offers to sell to the Responding Unitholder or its designee the Initiating Unitholder's Units for a cash payment, by wire transfer of immediately available Japanese Yen, in an amount equal to the [***] as of the date of such transaction multiplied by the Initiating Unitholder's Percentage as of such date.

(f) The Responding Unitholder may accept such offer by written response to the Initiating Unitholder within forty-five (45) days of receipt of the Deadlock Dissolution Notice indicating that the Responding Unitholder elects to purchase the Units of the Initiating Unitholder. If the Responding Unitholder declines to exercise its right to purchase the Units of the Initiating Unitholder pursuant to this Section 10.3 or fails to respond to such Deadlock Dissolution Notice (or if both Unitholders submit Deadlock Dissolution Notices), the Company shall be dissolved pursuant to Section 11.1(d) (Events of Dissolution), at the end of a one-year period for the wind-down of operations commencing with the receipt of the Deadlock Dissolution Notice by the Responding Unitholder. During such one-year period, the Company's business shall be conducted in accordance with the most recently approved Business Plan except that additional capital expenditures will not be made except as required for line maintenance.

10.4 Remedies Upon Event of Default; Termination on Breach. If there has occurred and is continuing an Event of Default with respect to a Unitholder (upon such occurrence, such Unitholder is referred to herein as the "Defaulting Unitholder"), in addition to all other remedies available to the Company or the other Unitholder (the "Nondefaulting Unitholder"), whether under any of the FP Operative Documents or other agreements or by law, the Nondefaulting Unitholder shall have the option to take one or more of the following actions:

(a) give written notice to the Defaulting Unitholder of its intention to acquire all of the Units of the Defaulting Unitholder for a cash payment, by wire transfer of immediately available Japanese Yen, in an amount equal to the [***] of the Company as of the date of such transaction multiplied by the Defaulting Unitholder's Percentage as of such date; and/or

(b) elect to dissolve the Company pursuant to Section 11.3 (Dissolution Upon Event of Default), in which case the affairs of the Company shall be wound up and the Company shall be dissolved in accordance with Section 11 (Dissolution).

10.5 Mechanics of Sale.

(a) The closing of any purchase and sale of Units pursuant to Section 10.3 (Dispute Resolution; Deadlock), 10.4 (Remedies Upon Event of Default; Termination on Breach), 11.4 (Dissolution by Unilateral Option) or 11.5 (Dissolution Upon Notice) shall take place not later than the [***] Business Day after notice of the purchase is given, as the case may be, except that such period shall be extended as necessary in order to comply with any Governmental Rule. The purchasing Unitholder shall pay for the Units being acquired by wire transfer of immediately available funds in Japanese Yen to an account specified by the selling Unitholder. The selling Unitholder shall execute all documents necessary to effect the conveyance of its Units, free and clear of all Liens, to the purchasing Unitholder. In addition, the Unitholders shall enter into an indemnity and release agreement, in a form reasonably satisfactory to each Unitholder, indemnifying and holding harmless the selling Unitholder and its Affiliates for liabilities or claims made after the date of the purchase and sale under any guarantees or other agreements supporting the obligations of the Company which may have been extended by the selling Unitholder or any of its Affiliates. The Unitholders shall also reach agreement on a reasonable transition plan of up to six months in connection with services provided to the Company by FP Secondees assigned to the Company by the Selling Unitholder.

(b) If a Unitholder elects to acquire all of the Units of the other Unitholder pursuant to Section 10.3 (Dispute Resolution; Deadlock), 10.4 (Remedies Upon Event of Default; Termination on Breach), 11.4 (Dissolution by Unilateral Option) or 11.5 (Dissolution Upon Notice), such Unitholder shall be obligated to take all actions required of it to consummate the applicable purchase and sale on the date determined pursuant to this Section 10.5 (Mechanics of Sale). If any Unitholder has the right to purchase the Units of any other Unitholder, such Unitholder shall have the right to assign such right to purchase to any other Person.

11. DISSOLUTION

11.1 Events of Dissolution. The Company shall be dissolved and shall commence winding up its affairs upon the first to occur of the following:

(a) the expiration of the term of the Company pursuant to Section 2.4 (Term; Extension);

(b) the agreement of the Unitholders to dissolve the Company pursuant to Section 11.2 (Dissolution by Agreement);

(c) the election of the Nondefaulting Unitholder pursuant to Section 11.3 (Dissolution Upon Event of Default);

(d) the first anniversary of the receipt by either Unitholder of a Deadlock Dissolution Notice submitted with respect to a failure of the Unitholders to approve and agree upon a Business Plan pursuant to Section 10.3 (Dispute Resolution; Deadlock) if either (i) the Responding Unitholder declines to exercise its right to purchase the Units of the Initiating Unitholder or fails to respond to such Deadlock Dissolution Notice, or (ii) both Unitholders submit Deadlock Dissolution Notices with respect to such failure to agree;

(e) the election by Toshiba to dissolve the Company pursuant to Section 11.4 (Dissolution by Unilateral Option);

(f) the bankruptcy, death, dissolution, expulsion or incapacity of a Unitholder or the occurrence of any other event which terminates the membership of a Unitholder in the Company ("Bankruptcy Event"); or

(g) the election of the Notifying Party to dissolve the Company pursuant to Section 11.5 (Dissolution Upon Notice) unless the Notified Party elects to purchase the Units of the Notifying Party pursuant to Section 11.5 (Dissolution Upon Notice).

11.2 Dissolution by Agreement. The Company may be dissolved at any time by the unanimous written consent of the Unitholders.

11.3 Dissolution Upon Event of Default. During the occurrence and continuation of an Event of Default (other than a Bankruptcy Event) with respect to a Unitholder, the Nondefaulting Unitholder may elect, by written notice to the Defaulting Unitholder, to dissolve the Company, in which event the Company shall be dissolved and the Unitholders shall take all actions necessary to wind up the affairs of the Company in accordance with Section 11.7 (Winding Up). This Section 11.3 shall not be construed to limit the rights of the Nondefaulting Unitholder under Section 10.4 (Remedies Upon Event of Default) or to seek damages from the Defaulting Unitholder or any other Person for the breach of its obligations under any of the FP Operative Documents.

11.4 Dissolution by Unilateral Option. At any time between April 1, 2007 and March 31, 2008, SanDisk may, by giving written notice to Toshiba, elect to withdraw from the Company, in which case Toshiba must, directly or through any of its Affiliates, either (i) purchase from SanDisk all of SanDisk's Units within one (1) year following SanDisk's notice to withdraw for a cash payment, by wire transfer of immediately available Japanese Yen, in an amount equal to the [***] of the Company as of the FP Termination Date multiplied by SanDisk's Percentage as of the Termination Date (the estimated [***] of the Company as of the Termination Date to be agreed by the Unitholders in good faith and any necessary true up payments promptly after the actual [***] of the Company as of the Termination Date is determined), or (ii) cooperate with SanDisk to dissolve the Company within one (1) year of the notice of withdrawal and to wind-up its affairs in accordance with Section 11.7 (Winding Up) (the date as of which any Unitholder, itself

or together with its Affiliates, holds all Units of the Company or the date the Company is dissolved in accordance with applicable Law, the "Termination Date," but in no event shall the Termination Date occur later than one (1) year following SanDisk's notice to withdraw).

11.5 Dissolution upon Notice. At any time between April 1, 2011 and March 31, 2012, any Unitholder (the "Notifying Party") may elect, by giving notice to all other Unitholders (the "Notified Party"), to dissolve the Company, in which event the Company will be dissolved and, within the one (1) year period following the giving of such notice, the Unitholders shall mutually agree upon a plan for winding up the affairs of the Company in accordance with Section 11.7 (Winding Up), unless the Notified Party, directly or through any of its Affiliates, elects in writing within three (3) months of receiving such notice, to purchase from the Notifying Party all of its Units for a cash payment, by wire transfer of immediately available Japanese Yen, in an amount equal to the [***] of the Company as of the date of such transaction multiplied by the Notifying Party's Percentage as of such date.

11.6 Financing Defaults.

(a) If pursuant to Section 6.3(c)(i) of the Master Agreement either Party, as the Investing Party, exercises its election to terminate this Agreement, the Unitholders shall cooperate in good faith to effect the purchase by Toshiba (or its designated Affiliate) and sale by SanDisk of all of SanDisk's Units, at a price equal to SanDisk's percentage share of the issued and outstanding Units in the Company multiplied by the [***] of the Company as of the date such transaction is closed (with estimated [***] as agreed by the Unitholders in good faith paid on the closing of such transaction and any true-up payment made by the appropriate Party promptly after determination of the actual [***] of the Company as of the closing of such purchase and sale transaction).

(b) [***]

(c) If pursuant to Section 6.10(d)(ii) of the Master Agreement either Party, as the Non-Defaulting Party, exercises its election to terminate this Agreement, the Non-Defaulting Party shall have the same rights as provided in Section 11.6(a) and the Unitholders shall cooperate in good faith to effect the purchase by the Non-Defaulting Party (or its designated Affiliate) and sale by the Defaulting Party of all of the Defaulting Party's Units.

11.7 Winding Up.

(a) Upon the dissolution of the Company, the Unitholders shall proceed as promptly as practicable to (i) wind-up the affairs of the Company and satisfy the Company's liabilities, (ii) dispose of the Company's assets as quickly as possible consistent with obtaining the full fair market value of the Company, preferably, to the extent it is commercially practicable to do so, by selling the Company as a going concern (provided, however, no Unitholder shall be under any obligation to extend the terms of any FP Operative Document or to offer to enter into any other agreement with a prospective

purchaser of the Company for the purchase or sale of goods or services or the use of facilities or any other business arrangement), and (iii) distribute any net proceeds to the Unitholders in accordance with Section 11.8 hereof and applicable Law. In connection with a sale of the Company's assets under clause (ii), each Unitholder or any of their respective Affiliates shall have a right of first offer to acquire the Company's tangible personal property in the liquidation process and may also acquire such property through participation at auction except in the event of a dissolution pursuant to Section 11.3 (Dissolution Upon Event of Default), in which event the Defaulting Unitholder and its Affiliates shall not have such right of first offer to acquire the Company's tangible personal property. Each of the Unitholders shall be furnished with a statement setting forth the assets and liabilities of the Company as of the date of the complete liquidation of the Company. The Accountants shall review the final accounting and shall render their opinion with respect thereto.

(b) During the period of winding-up, the Company shall continue to operate and all the provisions of this Agreement shall remain in effect, except as otherwise expressly provided herein. The Company shall notify all known creditors and claimants of the dissolution of the Company in accordance with applicable law.

11.8 Liquidation Proceeds.

(a) In the case of the dissolution and liquidation of the Company, the Company may make a distribution in kind. Any cash and all distributions in kind that are to be distributed shall be distributed to the Unitholders, on a pro rata basis based upon the respective Percentages of the Unitholders as of the date of such distribution.

(b) Unless otherwise agreed by the Unitholders, and to the extent permitted under any agreements with third parties, all assets to be distributed upon the dissolution and liquidation of the Company shall be distributed as follows:

(i) first, to creditors, including Unitholders who are creditors, to the extent permitted by law, in satisfaction of liabilities of the Company, other than for distributions to Unitholders pursuant to Section 6.2 (Distributions); and

(ii) second, to the Unitholders on a pro rata basis based upon the respective Percentages of the Unitholders as of the date of such distribution.

For purposes of this Section 11.8, instruments of transfer and other documents reasonably requested by the distributee shall be executed by the Company or the other Unitholder, or both.

(c) Any distribution made pursuant to this Section 11.8 shall be made as soon as practicable under and in accordance with applicable Japanese law.

12. INDEMNIFICATION AND INSURANCE

12.1 Indemnification.

(a) Subject to Section 12.1(c), the Company shall indemnify each Person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (including an action by or in the right of a Unitholder or the Company), by reason of the fact that such Person is or was a Unitholder or is or was or has agreed to become a Director or is or was serving or has agreed to serve at the request of the Company as a director, officer, employee or agent of the Company or of another partnership, corporation, joint venture, trust or other enterprise, arising from any action alleged to have been taken in any such capacity or by reason of any liability or obligation of the Company, against any and all losses, damages, liabilities, costs, charges, expenses (including interest, penalties and reasonable attorneys' fees and expenses), judgments, fines and amounts paid in settlement (collectively, "Losses") actually and reasonably incurred by him or on his behalf in connection with such action, suit or proceeding and any appeal therefrom. Without limiting the generality of the foregoing, any of such Losses shall be deemed to arise out of a Company liability or obligation if it arises out of or is based upon the conduct of the business of the Company (or any of its Subsidiaries) or the ownership of the property of the Company (or any of its Subsidiaries).

(b) The indemnification provided under this Section 12.1 shall inure to the benefit of the successors, heirs and personal representatives of any Person entitled to the benefit of such indemnification. Such indemnification shall be a contract right and shall include the right to be paid advances of reasonable expenses incurred by any such Person in connection with such action, suit or proceeding.

(c) The indemnification provided under this Section 12.1 shall not inure to the benefit of any Person in respect of Losses to the extent that such Losses (i) arise out of or are based upon the gross negligence or willful misconduct of such Person or (ii) constitute a tax, levy or similar governmental charge not imposed upon the Company (or any of its Subsidiaries) or on their respective properties. The indemnification provided under this Section 12.1 shall also not be available to any Person in respect of any Losses if a judgment or other final adjudication adverse to such Person establishes (x) that such Person's acts were committed in bad faith or were the result of active and deliberate dishonesty and were material to the cause of action so adjudicated or (y) that such Person gained in fact a financial profit or other advantage to which such Person was not legally entitled. It is understood and agreed that, for the purposes of this Section 12.1, Losses shall be deemed not to arise out of or be based upon the gross negligence or willful misconduct of a Person solely because it arises out of or is based upon the gross negligence, willful misconduct, bad faith or active and deliberate dishonesty of a director, officer or employee of such Person if at the time of such gross negligence, willful misconduct, bad faith or active and deliberate dishonesty, such director, officer or employee was also a FP Secondee or a Director acting in his capacity as such.

(d) The termination of any action, suit or proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the indemnified Person did not meet the standard set forth in Section 12.1(c) (Indemnification).

12.2 Insurance. The Company may, to the fullest extent permitted by law, purchase and maintain insurance against any liability that may be asserted against any Person entitled to indemnity pursuant to Section 12.1.

12.3 Indemnification by the Unitholders.

(a) Each Unitholder agrees to, and does hereby, indemnify and hold harmless the Company and the other Unitholder from and against any and all Losses arising out of, or based upon, the gross negligence or willful misconduct of such Unitholder under this Agreement or such Unitholder exceeding its authority under this Agreement.

(b) The provisions of this Section 12.3 shall survive each of the termination of this Agreement, the dissolution of the Company and the withdrawal of any Unitholder.

12.4 Assertion of Claims.

(a) In the event that a Person (the "Indemnified Party") desires to assert its right to indemnification from a Person (an "Indemnifying Party") required to indemnify such Indemnified Party under this Section 12, the Indemnified Party will give the Indemnifying Party prompt notice of the claim giving rise thereto (a "Claim"), and the Indemnifying Party shall undertake the defense thereof (unless the Claim is asserted against or related to or results from any action or failure to take action by such Indemnifying Party). The failure to promptly notify the Indemnifying Party hereunder shall not relieve the Indemnifying Party of its obligations hereunder, except to the extent that the Indemnifying Party is actually prejudiced by the failure to so notify promptly.

(b) The Indemnified Party shall not settle or compromise any Claim without the written consent of the Indemnifying Party unless the Indemnified Party agrees in writing to forego any and all claims for indemnification from the Indemnifying Party with respect to such Claim. However, if the Indemnifying Party, within a reasonable time after notice of any such Claim, fails to defend such Claim, the Indemnified Party shall have the right to undertake the defense, compromise or settlement of such Claim on behalf of and for the account and risk of the Indemnifying Party, subject to the right of the Indemnifying Party to assume the defense of such Claim at any time prior to settlement, compromise or final determination thereof.

(c) If the Indemnifying Party has undertaken the defense of a Claim and (i) if there is a reasonable expectation that (x) a Claim may materially and adversely affect the Indemnified Party other than as a result of money damages or other money payments or (y) the Indemnified Party or Unitholders may have legal defenses available to it or them that are different from or additional to the defenses available to the Indemnifying Party, or (ii) if the Indemnifying Party shall not have employed counsel reasonably satisfactory to the Indemnified Party, the Indemnified Party shall nevertheless have the right, at the Indemnifying Party's cost and expense, to defend such Claim.

13. MISCELLANEOUS

13.1 Governing Law. Notwithstanding anything to the contrary in Appendix A, this Agreement shall in all respects be governed by and construed in accordance with the laws of Japan, without regard to the conflict of laws principles.

13.2 Effectiveness. This Agreement shall be effective as of the date first written above and shall remain in effect until the Termination Date. Sections 7, 11.7, 11.8 and 13 shall survive the Termination Date.

[REST OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, this Agreement has been executed and delivered by each party as of the date first above written.

TOSHIBA CORPORATION

By: /s/ Masashi Muromachi
Name: Masashi Muromachi
Title: President and CEO Semiconductor Company Corporate Vice President

SANDISK INTERNATIONAL LIMITED

By: /s/ Eli Harari
Name: Eli Harari
Title: President

[Signature Page to Flash Partners Operating Agreement]

EXHIBIT A

ARTICLES OF INCORPORATION OF THE COMPANY

[***]

ARTICLES OF INCORPORATION
OF
FLASH PARTNERS, LTD.

[***]

Schedule 2.1(b)

Committed Additional Capital Contributions

[***]

Schedule 5.3

Management and Operating Reports

[***]

Schedule 6.1

Capital Contributions

[***]

Schedule 8.3

Monthly Reports

This Schedule provides a list of Unitholder required reports, pursuant to Section 8.3(d) (Monthly Reports), that are required to be transmitted to the Unitholders by the dates listed. Any Unitholder may modify this list periodically as requirements for data change. When a Unitholder requests a report, a sample format for the report will be provided to the Company by the requesting Unitholder.

REPORTS TO UNITHOLDERS

| | REPORT TITLE | DATE DUE |
|---|---|---|
| A. | Monthly Flash Report | 3 days after month close |
| B. | Monthly Measurement Report | 7 days after month close |
| C. | Monthly Cash Flow Report | 7 days after month close |
| D | Monthly Balance sheets | 7 days after month close |
| E. | Monthly Profit & Loss | 7 days after month close |
| F. | Monthly Operational Spending Summary | 7 days after month close |

**Exhibit 10.21**

*Execution Version*

CERTAIN CONFIDENTIAL PORTIONS HAVE BEEN REDACTED FROM THIS EXHIBIT BECAUSE THEY ARE BOTH (i) NOT MATERIAL AND (ii) A TYPE THE REGISTRANT TREATS AS PRIVATE OR CONFIDENTIAL. INFORMATION THAT HAS BEEN OMITTED HAD BEEN IDENTIFIED IN THIS DOCUMENT WITH A PLACEHOLDER IDENTIFIED BY THE MARK "[***]".

**FPL COMMITMENT AND EXTENSION AGREEMENT**

This FPL COMMITMENT AND EXTENSION AGREEMENT (this "Agreement") is made as of October 20, 2015, by and among Toshiba Corporation, a Japanese corporation ("Toshiba"), SanDisk Corporation, a Delaware corporation ("SanDisk") and SanDisk (Cayman) Limited, a company organized under the laws of the Cayman Islands ("SanDisk Cayman" and, together with Toshiba and SanDisk, the "Parties").

WHEREAS, the Parties have entered into that certain Flash Partners Master Agreement, dated as of September 10, 2004 (as amended, the "FP Master Agreement"), and the other FP Operative Documents, which collectively provide for the management and operation of Flash Partners Limited, a Japanese *tokurei yugen kaisha* ("Flash Partners") and which by their terms are set to expire as of December 31, 2019;

WHEREAS, in light of the Parties' long history of successful collaboration in Flash Partners, the Parties desire to extend the term of Flash Partners, the FP Master Agreement and the other FP Operative Documents, and to specify the terms and conditions on which such extension is hereby agreed;

WHEREAS, each Party's firm commitment to Flash Partners until December 31, 2029, on the terms and conditions set forth herein, is the primary inducement for the other Party's entry into this Agreement;

WHEREAS, in light of the foregoing, the terms and conditions set forth in this Agreement are fair, reasonable and necessary to protect the Parties' interests; and

WHEREAS, on even date herewith, (a) the Parties and certain of their respective affiliates are entering into a New Y2 Facility Agreement providing for the joint operation of the New Y2 Facility and production of BiCS Products (in each case as defined therein) by the Parties and their respective affiliates, and (b) SanDisk and Toshiba are entering into an Information Security Agreement setting out certain terms and conditions relating to information security measures and protection and treatment of Toshiba Confidential Information (as defined therein);

NOW, THEREFORE, on the terms and subject to the conditions and limitations set forth in this Agreement, with reference to Section 2.1 of Appendix A to the FP Operative Documents and Section 2.4 of the FP Operating Agreement, the Parties hereby agree as follows:

**1. RELATION TO FP OPERATIVE DOCUMENTS**

1.1 Application of Appendix A. Appendix A to the FP Operative Documents, as amended by this Agreement ("Appendix A"), shall apply to this Agreement. The capitalized terms used but not defined in this Agreement shall have the respective meanings assigned to them in Appendix A (or, if not defined in Appendix A, the respective meanings assigned to them in the FP Master Agreement) and the rules of construction and documentary conventions set forth in Appendix A shall apply to this Agreement as if set forth herein.

1.2 Effect of this Agreement. Except as expressly set forth in this Agreement, the FP Operative Documents (as in effect as of the date hereof and modified by the New Y2 Facility Agreement) shall remain unchanged and in full force and effect, and this Agreement shall be governed by and subject to the terms of the FP Operative Documents as amended hereby. From and after the date of this Agreement, each reference in any FP Operative Document to "this Agreement," "hereof," "hereunder" or words of like import, and all references to such FP Operative Document in any and all agreements, instruments, documents, notes, certificates and other writings of every kind of nature (other than in this Agreement or as otherwise expressly provided) shall be deemed to mean such FP Operative Document, as amended by and giving effect to this Agreement, whether or not such amendment is expressly referenced.

1.3 Addition to FP Operative Documents. This Agreement shall be deemed to be an FP Operative Document and the definition of "FP Operative Documents" as set forth in Appendix A is hereby amended so as to include this Agreement.

**2. EXTENSION**

2.1 FPL Term Extended. Section 2.4 ("Term; Extension") of the FP Operating Agreement is hereby amended and restated in its entirety as follows:

"Term; Extension. The Company shall be terminated on December 31, 2029, unless extended by mutual written agreement of all the Unitholders or earlier terminated in accordance with Section 11 (Dissolution). Any such extension shall be effective only upon the written agreement of all of the Unitholders and shall be on such terms and for such period as set forth in such agreement. The Unitholders agree to meet, no later than December 31, 2028, to discuss the possible extension of the term of the Company."

2.2 Flash Partners Articles of Incorporation. Promptly following the date hereof, the Parties shall cause Article 5 of the Articles of Incorporation of Flash Partners to be amended to extend the term of Flash Partners to December 31, 2029.

**3. [***]**

**4. OTHER COVENANTS AND AMENDMENTS**

4.1 Material Breach. Section 8.1 ("Termination") of the FP Master Agreement is hereby amended to add the following provision as a new Section 8.1(k) thereof:

"(k) The Parties agree and acknowledge that in the event of a final determination by an arbitral tribunal under Section 2.5 of Appendix A that a Party has committed or is committing a continuing material breach of any of [***] of this Agreement that would reasonably be expected to cause material damage to Flash Partners or the non-breaching Party (any such breach, a "Material Breach"), and the breaching Party fails to cure such breach within [***] after such determination, then the non-breaching Party shall have as a remedy for Material Breach the termination of Flash Partners and of this Agreement and the FP Operative Documents, in addition to all other legal and equitable remedies available to such Party. Notwithstanding anything to the contrary in Appendix A, any such termination shall constitute an "Event of Default" of the breaching Party for all purposes of this Agreement and of that certain FPL Commitment and Extension Agreement among the Parties dated as of October 20, 2015.

In the event that a Party asserts a Material Breach in a written notice to the other Party, the dispute shall proceed as specified in Section 2.5 of Appendix A, provided, however, that

(i) no matters other than the existence of such Material Breach (and counterclaims and defenses directly related to the conduct or circumstances underlying the asserted Material Breach) shall be submitted to or determined by the arbitral tribunal;

(ii) the Parties shall use their respective reasonable best efforts to complete and finalize the Terms of Reference within [***] following such assertion of Material Breach; and

(iii) the Parties shall instruct the arbitral tribunal, with the full assistance and cooperation of the Parties, to endeavor to submit its draft award on the existence of the Material Breach to the Court of Arbitration of the ICC for approval within [***] following the effective date of the Terms of Reference, provided, that any failure to issue an award in such time period shall not be considered a defense or objection to the enforcement of such award.

The Parties agree to attempt in good faith to resolve any potential claim for Material Breach."

4.2 Restructuring Costs. In connection with any termination of Flash Partners, the FP Master Agreement and/or the FP Operating Agreement:

(a) the Parties shall exercise their respective reasonable best efforts to plan such termination in advance with the goal of minimizing related costs;

(b) with respect to Toshiba employees and SanDisk employees working at the Y3 Facility, (i) in the case of those that are Toshiba employees, Toshiba shall use its reasonable best efforts to retrain or relocate such individuals to other Toshiba facilities, and (ii) in the case of those that are SanDisk employees, SanDisk shall use its reasonable best efforts to retrain or relocate such individuals to other SanDisk facilities, in each case to the maximum extent possible;

(c) [***]

(d) [***]

4.3 Consequences of Deadlock Termination. Section 8.1(f)(i) of the FP Master Agreement is hereby amended and restated in its entirety as follows:

" (i) there shall be no capacity ramp-down rights or obligations,".

**5. MISCELLANEOUS**

5.1 Term. This Agreement shall continue in full force and effect until the latest of (a) the termination of the FP Master Agreement, (b) the completion of the dissolution, liquidation and winding up of Flash Partners, and (c) the date on which a single Party owns all of the Units.

5.2 Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of California applicable to agreements made and to be performed entirely within such state without regard to the conflict of laws principles of such state, except where application of Japanese law is mandatory.

5.3 Further Assurances. Each Party shall from time to time, and shall cause its Affiliates who are party to any FP Operative Document from time to time to, at the reasonable request of the other Parties, and without further consideration (unless otherwise provided for under the FP Operative Documents), execute and deliver such instruments, cooperate and take any other actions as may be reasonably necessary to effectuate (i) the provisions of this Agreement and (ii) the transactions contemplated herein.

5.4 Other Terms. Further to Section 1.1 above, the general, miscellaneous, interpretive, non-disclosure and other terms and conditions provided in Appendix A shall apply to this Agreement as if set forth herein.

**[**The remainder of this page is intentionally left blank.**]**

IN WITNESS WHEREOF, the Patties have caused this Agreement to be executed by their respective duly authorized representatives as of the date first written above.

**SANDISK CORPORATION**

By: /s/ Sanjay Mehrotra
Name: Sanjay Mehrotra
Title: President and CEO

**TOSHIBA CORPORATION**

By: /s/ Seiichi Mori
Name: Seiichi Mori
Title: President and CEO
Semiconductor & Storage Products Company Corporate Senior Vice President

**SANDISK (CAYMAN) LIMITED**

By: /s/ Judy Bruner
Name: Judy Bruner
Title: Director

**Exhibit 10.22**

CERTAIN CONFIDENTIAL PORTIONS HAVE BEEN REDACTED FROM THIS EXHIBIT BECAUSE THEY ARE BOTH (i) NOT MATERIAL AND (ii) A TYPE THAT THE REGISTRANT TREATS AS PRIVATE OR CONFIDENTIAL. INFORMATION THAT HAS BEEN OMITTED HAS BEEN IDENTIFIED IN THIS DOCUMENT WITH A PLACEHOLDER IDENTIFIED BY THE MARK "[***]".

---

# K2 PH1 FACILITY AGREEMENT

by and among

KIOXIA CORPORATION,

KIOXIA IWATE CORPORATION,

WESTERN DIGITAL CORPORATION,

SANDISK LLC,

SANDISK (CAYMAN) LIMITED,

SANDISK (IRELAND) LIMITED,

SANDISK FLASH B.V.,

FLASH PARTNERS, LTD.,

FLASH ALLIANCE, LTD.

and

FLASH FORWARD, LTD.

dated as of

June 17, 2024

---

**TABLE OF CONTENTS**

**TABLE OF CONTENTS**
(continued)

**TABLE OF CONTENTS**
(continued)

**TABLE OF CONTENTS**
(continued)

**K2 PH1 FACILITY AGREEMENT**

This K2 PH1 FACILITY AGREEMENT (this "Agreement") is made as of June 27, 2024, by and among Kioxia Corporation, a Japanese corporation ("KIC"), Kioxia Iwate Corporation (formerly known as "Toshiba Memory Iwate Corporation"), a Japanese corporation ("KIW" and, together with KIC, "Kioxia"), Western Digital Corporation, a Delaware corporation ("WD" and, together with KIC, the "Parent Parties"), SanDisk LLC, a Delaware limited liability company ("SanDisk LLC"), SanDisk (Cayman) Limited, a company organized under the laws of the Cayman Islands ("SanDisk Cayman"), SanDisk (Ireland) Limited, a company organized under the laws of the Republic of Ireland ("SanDisk Ireland"), SanDisk Flash B.V., a company organized under the laws of the Netherlands ("SanDisk Flash," and collectively with SanDisk LLC, SanDisk Cayman and SanDisk Ireland, "SanDisk"), Flash Partners, Ltd., a Japanese *tokurei yugen kaisha* ("FPL"), Flash Alliance, Ltd., a Japanese *tokurei yugen kaisha* ("FAL"), and Flash Forward, Ltd., a Japanese *godo kaisha* ("FFL," and collectively with Kioxia, WD, SanDisk, FPL and FAL, the "Parties").

WHEREAS, FPL, FAL and FFL (collectively, with any future joint venture operations mutually agreed between KIC and WD, the "JVs" and, each, a "JV") are engaged in the manufacture of NAND Flash Memory Products and BiCS Products;

WHEREAS, Kioxia plans to build and facilitize the K2 Ph1 Facility located within the Kitakami Facility (each as defined in Exhibit A) for use in BiCS Technology Transitions, among other potential uses pursuant to this Agreement;

WHEREAS, KIC conducts certain activities at the Kitakami Facility through KIW, KIC's wholly owned Subsidiary;

WHEREAS, the Parties intend for FFL to be the Parent Parties' primary vehicle for joint investments in tools for the manufacture of BiCS Products at the K2 Ph1 Facility, which FFL will acquire in accordance with a production framework substantially similar to the production framework established in the New Y2 Agreement;

WHEREAS, the Parties desire to set forth the terms and conditions of the construction and use of the K2 Ph1 Facility; and

WHEREAS, some or all of the Parties are concurrently entering into this Agreement, the Amended JMD Agreement and the K2 Ph1 MCEIA (each as defined in Exhibit A) (collectively, the "New Agreements").

NOW, THEREFORE, the Parties hereby agree as follows:

## 1. FRAMEWORK

1.1 New Y2 Production Framework. The Parties acknowledge and agree that the terms and conditions set forth in Article 1 of the New Y2 Agreement apply to the manufacture of BiCS Products in the K2 Ph1 Facility (including, for the avoidance of doubt, with respect to the transfer of BiCS Process Technology (as defined in the New Y2 Agreement), process integration for manufacture of BiCS Products, and the rights of the Parent Parties to market and sell BiCS

Products) to the same extent that they would apply if the K2 Ph1 Facility were the New Y2 Facility and part of the Yokkaichi Facility; *provided*, *however*, that to the extent any provision of Article 1 of the New Y2 Agreement expressly conflicts with any provision in this Agreement, the provision in this Agreement shall control as to such conflict.

1.2 FFL as Primary Investment Vehicle. FFL shall be the Parent Parties' primary vehicle for joint investments in tools for the Kitakami Facility, [***]

[***]

[***]

1.3 Former JV Capacity.

(a) For purposes of Section 1.4 of the K1 Agreement, (i) any capacity of a JV of which a Parent Party or SanDisk, as the case may be, has acquired all of the Units (as defined in the FPL Operating Agreement), Shares (as defined in the FAL Operating Agreement), or Interests (as defined in the FFL Operating Agreement), as applicable, or (ii) any capacity acquired by a Parent Party or SanDisk, as the case may be, from a JV as a result of the dissolution procedures under the JV Operating Agreement of such JV, or in connection with the termination of the JV Master Agreement of such JV, in each case, in the K2 Ph1 Facility, shall constitute Former JV Capacity (as defined in the K1 Agreement).

[***]

1.4 Scope. This Agreement applies solely to the K2 Ph1 Facility. If the Parties agree to collaborate in any subsequent phase of the K2 Facility, the terms and conditions that may apply to such subsequent phase shall be separately negotiated and memorialized in a separate, subsequent agreement.

**2. K2 PH1 FACILITY AND CONSTRUCTION**

2.1 Purpose of K2 Ph1. The Parties acknowledge and agree that (a) the K2 Ph1 Facility may be used for BiCS Technology Transitions and (b) the K2 Ph1 Facility may also be used by the Parties for (i) Kitakami Capacity Transfers, BiCS Expansions and BiCS Conversions, (ii) the manufacture of other products (including supporting capacity expansions and technology transitions of such other products) and (iii) the development of new technologies or products, in each case of (ii) and (iii), as mutually agreed between the Parent Parties from time to time. [***]

2.2 First JV Wafer Out. The Parties target K2 Ph1 Facility cleanroom readiness to occur in [***] with respect to wafer capacity from the implementation of the K2 Ph1 Minimum Commitment, with a First JV Wafer Out Date targeted in [***]

2.3 Rights and Responsibilities in Construction.

(a) Kioxia. Kioxia shall (i) direct the design, construction and facilitization of the K2 Ph1 Facility and (ii) exercise commercially reasonable efforts to ensure that the K2 Ph1 Facility is (A) insurable, (B) designed and constructed to mutually acceptable high levels of risk control standards and (C) completed on a schedule consistent with achieving the First JV Wafer Out Date provided for in Section 2.2. Kioxia shall maintain the K2 Ph1 Facility at mutually acceptable high levels of risk control standards in accordance with current practice.

(b) WD. In connection with the construction and facilitization of the K2 Ph1 Facility, (i) WD shall (and the Parent Parties shall cause the JVs to) assist Kioxia in minimizing the time required to obtain required administrative approvals, and (ii) WD and its agents shall have (with prior coordination with Kioxia and the construction coordinators for the K2 Ph1 Facility) reasonable access to the K2 Ph1 Facility construction site and to all appropriate information pertaining to the construction of the K2 Ph1 Facility and necessary for WD to participate in the JV operations in the K2 Ph1 Facility; *provided* that WD shall be solely responsible for all damage caused by such access.

2.4 Phases of Construction. The shell of the K2 Ph1 Facility shall be built in one (1) phase, and the cleanroom shall be built in two (2) phases. [***]

2.5 Construction Costs and Related Costs.

(a) Building Depreciation Prepayment. Prior to each Payment Due Date set forth inSchedule 2.5(a)(i) or if such Payment Due Date is not a Business Day, the Business Day immediately preceding such Payment Due Date [***] WD and KIW shall pay to FFL the Payment Amount set forth for such Payment Due Date in Schedule 2.5(a)(i) (each, a "Building Depreciation Prepayment"); and [***]

[***]

(b) Start-Up Costs. The Parties acknowledge that one or more of the Parties have incurred or will incur actual costs in connection with constructing the K2 Ph1 Facility and preparing the K2 Ph1 Facility for production during the period prior to the start of volume production at the K2 Ph1 Facility, including personnel costs, materials costs and other operating expenses, for which each Parent Party has the obligation ultimately to bear fifty percent (50%) ("Start-Up Costs"). The Parent Parties shall discuss in good faith and agree upon theStart-Up Costs borne by the Parties and the means and timing by which each Party, as applicable, shall be reimbursed or credited for having incurred more than fifty percent (50%) of the Start-Up Costs or shall make payments due for having incurred less than fifty percent (50%) of the Start-Up Costs; *provided* that the determination and allocation ofStart-Up Costs and the means and timing of reimbursement shall be in a manner substantially similar to that utilized in connection with the start-up costs of the Yokkaichi Facility and Kitakami Facility. [***] Start-Up Costs will be excluded from K2 Ph1 Manufacturing Costs.

[***]

[***]

2.6 Incentives.

[***]

(b) If a government incentive reduces KIC's construction costs that are subject to Building Depreciation Prepayment(s), KIC shall disclose such incentives to WD in a timely manner. Upon KIC's receipt of any such incentive, KIC shall reduce the Building Depreciation Prepayment paid or to be paid by each Parent Party (or credit against such Building Depreciation Payment) by a proportionate, fair share of the value of the incentive received as soon as reasonably practicable. The Parent Parties will discuss in good faith the appropriate and specific timing, form and mechanism for such reduction or credit, taking into account tax considerations.

2.7 Insurance. Kioxia shall maintain or arrange property insurance covering the JV assets in the K2 Ph1 Facility and business interruption insurance in respect of the business conducted at the K2 Ph1 Facility, the scope and amounts of which shall be consistent with existing practices at the Yokkaichi Facility and as required by any lender or carrier to secure such coverage. This coverage shall provide basically full replacement value of all JV equipment installed in the K2 Ph1 Facility, subject to valuation as part of Kioxia's annual insurance policy renewal, and shall name the applicable JV as a beneficiary in respect of assets owned or leased by it and K2 Ph1 employee expenses covered by business interruption insurance. On an annual basis, or when requested by either Party, the K2 Ph1 Operating Committee shall discuss and review the current insurance coverage and/or the need for any additional property or business interruption insurance in respect of the JV assets in and operations of the K2 Ph1 Facility. Further, WD reserves the right to seek to arrange additional property or business interruption insurance for its own account in respect of such assets or operations, and Kioxia shall cooperate in good faith to provide such information and access as is reasonably necessary for WD to arrange such insurance. If Kioxia makes a recovery from a third party (other than an insurer per the above) in respect of both assets in the K2 Ph1 Facility and other assets, then Kioxia shall allocate to the applicable JVs a share of the net amount of such recovery in proportion to the losses suffered by such JVs and total losses suffered by such JVs and Kioxia.

## 3. PRODUCTS; RIGHTS TO CLEANROOM SPACE; TOOLS

3.1 BiCS Products.

(a) Subject to Section 1.2, the JVs may produce BiCS Products at the K2 Ph1 Facility.

(b) BiCS Products manufactured at the Kitakami Facility and that are identified by [***] as K2 Ph1 lots are referred to as "K2 Ph1 BiCS Products." "JV K2 Ph1 BiCS Products" are K2 Ph1 BiCS Products allocated to [***]

[***]

(c) For the avoidance of doubt, [***]

3.2 Rights to Cleanroom Space.

(a) K2 Ph1 JV Space. The JVs shall have the right to invest in and secure production capacity and/or cleanroom space in the K2 Ph1 Facility as follows:

(i) K2 Ph1 JV BiCS Space. Subject to Section 1.2, the Parties acknowledge that each of the JVs has the right to invest in and secure production capacity and/or cleanroom space in the K2 Ph1 Facility for the production of JV BiCS Products (the cleanroom space actually so utilized for production of BiCS Products at any time, such JV's "K2 Ph1 JV BiCS Space"). In the event of an expiration or dissolution of a JV or termination of a JV Master Agreement for any reason, without any limitation on KIC's use or disposal of the facilities or assets of such JV, each Parent Party shall consider in good faith potential negative impacts on the remaining JVs' respective production capacities in the K2 Ph1 Facility and utilization of their respective K2 Ph1 JV BiCS Space.

(ii) K2 Ph1 JMD Space. [***]

(b) K2 Ph1 Non-JV Space. The Parent Parties have the right to invest in and secure production capacity and/or cleanroom space as follows:

(i) KIC R&D Space. [***]

(ii) Unilateral Space. [***]

[***]

[***]

[***]

[***]

[***]

[***]

3.3 Tool Acquisition, Usage and Layout.

(a) JV Tools. Acquisitions of JV BiCS Tools shall be made in accordance with the terms for NAND Flash Memory Products tool acquisitions in the applicable JV Master Agreement, and JV BiCS Tools may be installed in the K2 Ph1 Facility as mutually agreed by the Parent Parties. [***]

(b) JMD Tools. [***]

(c) Kioxia R&D Tools. [***]

(d) Unilateral Tools. [***]

[***]

(e) Tool Layout. [***]

3.4 NAND Flash Memory Products. Notwithstanding anything to the contrary in this Agreement, but subject to Section 1.2, the Parties acknowledge that NAND Flash Memory Products may be manufactured using tools installed in the K2 Ph1 Facility cleanroom space if and to the extent agreed in a JV Business Plan or by the applicable Operating Committee. Any such manufacture of NAND Flash Memory Products (including as to expansion or technology transition) shall be conducted pursuant to the terms of the applicable JV's JV Agreements as if such JV Agreements contemplated the manufacture of NAND Flash Memory Products in the K2 Ph1 Facility. Any NAND Flash Memory Products manufactured at the Kitakami Facility and that are identified [***] as K2 Ph1 lots are referred to as "K2 Ph1 NAND Flash Memory Products." "JV K2 Ph1 NAND Flash Memory Products" are K2 Ph1 NAND Flash Memory Products allocated to a JV under the applicable JV's JV Master Agreement. Allocation of monthly lot output of NAND Flash Memory Products under the JV Master Agreements is hereby amended to include the following: the actual monthly lot output of K2 Ph1 NAND Flash Memory Products will be allocated between the Parent Parties in the manner set forth in this Agreement as if all of such output were BiCS Product output from the K2 Ph1 Facility; *provided* that during any month in which the planned production of NAND Flash Memory Products is [***] output will be allocated between the Parent Parties using an [***]

## 4. RAMP-UP PROCESS

4.1 K2 Ph1 Minimum Commitment.

(a) Unless otherwise agreed in writing between the Parent Parties, the Parent Parties shall, through FFL, make an initial investment to implement, using the K2 Ph1 Facility, a BiCS Technology Transition of up to 500 L/M in aggregate FFL production capacity to the BiCS Products generation known to the Parties as "BiCS8" and/or "BiCS10," which investment shall be divided equally between the Parent Parties (the foregoing, as further described below, the "K2 Ph1 Minimum Commitment"). The specific number of L/M and product mix between "BiCS8" and/or "BiCS10" that will comprise the K2 Ph1 Minimum Commitment shall be discussed in good faith and agreed in writing by the Parent Parties as soon as practicable, with a target for reaching an agreement in writing on the foregoing by July 31, 2024.

[***]

[***]

[***]

4.2 Existing Facility BiCS Expansion.

[***]

[***]

[***]

[***]

[***]

[***]

[***]

[***]

[***]

[***]

[***]

[***]

[***]

[***]

4.3 Other Facility Expansions.

[***]

[***]

[***]

[***]

[***]

[***]

4.4 BiCS Conversions and BiCS Technology Transitions Without limiting KIC's implementation of BiCS Conversions or BiCS Technology Transitions as part of the Phase I Implementation (as defined in the Y6 Agreement), the JVs shall be given priority for any BiCS Conversion or BiCS Technology Transition. Should any of FPL, FAL or FFL not accept any proposal for a BiCS Conversion or BiCS Technology Transition, the non-rejecting Parent Party may implement such BiCS Conversion or BiCS Technology Transition on its capacity, [***] Subject to the foregoing priority granted to the JVs, nothing in this Agreement shall in any way limit KIC's ability to implement BiCS Conversions or BiCS Technology Transitions within the

Kioxia Capacity, which shall be made in KIC's sole discretion. For the avoidance of doubt, any BiCS Conversion or BiCS Technology Transition involving the use of the New Y2 Facility, the Y6 Facility, the K1 Facility, the Y7 Ph1 CS or the K2 Ph1 Facility shall be managed as a technology transition by the Operating Committees in accordance with the JV Agreements and past practices at the Yokkaichi Facility and Kitakami Facility.

4.5 Failure to Invest.

(a) K2 Ph1 Minimum Commitment. If WD fails for any reason to make (or authorize the JVs to make) the investment necessary to implement its fifty percent (50%) share of the K2 Ph1 Minimum Commitment [***], then [***]

(b) Ramp-Up Commitment. If a Parent Party fails for any reason to make (or authorize the JVs to make) the investment necessary to implement its fifty percent (50%) share of a Ramp-Up Commitment, then the other Parent Party (so long as it has made and authorized the investment necessary to implement its fifty percent (50%) share of the K2 Ph1 Minimum Commitment) may, [***]

[***]

4.6 *Intentionally omitted.*

4.7 Adjustment Payment.

(a) Solely with respect to the K2 Ph1 Facility, [***] if either Parent Party's Threshold Direct Capacity Ratio and/or Threshold Supported Capacity Ratio (each as defined below) falls below [***] then [***] will pay [***] an Adjustment Payment (as defined below) [***]

[***]

(b) As used herein:

[***]

[***]

[***]

[***]

[***]

[***]

[***]

4.8 [***] and Kitakami Capacity Transfers.

(a) [***] Proposals.

[***]

[***]

[***]

[***]

[***]

(b) [***]

[***]

[***]

[***]

[***]

[***]

[***]

(c) Kitakami Capacity Transfer Proposal.

[***]

[***]

[***]

[***]

[***]

[***]

[***]

[***]

[***]

[***]

[***]

[***]

(d) [***]

[***]

[***]

[***]

[***]

[***]

[***]

[***]

[***]

[***]

[***]

[***]

(e) *Intentionally omitted.*

(f) [***]

[***]

[***]

[***]

[***]

[***]

[***]

[***]

[***]

[***]

[***]

[***]

[***]

[***]

[***]

[***]

[***]

[***]

4.9 [***]

**5. BiCS PRODUCTS PRIORITY**

5.1 WD. WD's and its Subsidiaries' manufacturing capacity for, and purchased supply of, BiCS Products and BiCS Product Alternatives shall be sourced from, and in, the following priority:

(a) from the JVs to fulfill the BiCS Products capacity allocated to WD or SanDisk, as provided under the JV Agreements; and

(b) from (i) WD's or SanDisk's Former JV Capacity obtained in accordance with Section 1.4 of the K1 Agreement (if any) and/or (ii) from [***] and/or from other third parties, *provided* that, with respect to sub-clause (ii) only, (A) WD and SanDisk shall use commercially reasonable efforts to source from third parties that are licensees of KIC as to BiCS Technology and (B) WD or SanDisk, as applicable, shall have fulfilled its fifty percent (50%) share of (1) the Y3 Ramp-Up Plan, (2) the Y4 Ramp-Up Plan, (3) the Phase I Minimum RUP Commitment, (4) the Phase II Minimum RUP Commitment to the extent applicable (each of (1), (2), (3), and (4), as defined in the FFL Master Agreement), (5) the Minimum Commitment (as defined in the New Y2 Agreement) for the New Y2 Facility, (6) the Minimum Commitment (as defined in the Y6 Agreement) for the Y6 Facility, (7) the K1 Minimum Commitment (as defined in the K1 Agreement), (8) the Y7 Ph1 CS Minimum Commitment (as defined in the Y7 Ph1 Agreement) and (9) the K2 Ph1 Minimum Commitment (to the extent the associated capacity exists).

5.2 [***]

[***]

[***]

5.3 JV Manufacturing Source. Notwithstanding anything to the contrary in this Agreement or any other Master Operative Document, the Yokkaichi Facility and the Kitakami Facility shall be the JVs' exclusive manufacturing sources for output of BiCS Products, except upon mutual agreement by the Parent Parties.

5.4 Prior Agreement. This Article 5 supersedes and replaces Article 5 of the Y7 Ph1 Agreement (and any applicable provisions in the Existing Agreements that were superseded by Article 5 of the Y7 Ph1 Agreement) from the date hereof. From and after the date of this Agreement, any reference to Section 5.1, 5.2, 5.1(b)(ii) or 5.2(b)(ii) of the Y7 Ph1 Agreement (and any applicable provision in the Existing Agreements that was superseded by Section 5.1, 5.2, 5.1(b)(ii) or 5.2(b)(ii) of the Y7 Ph1 Agreement) shall instead refer to Section 5.1, Section 5.2, Section 5.1(b)(ii) and Section 5.2(b)(ii), respectively, of this Agreement. The references to "Section 5.1(a)," "Section 5.1(b)," "Section 5.1(a)(iv)," and "Section 5.1(b)(v)" in Section 5.2 of the New Y2 Agreement shall refer to Section 5.1, Section 5.2, Section 5.1(b)(ii) and Section 5.2(b)(ii), respectively, of this Agreement.

## 6. K2 PH1 OPERATING COMMITTEE

6.1 Committee Purpose and Authority. There will be an Operating Committee for K2 Ph1 Facility operations (the "K2 Ph1 Operating Committee") consisting of a senior executive designated by each of WD and KIC (each such individual, the "WD Representative" and the "KIC Representative," respectively), each of whom shall have an engineering background and

represent the designating Party on a day-to-day basis at the K2 Ph1 Facility. The K2 Ph1 Operating Committee shall work together and endeavor to make the K2 Ph1 Facility the most advanced and competitive memory fabrication facility in the world. The K2 Ph1 Operating Committee will have the authority to determine all JV-related matters concerning the day-to-day operations of the K2 Ph1 Facility (including staffing matters as provided in Article 7), subject to the requirements of this Agreement and consistent with past practice at the Yokkaichi Facility and K1 Facility.

6.2 Parent Party Representatives.

(a) Replacement. Each Parent Party shall notify the other Parent Party in advance of any replacement of its representative on the K2 Ph1 Operating Committee. If a Parent Party requests in good faith that the other Parent Party's representative be replaced with another person from the other Parent Party's organization, the other Party shall consider and discuss in good faith with the requesting Parent Party such request, *provided* that such replacement, if any, may be determined solely by such other Parent Party.

[***]

6.3 Committee Meetings. The K2 Ph1 Operating Committee shall communicate on a day-to-day basis with respect to the status of the K2 Ph1 Facility operations and any other issues that may arise and shall meet in person no less than one time per week, or such other times and frequency as mutually agreed by all members of such committee. The K2 Ph1 Operating Committee shall hold a monthly review meeting in English at the Yokkaichi Facility or, if agreed by the K2 Ph1 Operating Committee members, via web conference on [***] of each calendar month, unless otherwise agreed by the K2 Ph1 Operating Committee. The K2 Ph1 Operating Committee shall prepare and use commercially reasonable efforts to distribute to the Parent Parties at least three (3) Business Days in advance of the K2 Ph1 Operating Committee's monthly review meetings monthly reports in English with respect to the engineering activities, operations and cost information of the K2 Ph1 Facility.

6.4 Dispute Resolution. If the members of the K2 Ph1 Operating Committee are unable to agree on any issue after [***] (by agreement of its two (2) members), they shall submit such matter together with their respective recommendations to the applicable Board of Directors or Board of Executive Officers of the applicable JV(s), which shall endeavor to immediately resolve the issue or escalate such issue, as applicable in the manner set forth in the applicable JV Master Agreement.

**7. ENGINEERS AND HEADCOUNT PLAN**

7.1 K2 Ph1 JV Engineers; Personnel. As used in this Agreement:

(a) "K2 Ph1 JV Engineers" means [***]

(b) "KIC Personnel" means [***]

(c) "WD Personnel" [***]

(d) "Personnel" means [***] and

(e) "WD Team" means [***]

7.2 K2 Ph1 JV Headcount Plan. [***]

7.3 Staffing. [***]

7.4 Integration; Headcount Working Group. Integration of the WD Team into the K2 Ph1 Facility organization, organization structure, updates on the hiring of K2 Ph1 JV Engineers by WD or KIC (or their respective Affiliates), access to the K2 Ph1 Operating Committee, WD Team member communications with WD, [***] and related matters will be discussed by the Headcount Working Group (as defined in the FFL Master Agreement), as

applicable, and, subject to and without any limitation on the effect of the Information Security Agreement as applicable, provided for and resolved in the manner set forth in the FFL Master Agreement with respect to personnel at the Y5 Facility, except that matters to be handled by the Y5 Operating Committee will be handled instead by the K2 Ph1 Operating Committee.

7.5 WD Team. With respect to the WD Team, subject to and without any limitation on the effect of the Information Security Agreement, the Parties agree as follows:

(a) Language Skills. Recognizing that Japanese language skills will be necessary for personnel working at the K2 Ph1 Facility, WD shall seek to minimize the number of K2 Ph1 JV Engineers seconded by WD or any of its Affiliates to the K2 Ph1 Facility who are not highly proficient in Japanese, and WD shall ensure that those members of the WD Team who are not Japanese speakers receive some language training in Japanese at WD's cost before being sent to work at the K2 Ph1 Facility and WD shall use commercially reasonable efforts to ensure that such language training is appropriate to such WD Team member's position at the K2 Ph1 Facility.

(b) Reimbursement; Conditions. WD's and its Affiliates' K2 Ph1 JV Engineers shall be integrated by KIC at the Kitakami Facility and shall work together with KIC's and its Affiliates' K2 Ph1 JV Engineers to seek to ensure the optimal operation of the K2 Ph1 Facility from a cost and technology perspective. [***]

(c) WD Personnel. [***]

[***]

[***]

[***]

(g) Employment Relationship. All members of the WD Team will remain employees of WD (or WD's Affiliate, as applicable).

7.6 Indemnification. Each Parent Party will indemnify the other Parties from any claim by any of such Parent Party's or its Affiliate's employees, consultants or agents (such Parent Party being the "Employer") (a) based on other than willful misconduct of such Employer or its Affiliate, its or its Affiliate's employees, consultants or agents or (b) that he or she has rights, or is owed obligations, as an employee of the Party that is not the Employer or its Affiliate.

7.7 Other Personnel. [***]

**8. MANUFACTURING COSTS**

8.1 K2 Ph1 Manufacturing Costs. [***]

[***]

[***]

[***]

(d) Manufacturing Cost Reconciliation. Within [***] after the end of each JV fiscal quarter, KIC shall perform the manufacturing cost reconciliations of [***] and [***] in each case as described above (together, the "Quarterly Manufacturing Cost Reconciliation"). KIC shall provide a forecast of the Quarterly Manufacturing Cost Reconciliation to the JVs and WD every month.

8.2 K2 Ph1 Manufacturing Cost Allocation Framework. K2 Ph1 Manufacturing Costs shall be shared by the Parties and shall be either K2 Ph1 Fixed Manufacturing Costs or K2 Ph1 Variable Manufacturing Costs, in each case as determined in the manner set forth in this Article 8. [***]

8.3 K2 Ph1 Manufacturing Cost Allocation Methodology.

[***]

(b) K2 Ph1 Manufacturing Costs allocated to each of Y3 Products, Y4 Products, Y5 Products, New Y2 Products, Y6 Products, K1 Products and Y7 Ph1 CS Products in accordance with Section 8.3(a) will be treated as a Y3/Y4/Y5/New Y2/Y6/K1/Y7 Ph1 CS/K2 Ph1 Cross Charge (as described in Schedule 8.4(b)(i)) and further allocated among the applicable JV, KIC, WD, and SanDisk in accordance with the applicable JV's JV Agreements or the New Y2 Agreement, Y6 Agreement, K1 Agreement or Y7 Ph1 Agreement, as applicable.

(c) K2 Ph1 Manufacturing Costs allocated to K2 Ph1 Products will be further allocated as set forth in Section 8.4(b).

(d) Within [***] after the end of each JV fiscal quarter, KIC shall provide to WD a reconciliation of the allocation of K2 Ph1 Manufacturing Costs that reflects [***] during the fiscal quarter. KIC will provide a forecast of such quarterly reconciliation to the JVs and WD every month.

(e) In the event that there is a [***] warrant a deviation from the allocation methodology set forth in Sections 8.3(a) through 8.3(d), then the Parent Parties shall [***]

8.4 K2 Ph1 Product Manufacturing Costs.

(a) "K2 Ph1 Product Manufacturing Costs" means [***]

(b) All K2 Ph1 Product Manufacturing Costs will be either K2 Ph1 Product Fixed Manufacturing Costs or K2 Ph1 Product Variable Manufacturing Costs.

(i) K2 Ph1 Product Fixed Manufacturing Costs. "K2 Ph1 Product Fixed Manufacturing Costs" means [***]

(ii) K2 Ph1 Product Variable Manufacturing Costs. "K2 Ph1 Product Variable Manufacturing Costs" means [***]

8.5 Accounting and Cost Methodology. K2 Ph1 Manufacturing Costs methodology will in principle be in accordance with the existing accounting and cost methodology used by the JVs in the Kitakami Facility. [***]

8.6 No Duplication of Costs or Expenses. It is the intent of the Parties that any payments made by the Parties under or pursuant to any Master Operative Document shall not be duplicative and that the Parties shall in no event be required to pay or contribute more than once for any service, product or development work provided under the Master Operative Documents, if such service, product or development work is provided under more than one Master Operative Document. In addition, to the extent that a Party makes a direct payment for any service, product or development work under a Master Operative Document, the cost incurred by KIC (from the Kitakami Facility) or the JVs, as the case may be, in connection with the provision of such service, product or development work shall not be included in the applicable wafer price charged to such Party.

[***]

**9. FOUNDRY AND PURCHASE AND SUPPLY ARRANGEMENTS**

9.1 K2 Ph1 Foundry Arrangements.

(a) Die Sort, Equipment and Raw Materials. Die sorting facilities for JV K2 Ph1 Products will be located at [***] or such other place mutually agreed by the Parent Parties. Kioxia's use of any of FPL's, FAL's and FFL's manufacturing equipment located in the K2 Ph1 Facility in the manufacture of BiCS Products will be governed by the FPL Lease Agreement, the FAL Lease Agreement and the FFL Lease Agreement, respectively. Kioxia shall be responsible for obtaining the raw materials and services to be used in the manufacture of JV K2 Ph1 Products.

(b) Foundry Production. Kioxia shall manufacture BiCS Products at the K2 Ph1 Facility for the JVs as ordered by the JVs pursuant to the Foundry Agreements. Kioxia and the JVs shall use their best efforts to achieve the manufacturing capacity for the K2 Ph1 Facility set forth in the JV Business Plans, which will include any plans for JV use of cleanroom space in the K2 Ph1 Facility. Wafers produced in the K2 Ph1 Facility will be sorted between the Parent Parties such that aggregate yield losses will be shared on an equal basis.

(c) Operating Relationship. The Parent Parties shall provide personnel necessary for the manufacture of BiCS Products for and on behalf of the JVs as described in Article 7.

(d) Consideration to be Paid to Kioxia. Kioxia shall be compensated by the JVs as provided in the Foundry Agreements, [***]

(e) K2 Ph1 Purchase Orders. POs (as defined in each Foundry Agreement) for JV K2 Ph1 Products shall be issued by each JV to [***]

9.2 Purchase and Supply Agreements. For the avoidance of doubt, the rights, obligations and procedures for the purchase by the Parent Parties from FPL, FAL and FFL of JV BiCS Products manufactured in whole or in part at the K2 Ph1 Facility shall be as set forth in the FPL Purchase and Supply Agreements, the FAL Purchase and Supply Agreements and the FFL Purchase and Supply Agreements, respectively, of the applicable Kioxia party (in the case of Kioxia) and the applicable SanDisk party (in the case of WD). Kioxia may place POs for Products (each as defined in each Purchase and Supply Agreement between KIC and each JV), including JV BiCS Products, pursuant to such Purchase and Supply Agreement.

9.3 Equal Right to JV Production. For the avoidance of doubt, Kioxia, on one hand, and WD and SanDisk, on the other hand, shall have the right and obligation, through the JVs, to utilize fifty percent (50%) of the manufacturing capacity for JV BiCS Products manufactured in whole or in part at the K2 Ph1 Facility, on an Equivalent Lot basis, as provided in the JV Master Agreements.

9.4 Forecasts/Production Planning. The Parent Parties shall submit forecasts to the applicable JV(s) for K2 Ph1 Products [***]

[***]

9.5 K2 Ph1 Product Output Allocation. The actual monthly lot output of K2 Ph1 Products shall be allocated among the JVs, Kioxia, WD and SanDisk, as applicable, based on the K2 Ph1 Capacity Ratio, *provided* that during any month in which the planned production capacity of K2 Ph1 Products is [***] WD and SanDisk, as applicable, will be allocated output of such K2 Ph1 Products [***]

9.6 Alternative Use of Allocated Capacity. For the avoidance of doubt, any alternative use of a Party's allotted manufacturing capacity for JV BiCS Products within the K2 Ph1 Facility will be as permitted in, and subject to and governed by the terms of, the applicable JV's JV Master Agreement.

**10. RESEARCH AND DEVELOPMENT**

[***]

[***]

[***]

[***]

[***]

[***]

[***]

[***]

[***]

[***]

[***]

10.5 No Change to Common R&D. Except as set forth in this Article 10, or as may be otherwise agreed in writing between the Parties, the Common R&D Agreement shall continue in full force and effect in accordance with its terms, and the agreements regarding equipment, materials and development provided for in the Common R&D Agreement shall continue to be part of the Common R&D Agreement.

## 11. K2 PH1 INFORMATION AND DATA SHARING

11.1 Management and Operating Reports. Upon the request of either KIC or WD, the K2 Ph1 Operating Committee shall provide KIC and WD with, simultaneously in Japanese and English, those management and operating reports identified on Schedule 11.1 and as mutually agreed upon from time to time by the Parent Parties. Upon reasonable request from WD, employees of Kioxia shall explain such reports to employees of WD and its Subsidiaries and

respond to questions from employees of WD and its Subsidiaries; *provided*, *however*, that WD acknowledges and agrees that Kioxia will not be responsible for WD's or any of its Subsidiaries' failure to understand any such reports. The K1 Operating Committee and the Y5 Operating Committee (as defined in the FFL Master Agreement) will cooperate to obtain any information relating to K2 Ph1 Facility management or operations necessary for the reports to be provided by the Y5 Operating Committee under Section 8.1(d) of the FFL Master Agreement.

11.2 Production Control; Access to K2 Ph1 Data. From the start of production of JV Products in the K2 Ph1 Facility, Kioxia shall provide, consistent with past practice, employees of WD and its Subsidiaries [***] *provided* that the cost necessary for making such system available to such employees will be borne by [***] Each Party will be provided the same real-time access to K2 Ph1 data relating to JV Products.

11.3 Engineering Wafers. Each of the Parent Parties will have full access to all operational and engineering data and reports related to engineering wafers manufactured for JV Products manufactured at the K2 Ph1 Facility.

11.4 Unilateral Capacity Data. For any Kioxia Capacity in the K2 Ph1 Facility, Kioxia shall provide to the JVs all data necessary to determine whether the Kioxia Capacity is being operated [***] including but not limited to [***]

[***]

**12. OTHER MODIFICATIONS TO CERTAIN MASTER PERATIVE DOCUMENTS**

To update their agreement as expressed in certain of the Master Operative Documents to, among other things, take into account the K2 Ph1 Facility, to provide for the installation of tools and utilization of clean room space by each of the JVs within the K2 Ph1 Facility and to provide for KIW's performance of certain activities at the K2 Ph1 Facility, the Parties agree that the Master Operative Documents are hereby amended as set forth below, and as necessary to give effect to the purpose and intent of this Article 12 whether or not expressly set forth below.

12.1 JV Master Agreements.

(a) External Manufacturing Source. For the avoidance of doubt, the K2 Ph1 Facility is not an "external manufacturing source," as such term is used in the JV Master Agreements.

(b) Embedded NAND Products. The rights of each Parent Party under the JV Agreements to use a portion of its total allocated capacity in the JV Space to cause to be manufactured Embedded NAND Products, subject to the conditions and limitations set forth in the JV Agreements, are hereby extended to the K2 Ph1 JV Space.

(c) Proprietary Flash Products. The rights of each Parent Party under the JV Agreements to use a portion of its total allocated capacity from the JV Space to cause to be manufactured Proprietary Flash Products, subject to the conditions and limitations set forth in the JV Agreements, are hereby extended to the K2 Ph1 JV Space. Each of WD (together with SanDisk) and Kioxia may use a portion of its total allocated capacity from the K2 Ph1 JV Space to cause to be manufactured Proprietary Flash Products, subject to each of the limitations, conditions and Parent Party undertakings in respect of Proprietary Flash Products provided under the applicable JV Master Agreement, as amended, for the manufacture of Proprietary Flash Products in the Yokkaichi Facility. If a Parent Party requests a modification to the limitations, conditions and undertakings for the manufacture of Proprietary Flash Products, the Parent Parties will discuss such requested modification.

(d) Engineering Wafers. The rights of the Parent Parties and KIW to receive Evaluation Wafers and Qualification Wafers (each as defined in the JV Master Agreements) under the JV Master Agreements apply to Evaluation Wafers and Qualification Wafers manufactured in the K2 Ph1 Facility. For the avoidance of doubt, WD may ship its share of Evaluation Wafers and Qualification Wafers to any location in its sole discretion subject to any terms and conditions of the Master Operative Documents that relate or apply to the shipment of Evaluation Wafers or Qualification Wafers by SanDisk, including applicable export control requirements, *provided* that any such shipment by WD shall comply with applicable shipping procedures at the Kitakami Facility.

(e) Financing. The terms and conditions with respect to the financing necessary to enable committed or agreed capacity expansions or other investment in any JV for JV Capacity at the K2 Ph1 Facility shall be as follows: (i) in the case of FFL, as set forth in Section 6.12 of the FFL Master Agreement as if such investment were in the Y5 Facility; (ii) in the case of FAL, as set forth in Section 6.12 of the FAL Master Agreement as if such investment were in the Y4 Facility; and (iii) in the case of FPL, as set forth in Section 6.10 of the FPL Master Agreement as if such investment were in the Y3 Facility.

(f) Y3, Y4, Y5, New Y2, Y6, K1, Y7 Ph1 CS and K2 Ph1 Capacity Ratios The capacity ratios used to calculate output and cost allocation for the Y3 Facility, the Y4 Facility, the Y5 Facility, the New Y2 Facility, the Y6 Facility, the K1 Facility and the Y7 Ph1 Facility as set forth in Schedule 12.1(f) to the Y7 Ph1 Agreement (and any schedule of any other Existing Agreement that was superseded by such schedule of the Y7 Ph1 Agreement) are hereby replaced with the capacity ratios initially set forth on Schedule 12.1(f) to this Agreement and updated from time to time by the Parent Parties as mutually agreed.

[***]

[***]

[***]

(h) Excess Capacity.

(i) The final paragraph of Section 6.5(b)(i) of FPL Master Agreement is hereby deleted in its entirety and replaced with the following:

[***]

(ii) The final paragraph of Section 6.7(b)(i) of FAL Master Agreement is hereby deleted in its entirety and replaced with the following:

[***]

(iii) Section 6.6(b)(i)(D) of FFL Master Agreement is hereby deleted in its entirety and replaced with the following:

[***]

12.2 JV Operating Agreements. The management and operating reports identified on Schedule 5.3 to each JV Operating Agreement will take into account any utilization by FPL, FAL and FFL, as applicable, of the K2 Ph1 JV Space.

12.3 JV Foundry Agreements.

(a) KIW has previously been added as a party to each of the Foundry Agreements and is fully bound by all of the covenants, conditions and agreements thereunder that are required to be performed, observed or satisfied by KIC with respect to the K2 Ph1 Facility, and may exercise all of KIC's rights thereunder, in each case, as though an original party thereto in the same manner and to the same extent as if KIW were KIC itself.

(b) The reference to JV Y5 NAND Flash Memory Products in Article 5 of the FFL Foundry Agreement is hereby revised to include JV K2 Ph1 BiCS Products manufactured for FFL.

(c) Subject to Section 1.2, purchases from Kioxia by:

(i) FPL of JV K2 Ph1 BiCS Products manufactured for FPL shall be made in accordance with the terms of the FPL Foundry Agreement for purchases of Products (as defined therein), *provided* that the purchase prices and manufacturing costs for JV K2 Ph1 BiCS Products manufactured for FPL shall be calculated and allocated in accordance with Article 8 hereof;

(ii) FAL of JV K2 Ph1 BiCS Products manufactured for FAL shall be made in accordance with the terms of the FAL Foundry Agreement for purchases of Products (as defined therein), *provided* that the purchase prices and manufacturing costs for JV K2 Ph1 BiCS Products manufactured for FAL shall be calculated and allocated in accordance with Article 8 hereof; and

(iii) FFL of JV K2 Ph1 BiCS Products manufactured for FFL shall be made in accordance with the terms of the FFL Foundry Agreement for purchases of Products (as defined therein), *provided* that the purchase prices and manufacturing costs for JV K2 Ph1 BiCS Products manufactured for FFL shall be calculated and allocated in accordance with Article 8 hereof.

[***]

(e) Section 3(b) of each Foundry Agreement is hereby deleted in its entirety and replaced with the following:

"(b) Beginning on a date agreed by the Parties, the Company shall on a [***] submit a written rolling forecast of the estimated monthly requirements of the Company for each Product (as specified therein) during each month of the Forecast Period (as defined below) (each, a "**Forecast**"). Each Forecast shall be binding on the Company, with respect to each Product referenced therein, for the period beginning on [***] (as defined below) for such Product (the "**Binding Commitment**"). No portion of any Binding Commitment set forth in any Forecast may

be modified by any subsequent Forecast without Kioxia's prior written consent. The Company shall issue each PO to Kioxia for a given month by the end of the month prior to the given month and each PO shall be consistent with the applicable month of the then-current Forecast.

As used herein:

[***]

[***]

(g) Section 3(d) of the FAL Foundry Agreement is hereby deleted in its entirety and replaced with the following:

"(d) The Company may reschedule or cancel orders for any Product that is not within the Binding Commitment period of the then-current Forecast for such Product. In the event the

Company requests Kioxia to defer or cancel orders for a Product within the Binding Commitment period of the then-current Forecast for such Product, Kioxia shall use all reasonable efforts to comply with the Company's request, *provided* that (i) the Company shall reimburse Kioxia for actual and direct raw material costs and work-in-process expenses and fixed costs allocated to such Products to be agreed to between the Parties and (ii) to the extent Kioxia suffers losses or other adverse impacts due to such rescheduling or cancellation that are not remedied pursuant to clause (i), the Parties shall discuss and resolve such situation in good faith. Such reimbursement by the Company to Kioxia shall be made immediately after the Company has received corresponding payments from Kioxia and/or SanDisk (pursuant to the Purchase and Supply Agreements (as defined in the Master Agreement)). In the event that the Company requests Kioxia to change a Product within the Binding Commitment period of the then-current Forecast for such Product to a different Product, Kioxia shall use all reasonable efforts to comply with the Company's request. Notwithstanding the foregoing sentences in this paragraph, nothing in this Agreement shall modify, alter or amend the obligations of the Parties pursuant to Section 6.3 (Y4 Facility Ramp-Up Plan), Section 6.5(a) (Equal right to capacity) or Section 6.5(b) (Alternative use of allotted capacity) of the Master Agreement."

(h) Section 3(d) of the FFL Foundry Agreement is hereby deleted in its entirety and replaced with the following:

"(d) The Company may reschedule or cancel orders for any Product that is not within the Binding Commitment period of the then-current Forecast for such Product. In the event the Company requests Kioxia to defer or cancel orders for a Product within the Binding Commitment period of the then-current Forecast for such Product, Kioxia shall use all reasonable efforts to comply with the Company's request, *provided* that (i) the Company shall reimburse Kioxia for actual and direct raw material costs and work-in-process expenses and fixed costs allocated to such Products to be agreed to between the Parties and (ii) to the extent Kioxia suffers losses or other adverse impacts due to such rescheduling or cancellation that are not remedied pursuant to clause (i), the Parties shall discuss and resolve such situation in good faith. Such reimbursement by the Company to Kioxia shall be made immediately after the Company has received corresponding payments from Kioxia and/or SanDisk (pursuant to the Purchase and Supply Agreements (as defined in the Flash Forward Master Agreement)). In the event that the Company requests Kioxia to change a Product within the Binding Commitment period of the then-current Forecast for such Product to a different Product, Kioxia shall use all reasonable efforts to comply with the Company's request. Notwithstanding the foregoing sentences in this paragraph, nothing in this Agreement shall modify, alter or amend the obligations of the Parties pursuant to Section 8.6(a) (Forecasts/Production Planning), Section 6.6(a) (Equal Right to Joint Venture Capacity) or Section 6.6(b) (Alternative Use of Allotted Capacity) of the Flash Forward Master Agreement."

(i) Section VI of the Quality Assurance Agreement attached to each of the FPL Foundry Agreement, the FAL Foundry Agreement and the FFL Foundry Agreement as Exhibit A, is hereby deleted in its entirety and replaced with the following:

[***]

[***]

12.4 JV Purchase and Supply Agreements.

(a) KIW has previously been added as a party to each of the Purchase and Supply Agreements to which KIC is a party and is fully bound by, and subject to, all of the covenants, conditions and agreements thereunder that are required to be performed, observed or satisfied by KIC with respect to the K2 Ph1 Facility, and may exercise all of KIC's rights thereunder, in each case, as though an original party thereto in the same manner and to the same extent as if KIW were KIC itself.

(b) The capitalized term "Products" in the FFL Purchase and Supply Agreements is hereby revised to include JV K2 Ph1 BiCS Products manufactured for FFL in accordance with the Purchase Specification as thereinafter defined.

(c) Subject to Section 1.2, purchases by Kioxia or WD from:

(i) FPL of JV K2 Ph1 BiCS Products manufactured for FPL shall be made in accordance with the terms of KIC's (in the case of Kioxia) and SanDisk Cayman's (in

the case of WD, as if WD were SanDisk Cayman) FPL Purchase and Supply Agreement for purchases of Products (as defined therein), *provided* that with respect to such purchases of JV K2 Ph1 BiCS Products manufactured for FPL, any price or charge that is calculated or determined under Article 4 ("Purchase Prices of Products; Title Transfer") of the FPL Purchase and Supply Agreement based on Article 4 of the FPL Foundry Agreement shall instead be based on Article 8 hereof;

(ii) FAL of JV K2 Ph1 BiCS Products manufactured for FAL shall be made in accordance with the terms of KIC's (in the case of Kioxia) and SanDisk Ireland's (in the case of WD, as if WD were SanDisk Ireland) FAL Purchase and Supply Agreement for purchases of Products (as defined therein), *provided* that with respect to such purchases of JV K2 Ph1 BiCS Products manufactured for FAL, any price or charge that is calculated or determined under Article 4 ("Purchase Prices of Products; Title Transfer") of the FAL Purchase and Supply Agreement based on Article 4 of the FAL Foundry Agreement shall instead be based on Article 8 hereof; and

(iii) FFL of JV K2 Ph1 BiCS Products manufactured for FFL shall be made in accordance with the terms of KIC's (in the case of Kioxia) and SanDisk Flash's (in the case of WD, as if WD were SanDisk Flash) FFL Purchase and Supply Agreement for purchases of Products (as defined therein), *provided* that with respect to such purchases of JV K2 Ph1 BiCS Products manufactured for FFL, any price or charge that is calculated or determined under Article 4 ("Purchase Prices of Products; Title Transfer") of the FFL Purchase and Supply Agreement based on Article 4 of the FFL Foundry Agreement shall instead be based on Article 8 hereof.

[***]

(e) Section 3(b) of KIC's FPL Purchase and Supply Agreement is hereby deleted in its entirety and replaced with the following:

"(b) Beginning on a date agreed by the Parties, Kioxia shall [***] submit a written rolling forecast of the estimated monthly requirements of Kioxia for each Product (as specified therein) during each month of the Forecast Period (as defined below) (each, a "**Forecast**"). Each Forecast shall be binding on Kioxia, with respect to each Product referenced therein, for [***] (as defined below) for such Product (the "**Binding Commitment**"). No portion of any Binding Commitment set forth in any Forecast may be modified by any subsequent Forecast without the Company's prior written consent. Kioxia shall issue each PO to the Company for a given month by the end of the month prior to the given month and each PO shall be consistent with the applicable month of the then-current Forecast.

[***]

(f) Section 3(b) of SanDisk Cayman's FPL Purchase and Supply Agreement is hereby deleted in its entirety and replaced with the following:

"(b) Beginning on a date agreed by the Parties, SanDisk International shall [***] agreed by the Parties, submit a written rolling forecast of the estimated monthly requirements of SanDisk International for each Product (as specified therein) during each month of the Forecast Period (as defined below) (each, a "**Forecast**"). Each Forecast shall be binding on SanDisk International, with respect to each Product referenced therein, [***] (as defined below) for such Product (the "**Binding Commitment**"). No portion of any Binding Commitment set forth in any Forecast may be modified by any subsequent Forecast without the Company's prior written consent. SanDisk International shall issue each PO to the Company for a given [***]

As used herein:

[***]

(g) Section 3(b) of KIC's FAL Purchase and Supply Agreement is hereby deleted in its entirety and replaced with the following:

"(b) Beginning on a date agreed by the Parties, Kioxia shall [***] agreed by the Parties, submit a written rolling forecast of the estimated monthly requirements of Kioxia for each Product (as specified therein) during each month of the Forecast Period (as defined below) (each, a "**Forecast**"). Each Forecast shall be binding on Kioxia, with respect to each Product referenced therein, [***] (as defined below) for such Product (the "**Binding Commitment**"). No portion of any Binding Commitment set forth in any Forecast may be modified by any subsequent Forecast without the Company's prior written consent. Kioxia shall issue each PO to the Company for [***]

As used herein:

[***]

(h) Section 3(b) of SanDisk Ireland's FAL Purchase and Supply Agreement is hereby deleted in its entirety and replaced with the following:

"(b) Beginning on a date agreed by the Parties, SanDisk Ireland shall [***] agreed by the Parties, submit a written rolling forecast of the estimated monthly requirements of SanDisk Ireland for each Product (as specified therein) during each month of the Forecast Period (as defined below) (each, a "**Forecast**"). Each Forecast shall be binding on SanDisk Ireland, with respect to each Product referenced therein, [***] (as defined below) for such Product (the "**Binding Commitment**"). No portion of any Binding Commitment set forth in any Forecast may be modified by any subsequent Forecast without the Company's prior written consent. SanDisk Ireland shall issue each PO to the Company [***]

As used herein:

[***]

(i) Section 3(b) of KIC's FFL Purchase and Supply Agreement is hereby deleted in its entirety and replaced with the following:

"(b) Beginning on a date agreed by the Parties, Kioxia shall [***] agreed by the Parties, submit a written rolling forecast of the estimated monthly requirements of Kioxia for each Product (as specified therein) during each month of the Forecast Period (as defined below) (each, a "**Forecast**"). Each Forecast shall be binding on Kioxia, with respect to each Product referenced therein, [***] (as defined below) for such

Product (the "**Binding Commitment**"). No portion of any Binding Commitment set forth in any Forecast may be modified by any subsequent Forecast without the Company's prior written consent. Kioxia shall issue each PO to the Company for [***]

As used herein:

[***]

(j) Section 3(b) of SanDisk Flash's FFL Purchase and Supply Agreement is hereby deleted in its entirety and replaced with the following:

"(b) Beginning on a date agreed by the Parties, SanDisk Flash shall [***] agreed by the Parties, submit a written rolling forecast of the estimated monthly requirements of SanDisk Flash for each Product (as specified therein) during each month of the Forecast Period (as defined below) (each, a "**Forecast**"). Each Forecast shall be binding on SanDisk Flash, with respect to each Product referenced therein, [***] (as defined below) for such Product (the "**Binding Commitment**"). No portion of any Binding Commitment set forth in any Forecast may be modified by any subsequent Forecast without the Company's prior written consent. SanDisk Flash shall issue each PO to the Company [***]

As used herein:

[***]

(k) Section 3(d) of KIC's FPL Purchase and Supply Agreement is hereby deleted in its entirety and replaced with the following:

"(d) Kioxia may reschedule or cancel orders for any Product that is not within the Binding Commitment period of the then-current Forecast for such Product. In the

event Kioxia requests the Company to defer or cancel orders for a Product within the Binding Commitment period of the then-current Forecast for such Product, the Company shall use all reasonable efforts to comply with Kioxia's request, *provided* that (i) Kioxia shall reimburse the Company for actual and direct raw material costs and work-in-process expenses and fixed costs allocated to such Products to be agreed to between the Parties and (ii) to the extent the Company suffers losses or other adverse impacts due to such rescheduling or cancellation that are not remedied pursuant to clause (i), the Parties shall discuss and resolve such situation in good faith. In the event that Kioxia requests the Company to change a Product within the Binding Commitment period of the then-current Forecast for such Product to a different Product, the Company shall use all reasonable efforts to comply with Kioxia's request. Notwithstanding the foregoing sentences in this paragraph, nothing in this Agreement shall modify, alter or amend the obligations of SanDisk pursuant to Article 6 (Covenant Concerning NAND Flash Memory Products Business) of the Master Agreement."

(l) Section 3(d) of SanDisk Cayman's FPL Purchase and Supply Agreement is hereby deleted in its entirety and replaced with the following:

"(d) SanDisk International may reschedule or cancel orders for any Product that is not within the Binding Commitment period of the then-current Forecast for such Product. In the event SanDisk International requests the Company to defer or cancel orders for a Product within the Binding Commitment period of the then-current Forecast for such Product, the Company shall use all reasonable efforts to comply with SanDisk International's request, *provided* that (i) SanDisk International shall reimburse the Company for actual and direct raw material costs and work-in-process expenses and fixed costs allocated to such Products to be agreed to between the Parties and (ii) to the extent the Company suffers losses or other adverse impacts due to such rescheduling or cancellation that are not remedied pursuant to clause (i), the Parties shall discuss and resolve such situation in good faith. In the event that SanDisk International requests the Company to change a Product within the Binding Commitment period of the then-current Forecast for such Product to a different Product, the Company shall use all reasonable efforts to comply with SanDisk International's request. Notwithstanding the foregoing sentences in this paragraph, nothing in this Agreement shall modify, alter or amend the obligations of SanDisk International pursuant to Article 6 (Covenants Concerning NAND Flash Memory Products Business) of the Master Agreement."

(m) Section 3(d) of KIC's FAL Purchase and Supply Agreement is hereby deleted in its entirety and replaced with the following:

"(d) Kioxia may reschedule or cancel orders for any Product that is not within the Binding Commitment period of the then-current Forecast for such Product. In the event Kioxia requests the Company to defer or cancel orders for a Product within the Binding Commitment period of the then-current Forecast for such Product, the Company shall use all reasonable efforts to comply with Kioxia's request,

*provided* that (i) Kioxia shall reimburse the Company for actual and direct raw material costs and work-in-process expenses and fixed costs allocated to such Products to be agreed to between the Parties and (ii) to the extent the Company suffers losses or other adverse impacts due to such rescheduling or cancellation that are not remedied pursuant to clause (i), the Parties shall discuss and resolve such situation in good faith. In the event that Kioxia requests the Company to change a Product within the Binding Commitment period of the then-current Forecast for such Product to a different Product, the Company shall use all reasonable efforts to comply with Kioxia's request. Notwithstanding the foregoing sentences in this paragraph, nothing in this Agreement shall modify, alter or amend the obligations of Kioxia pursuant to Article 6 (Covenants Concerning NAND Flash Memory Products Business) of the Master Agreement."

(n) Section 3(d) of SanDisk Ireland's FAL Purchase and Supply Agreement is hereby deleted in its entirety and replaced with the following:

"(d) SanDisk Ireland may reschedule or cancel orders for any Product that is not within the Binding Commitment period of the then-current Forecast for such Product. In the event SanDisk Ireland requests the Company to defer or cancel orders for a Product within the Binding Commitment period of the then-current Forecast for such Product, the Company shall use all reasonable efforts to comply with SanDisk Ireland request, *provided* that (i) SanDisk Ireland shall reimburse the Company for actual and direct raw material costs and work-in-process expenses and fixed costs allocated to such Products to be agreed to between the Parties and (ii) to the extent the Company suffers losses or other adverse impacts due to such rescheduling or cancellation that are not remedied pursuant to clause (i), the Parties shall discuss and resolve such situation in good faith. In the event that SanDisk Ireland requests the Company to change a Product within the Binding Commitment period of the then-current Forecast for such Product to a different Product, the Company shall use all reasonable efforts to comply with SanDisk Ireland's request. Notwithstanding the foregoing sentences in this paragraph, nothing in this Agreement shall modify, alter or amend the obligations of SanDisk Ireland pursuant to Article 6 (Covenants Concerning NAND Flash Memory Products Business) of the Master Agreement."

(o) Section 3(d) of KIC's FFL Purchase and Supply Agreement is hereby deleted in its entirety and replaced with the following:

"(d) [***]

[***]

(p) Section 3(d) of SanDisk Flash's FFL Purchase and Supply Agreement is hereby deleted in its entirety and replaced with the following:

"(d) [***]

(q) Section VI of the Quality Assurance Agreement attached to each of the FPL Purchase and Supply Agreements, the FAL Purchase and Supply Agreements and the FFL Purchase and Supply Agreements as Exhibit A, is hereby deleted in its entirety and replaced with the following:

[***]

[***]

12.5 JV Lease Agreements.

(a) All references to Y3 NAND Flash Memory Products in the FPL Lease Agreement are hereby revised to include JV K2 Ph1 BiCS Products manufactured for FPL. All references to Y4 NAND Flash Memory Products in the FAL Lease Agreement are hereby revised to include JV K2 Ph1 BiCS Products manufactured for FAL. All references to Y5 NAND Flash Memory Products, JV Y5 BiCS Products, JV New Y2 BiCS Products or JV Y6 BiCS Products in the FFL Lease Agreement are hereby revised to include JV K2 Ph1 BiCS Products manufactured for FFL.

(b) [***] right to sub-lease the Equipment (as defined in each JV Lease Agreement) to [***] pursuant to Section 12.5(b) of the K1 Agreement shall apply to Equipment in the K2 Ph1 Facility.

12.6 Y7 Ph1 Agreement.

(a) Sections 4.7(b)(iii)(A) and 4.7(b)(iii)(B) of the Y7 Ph1 Agreement are each hereby amended by (i) replacing the phrase "during the applicable Shortfall Quarter" with the phrase "as of the end of the applicable Shortfall Quarter" and (ii) replacing the phrase "Y7 Ph1 CS Product Fixed Manufacturing Costs" with the phrase "Y7 Ph1 CS Fixed Manufacturing Costs".

(b) Section 4.7(b)(iii)(C) of the Y7 Ph1 Agreement is hereby amended by replacing the phrase ", both sub-clause (A) and sub-clause (B)" with the phrase "as of the end of the applicable Shortfall Quarter, the sum of the amounts set forth in both Section 4.7(b)(iii)(A) and Section 4.7(b)(iii)(B)".

12.7 Undertaking. From the date hereof, the New Agreements shall each constitute an "Underlying Agreement" for purposes of the Undertaking.

12.8 Settlement Agreement. From the date hereof, the New Agreements shall each constitute a "Collaboration Agreement" for purposes of the Settlement Agreement.

12.9 ISCO Supplement. From the date hereof, this Agreement shall constitute a "Core Agreement" for purposes of the ISCO Supplement.

12.10 Defined Terms. Capitalized terms used in the Master Operative Documents that are assigned meanings in the "Common Definitions" section of Exhibit A to this Agreement are hereby amended to have the respective meanings assigned to them in the "Common Definitions" section of Exhibit A to this Agreement unless the context otherwise requires.

**13. CONFIDENTIALITY AND DISCLOSURE**

13.1 Public Announcements. Neither Parent Party shall, nor shall it permit any of its Affiliates to, without the prior written consent of the other Parent Party:

(a) issue any public release, announcement or other document, or otherwise publicly disclose any information or make any public statement, concerning the operations of the K2 Ph1 Facility that refers to the other Parent Party or any of its Affiliates in connection therewith (other than a general reference to affiliation with the JVs) and (i) concerns the financial condition or results of operations of the JVs, other than as required by any applicable Law or accounting standard with respect to the financial disclosure obligations of either Parent Party, or (ii) (A) disparages either Parent Party or the JVs' performance or (B) reflects negatively on either Parent Party's commitment to the K2 Ph1 Facility; or

(b) publicly file all or any part of any New Agreement or any description thereof, or issue or otherwise make publicly available any press release, announcement or other document that contains Confidential Information belonging to the other Parent Party (or its Affiliates) or the JVs, except as may be required by applicable Law (in which case such Parent Party shall (or shall cause the Person required to make such filing to) cooperate with the other Parent Party, to the extent reasonable and practicable, in obtaining any confidential treatment for such filing requested by the other Parent Party).

(c) Each Parent Party shall use commercially reasonable efforts to grant or deny any approval required under this Section 13.1 within five (5) Business Days of receipt of written request by the other Parent Party; *provided*, *however*, that a Parent Party's failure to respond within said time period shall not be deemed to constitute such Parent Party's approval or consent.

13.2 Non-Disclosure Obligations.

(a) For a period of [***] from the date of receipt of each item of Confidential Information disclosed by one Party (the "Disclosing Party") under this Agreement or the K2 Ph1 MCEIA, the other Party (the "Receiving Party") shall safeguard such item of Confidential Information, shall keep it in confidence, and shall use reasonable efforts, consistent with those used in the protection of its own confidential information, to prevent its disclosure of such Confidential Information to third parties.

(b) Notwithstanding the foregoing Section 13.2(a), the Receiving Party shall not be obligated by this Section 13.2 with respect to information that:

(i) is already known to the Receiving Party at the time of its receipt from the Disclosing Party as reasonably evidenced by its written records;

(ii) is or becomes publicly available without breach of this Agreement by the Receiving Party;

(iii) is made available to a third party by the Disclosing Party without restriction on disclosure;

(iv) is rightfully received by the Receiving Party from a third party without restriction and without breach of this Agreement;

(v) is independently developed by the Receiving Party as reasonably evidenced by its written records contemporaneous with such development;

(vi) is disclosed with the prior written consent of the Disclosing Party, *provided* that each recipient from the Receiving Party shall execute a confidentiality agreement prohibiting further disclosure of the Confidential Information, under terms no less restrictive that those provided in this Agreement;

(vii) is required to be disclosed by the order of a Governmental Authority, *provided* that the Receiving Party shall give the Disclosing Party prompt notice of such request so that the Disclosing Party has an opportunity to defend, limit or protect such disclosure; or

(viii) is required to be disclosed by applicable securities or other Laws, *provided* that the Receiving Party shall, prior to any such disclosure required by the applicable Governmental Authority, provide the Disclosing Party with notice which includes a copy of the proposed disclosure and consider in good faith the Disclosing Party's timely input with respect to such disclosure.

(c) The Receiving Party shall use its reasonable best efforts to limit dissemination of the Disclosing Party's Confidential Information to such of its employees who have a need to know such information for the purpose for which such information was disclosed. The Receiving Party understands that disclosure or dissemination of the Disclosing Party's Confidential Information not expressly authorized hereunder would cause irreparable injury to the Disclosing Party, for which monetary damages would not be an adequate remedy and would entitle the Disclosing Party to equitable relief in addition to any remedies the Disclosing Party may have hereunder or at law.

(d) For purposes of the confidentiality obligations in the Existing Agreements and the New Agreements, information shall not be considered to have been made available to a

third party by the Disclosing Party without restriction on disclosure if such information was only made available to such third party as a result of an inadvertent or unintentional disclosure of such information by the Disclosing Party. In the event that the Disclosing Party's disclosure of Confidential Information to the Receiving Party is inadvertent or unintended and the Disclosing Party, upon becoming aware of such inadvertent or unintended disclosure, promptly notifies the Receiving Party in writing that such disclosure was inadvertent or unintended, the Receiving Party shall promptly (and in any event in less [***] destroy all such Confidential Information. In addition, if the Receiving Party reasonably believes that the Disclosing Party's disclosure of Confidential Information to the Receiving Party was inadvertent or unintended, the Receiving Party shall promptly notify the Disclosing Party of such belief and, if requested by the Disclosing Party, promptly (and in any event in less [***] destroy all such Confidential Information. If requested by the Disclosing Party, the Receiving Party shall certify in writing that all such Confidential Information has been destroyed.

(e) Nothing in this Agreement shall be construed as granting or conferring any rights, licenses or relationships by the transmission of the Confidential Information.

13.3 Ownership and Return of Information. All Confidential Information disclosed hereunder shall remain the property of the Disclosing Party. Upon request by the Disclosing Party, the Receiving Party shall return all Confidential Information of the Disclosing Party, including any and all copies thereof, or certify in writing that all such Confidential Information had been destroyed.

**14. TERM AND TERMINATION**

14.1 Term. This Agreement shall continue in full force and effect until the latest of the termination of (a) the FPL Master Agreement (if FPL has any JV Capacity at the K2 Ph1 Facility), (b) the FAL Master Agreement (if FAL has any JV Capacity at the K2 Ph1 Facility), and (c) the FFL Master Agreement, unless earlier terminated as hereinafter provided. The term of this Agreement may be extended by mutual agreement of both Parent Parties.

14.2 Termination. Notwithstanding the foregoing Section 14.1, this Agreement may be terminated:

(a) by the mutual written agreement of the Parties, in which case this Agreement will terminate on the date mutually agreed by the Parties;

(b) by either Parent Party upon [***] written notice to the other Parent Party, if (i) (A) the other Parent Party has failed to make (or authorize the JVs to make) the investment necessary to implement its share of the K2 Ph1 Minimum Commitment [***] (B) has failed to pay its [***] and (ii) KIC (in the case of termination by KIC), or WD or SanDisk (in the case of termination by WD) is not in material breach of any material Master Operative Document; or

(c) by either Parent Party, upon written notice to the other Parent Party, if the other Parent Party (i) makes an assignment of all or substantially all its assets for the benefit of

creditors, (ii) has filed a voluntary petition in bankruptcy or insolvency or any other legal action or document seeking reorganization, readjustment or arrangement of its business under any Law relating to bankruptcy or insolvency, or (iii) is adjudicated to be bankrupt or insolvent under any such Law, or has a receiver appointed over all or substantially all of its property, by a competent Governmental Authority; in which case of (i), (ii) or (iii), this Agreement will terminate on the thirtieth (30th) day after such notice of termination is given.

14.3 Termination for Material Breach. The Parent Parties agree and acknowledge that in the event of a final determination by an arbitral tribunal under Section 16.4 that a Parent Party has committed or is committing a continuing material breach of any ofSections [***] this Agreement or [***] of the New Y2 Agreement (by KIC, in the case of KIC, or by SanDisk, in the case of WD) [***] (any such breach, a "Material Breach"), and the breaching Parent Party fails to cure such breach within [***] after such determination, then the non-breaching Parent Party shall have as a remedy for Material Breach the termination of this Agreement, in addition to all other legal and equitable remedies available to such Parent Party. In the event that a Parent Party expressly asserts in writing a Material Breach, the dispute shall proceed as specified in Section 16.4; *provided*, *however*, that:

(a) no matters other than the existence of such Material Breach (and counterclaims and defenses directly related to the conduct or circumstances underlying the asserted Material Breach) shall be submitted to or determined by the arbitral tribunal;

(b) the Parent Parties shall use their respective reasonable best efforts to complete and finalize the Terms of Reference within [***] following such assertion of Material Breach; and

(c) the Parent Parties shall instruct the arbitral tribunal, with the full assistance and cooperation of the Parent Parties, to endeavor to submit its draft award on the existence of the Material Breach to the Court of Arbitration of the International Chamber of Commerce for approval within [***] following the effective date of the Terms of Reference, *provided* that any failure to issue an award in such time period shall not be considered a defense or objection to the enforcement of such an award.

The Parent Parties agree to attempt in good faith to resolve any potential claim for Material Breach. Any reference in [***] of the New Y2 Agreement, [***] of the Y6 Agreement, [***] of the K1 Agreement and [***] of the Y7 Ph1 Agreement to a provision that is expressly superseded and replaced by a provision of this Agreement shall refer to such provision of this Agreement and a breach by WD of any such provision shall constitute a breach by SanDisk for purposes of [***] of the New Y2 Agreement.

14.4 Termination in Good Faith. Termination of any Master Operative Document by any party thereto may be done only in good faith.

14.5 Survival.

(a) The provisions of Sections 4.5(c), 4.9, 7.6, 12.1(h), 12.3(e) to 12.3(i), 12.4(e) to 12.4(q) and 12.6 to 12.10, Article 13 (except Section 13.1(a)(ii)(B)), this Article 14, Article 16 and Exhibit A shall survive any termination or expiration of this Agreement.

(b) So long as (and only for so long as) the Parent Parties have BiCS Products manufacturing capacity in the JVs (other than Former JV Capacity), the provisions of Sections 3.2(b)(ii)(A), 3.3(d), 4.2 (except with respect to the K2 Ph1 Facility),4.3 (except with respect to the K2 Ph1 Facility), 4.4 (except with respect to the K2 Ph1 Facility),4.8 (for so long as the K1 Agreement remains in effect),Article 5 (except with respect to the K2 Ph1 Facility), Article 10 (except with respect to the K2 Ph1 Facility for Section 10.3(a)) and Section 12.1(f) (except with respect to the K2 Ph1 Facility), and Article 15 shall also survive any termination or expiration of this Agreement.

(c) Section 1.3 shall survive any termination or expiration of this Agreement until the expiration or termination of the last-to-expire or last-to-terminate of the JV Master Agreements.

14.6 Restructuring Costs.

(a) In the event this Agreement is terminated, the Parent Parties will exercise reasonable best efforts to plan such termination in advance with the goal of minimizing related costs. With respect to employees of KIC, WD or any of their respective Subsidiaries working at the K2 Ph1 Facility, (i) in the case of those that are employees of KIC or any of its Subsidiaries, KIC will use its reasonable best efforts to retrain or relocate such individuals to other KIC facilities, and (ii) in the case of those that are employees of WD or any of its Subsidiaries, WD will use its reasonable best efforts to retrain or relocate such individuals to other WD facilities, each to the maximum extent possible.

(b) The Parties agree that in the event of such a WD exit from the K2 Ph1 Facility, WD shall be obligated to pay to KIC (or where feasible, to bear directly) the WD Share (as defined below) of Restructuring Costs (as defined below); *provided*, *however*, that WD's total liability for Restructuring Costs shall in no event exceed US $10 million. For purposes of the foregoing:

(i) "WD Share" means (A) fifty percent (50%) of the aggregate Restructuring Costs for Personnel dedicated to the K2 Ph1 Facility, and (B) one hundred percent (100%) of the aggregate Restructuring Costs for "shortfall" K2 Ph1 JV Engineers (i.e., K2 Ph1 JV Engineers provided by KIC in excess of the K2 Ph1 JV Engineers allocated to KIC due to WD's failure to provide the number of K2 Ph1 JV Engineers allocated to WD, in each case, as agreed upon in the K2 Ph1 JV Headcount Plan pursuant to Section 7.3); and

(ii) "Restructuring Costs" means all costs and expenses incurred by KIC directly related to restructuring the workforce of Personnel dedicated to the K2 Ph1 Facility and shortfall K2 Ph1 JV Engineers in connection with WD's exit from the K2 Ph1 Facility for any reason, including without limitation severance or similar settlement expenses (including early retirement incentives), actual costs incurred for relocating such personnel to other facilities

(including relocation expense reimbursements or other relocation payments made to such personnel), actual costs incurred for retraining such personnel, and salaries and benefits paid to such personnel during the three (3) years from WD's exit from the K2 Ph1 Facility.

(c) Upon any termination of this Agreement, the Parties shall meet and discuss in good faith an estimate of the Restructuring Costs anticipated to be incurred by KIC. The Parties shall seek to arrive at a settlement amount (up to US $10 million) to be paid in a lump sum payment by WD to KIC in total satisfaction of WD's total liability for Restructuring Costs. To the extent the Parent Parties are not able to agree upon a lump-sum payment to be made by WD, KIC shall have the right to invoice WD for Restructuring Costs incurred by KIC for which underlying detail is provided to WD. WD shall pay the amounts shown on such invoices (up to an aggregate of US $10 million) on a quarterly basis to the extent such underlying detail has been provided.

14.7 Effect on Other Collaborations. Unless otherwise expressly provided herein, termination of this Agreement shall not affect any surviving rights or obligations set forth in the Joint Operative Documents. For the avoidance of doubt, the BiCS LDA and the WD-KIC PCLA (in each case, including the licenses provided thereunder) shall be unaffected by the termination of this Agreement, and the BiCS LDA and the WD-KIC PCLA shall terminate or expire in accordance with each of such agreement's terms.

## 15. REPRESENTATIONS AND WARRANTIES

Each Parent Party hereby represents and warrants to the other Parent Party as follows:

15.1 Organization and Standing. It is duly organized and validly existing and, where applicable, in good standing under the laws of the jurisdiction in which it is organized.

15.2 Authority; Enforceability. It has the requisite power and authority to enter into the New Agreements, to execute any certificates or other instruments to be executed by it in connection therewith and otherwise carry out the transactions contemplated by the New Agreements. All proceedings required to be taken by it to authorize the execution, delivery and performance of the New Agreements, and any such certificates and instruments, have been properly taken. This Agreement has been duly and validly executed and delivered by it and constitutes a valid and binding obligation of it, enforceable against it in accordance with its terms except as enforceability may be limited by bankruptcy, insolvency, fraudulent conveyance or similar laws affecting the enforcement of creditors' rights generally or the availability of equitable remedies (regardless of whether enforceability is considered in a proceeding at law or in equity).

15.3 No Conflict. The execution, delivery and performance of the New Agreements by it and its Affiliates do not and will not (a) breach, violate or conflict with any provision of its charter documents as amended to date, or (b) conflict with or violate any Law applicable to it. No consent, approval or authorization of, or filing with, any Governmental Authority, or any other Person, is required to be made or obtained by it in connection with the execution, delivery and performance by it of any New Agreement or the consummation by it of the transactions contemplated thereby.

15.4 Proceedings. Except for any action, claim, investigation or proceeding (a) threatened, asserted, or pending between or among WD and/or any of its Affiliates, on the one hand, and KIC and/or Toshiba, and/or any of its or their Affiliates, on the other hand or (b) that falls within the scope of any release, waiver, dismissal, or covenant not to sue set forth in the Settlement Agreement, there are no actions, claims, investigations or proceedings pending, or to its knowledge threatened, by or before any Governmental Authority that, if adversely determined, would have a material adverse effect on it or on the conduct of the business of any of the JVs as contemplated in the Master Operative Documents or on its ability to perform any material obligation under any Master Operative Document.

15.5 Litigation; Decrees. Except for any Action threatened, asserted, or pending (a) between or among WD and/or any of its Affiliates, on the one hand, and KIC and/or Toshiba, and/or any of its or their Affiliates, on the other hand or (b) that falls within the scope of any release, waiver, dismissal, or covenant not to sue set forth in the Settlement Agreement, there are no Actions pending, or, to its knowledge, threatened that (i) are reasonably likely, based on information known to it as of the date hereof, to have a material adverse effect on the conduct of the business of any of the JVs as contemplated by the Master Operative Documents or (ii) relate to any of the transactions contemplated by the Master Operative Documents in a manner which is material to its, any of its Affiliates' or any of the JVs' ability to carry out the transactions contemplated hereby and thereby or which could have a material adverse effect on the conduct of the business of any of the JVs as contemplated in the Master Operative Documents. Except for any judgment, order, writ, or decree in connection with any Action (A) between or among WD and/or any of its Affiliates, on the one hand, and KIC and/or Toshiba, and/or any of its or their Affiliates, on the other hand or (B) that falls within the scope of any release, waiver, dismissal, or covenant not to sue set forth in the Settlement Agreement, there is no judgment, order, writ or decree that substantially restrains its ability to consummate the transactions contemplated by the New Agreements.

15.6 Compliance with Other Instruments. Except (a) as may have been asserted by WD and/or any of its Affiliates, on the one hand, and KIC and/or Toshiba, and/or any of its or their Affiliates, on the other hand or (b) any default asserted in connection with any Action, claim, investigation or proceeding that falls within the scope of any release, waiver, dismissal, or covenant not to sue set forth in the Settlement Agreement, neither it nor any of its Affiliates that is party to any New Agreement is in default in any material respect in the performance of any material obligation, agreement, instrument or undertaking to which such Person is a party or by which such Person or any of its properties is bound. Except for any obligation, agreement, instrument or undertaking between or among (i) WD and/or any of its Affiliates, (ii) KIC and/or Toshiba, and/or any of its or their Affiliates, and/or (iii) any of the JVs, there is no such obligation, agreement, instrument or undertaking to which it or any of its Affiliates is a party or by which any of its Affiliates or any of its or their properties is bound, in each case that is reasonably likely to have a material adverse effect on the Parties' use of the K2 Ph1 Facility as contemplated by the New Agreements.

15.7 Patents and Proprietary Rights. To its knowledge, it owns or possesses sufficient legal rights to all patents, utility models, trademarks, service marks, trade names, copyrights, applications for any of the foregoing, mask works, software, trade secrets, licenses, information and proprietary rights and processes (collectively, "Intellectual Property") necessary (a) to carry

out its or any of its Affiliates' obligations under the Master Operative Documents and (b) for the conduct of the business of any of the JVs as contemplated in the Master Operative Documents, without any conflict with or infringement of the rights of others, except as will not have a material adverse effect on either (a) or (b) above. Except for any communications (i) between or among WD and/or any of its Affiliates, on the one hand, and KIC and/or Toshiba, and/or any of its or their Affiliates, on the other hand, or (ii) in connection with any Action, claim, investigation or proceeding that falls within the scope of any release, waiver, dismissal, or covenant not to sue set forth in the Settlement Agreement, including any communications referenced in Schedule 2.1 of the Settlement Agreement, it has not received any communications alleging that its Intellectual Property violates, or by its or any of its Affiliates entering into the transactions contemplated by the Master Operative Documents, would violate the Intellectual Property of any other Person or entity, which violation could reasonably be expected to have a material adverse effect on either (a) or (b) above.

15.8 Compliance with Laws. It and each of its Affiliates has complied and is complying in all material respects with all Laws, except where the failure to so comply would not have a material adverse effect on its or any of its Affiliates ability to perform its or their obligations under the Master Operative Documents or on the production of BiCS Products as contemplated by the Master Operative Documents.

15.9 Patent Cross Licenses. [***]

**16. MISCELLANEOUS**

16.1 Entire Agreement. This Agreement, together with the exhibit(s) and schedules hereto and the other Master Operative Documents, constitute the entire agreement of the Parties to this Agreement with respect to the subject matter hereof and supersedes all prior written and oral agreements and understandings with respect to such subject matter.

16.2 Undertaking as to Affiliate Obligations. Each Parent Party shall cause all covenants, conditions and agreements to be performed, observed or satisfied by any of its Affiliates that are parties to any New Agreement to be fully and faithfully observed, performed and satisfied by such Affiliate, and shall not cause or permit to exist any breach or default of such covenants, conditions or agreements arising from such Affiliate's action or inaction. Nothing in this Section 16.2 shall be construed to create any right in any Person other than the Parties. In the case of an affirmative covenant or other action required of WD or permitted to be taken by WD hereunder or under any other New Agreement, WD may perform or satisfy such affirmative covenant or other action directly or indirectly by causing one or more of its Subsidiaries to fully perform or satisfy such affirmative covenant or other action. Notwithstanding anything to the contrary in any Master Operative Document, if WD consents or agrees to KIC's or any of its Affiliate's taking an action or inaction that is subject to SanDisk's consent or agreement under a Master Operative Document, WD's providing such consent or agreement shall satisfy such requirement for SanDisk's consent.

16.3 Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of California applicable to agreements made and to be performed entirely within such state without regard to the conflict of laws principles of such state, except where application of Japanese law is mandatory. Each New Agreement shall be governed in accordance with its governing law provision and, in the absence of any such provision, by the first sentence of this Section 16.3.

16.4 Dispute Resolution; Arbitration. Any dispute concerning this Agreement shall be referred to the applicable JV's Management Representatives and handled by them in accordance with the applicable JV Master Agreement. If the Management Representatives cannot resolve such dispute in accordance with the terms of the applicable JV Master Agreement, then such dispute will be settled by binding arbitration in San Francisco, California. The dispute shall be heard by a panel of three (3) arbitrators pursuant to the rules of the International Chamber of Commerce. The awards of such arbitration shall be final and binding upon the parties thereto. Each party will bear its own fees and expenses associated with the arbitration. Filing fees and arbitrator fees charged by the International Chamber of Commerce shall be borne equally by the Parent Parties.

16.5 Remedies.

(a) Except as may otherwise be specifically provided in the New Agreements, the rights and remedies of the parties under this Agreement are cumulative and are not exclusive of any rights or remedies which the parties hereto would otherwise have.

(b) Equitable relief, including the remedies of specific performance and injunction, shall be available with respect to any actual or attempted breach of this Agreement; *provided*, *however*, that in the absence of exigent circumstances, the Parties shall refrain from commencing any lawsuit or seeking judicial relief in connection with such actual or attempted breach that is contemplated to be addressed by the dispute resolution process set forth in this Agreement until the Parties have attempted to resolve the subject dispute by following said dispute resolution process to its conclusion.

(c) If the due date for any amount required to be paid under any New Agreement is not a Business Day, such amount shall be payable on the next succeeding Business Day, *provided* that if payment cannot be made due to the existence of a banking crisis or international payment embargo, such amount may be paid within the following thirty (30) days.

(d) IN THE ABSENCE OF ACTUAL FRAUD, IN NO EVENT SHALL ANY PARTY BE LIABLE TO OR BE REQUIRED TO INDEMNIFY ANY OTHER PARTY OR ANY OF THEIR RESPECTIVE AFFILIATES UNDER THIS AGREEMENT (OR ANY AGREEMENT INTO WHICH THIS PROVISION IS INCORPORATED) FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL OR INDIRECT DAMAGE OF ANY KIND, (INCLUDING WITHOUT LIMITATION LOSS OF PROFIT OR DATA), WHETHER OR NOT ADVISED OF THE POSSIBILITY OF SUCH LOSS.

16.6 Relationship of the Parties. The Parties are independent contractors and no provision of or action pursuant to any New Agreement shall constitute any Party acting as the

direct or indirect agent or partner of the other Party for any purpose or in any sense whatsoever. Nothing contained in this Agreement is intended to, or shall be deemed to, create a partnership or fiduciary relationship between WD and KIC for any purpose. No Party shall take a position contrary to this Section 16.6.

16.7 Official Language. The official language of this Agreement is the English language only, which language shall be controlling in all respects, and all versions of this Agreement in any other language shall not be binding on the parties hereto or nor shall such other versions be admissible in any legal proceeding, including arbitration, brought under this Agreement. All communications and notices to be made or given pursuant to this Agreement shall be in the English language.

16.8 No Implied Licenses. All rights not expressly granted hereunder or under other agreements between or among the Parties are hereby retained in their entirety by such Party. Moreover, there are no implied grants or licenses hereunder and the only rights or licenses granted to any Party hereunder are limited to those rights and licenses expressly set forth herein.

16.9 Export Laws. No Party shall export or re-export, directly or indirectly, any technical information disclosed hereunder or direct product thereof to any destination prohibited or restricted by the export control regulations of Japan or the United States, including the U.S. Export Administration Regulations, without the prior authorization from the appropriate Governmental Authorities. No Party shall use technical information supplied by any other Party hereunder for any purpose to develop or manufacture nuclear, chemical, biological weapons or missiles (hereafter "weapons of mass destruction"). No Party shall knowingly sell any products manufactured using any other Party's technical information to any third party if it knows that the end-user of the products will use them for the development and/or manufacture of the weapons of mass destruction.

16.10 Definitions; Interpretation.

(a) Certain Definitions. Capitalized terms used but not defined in the main body of this Agreement shall have the meanings assigned to them in Exhibit A.

(b) Treatment of Ambiguities. The Parties acknowledge that each Party has participated in the drafting of this Agreement, and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in the construction or interpretation of this Agreement.

(c) References; Construction. Unless otherwise indicated herein, with respect to any reference made in this Agreement to a Section, Article, Schedule or Exhibit, such reference shall be to a section or article of, or a schedule or exhibit to, this Agreement. The article and section headings contained in this Agreement and the recitals at the beginning of this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement or any other agreement. Any reference made in this Agreement to a statute or statutory provision shall mean such statute or statutory provision as it has been amended through the date as of which the particular portion of the Agreement is to take effect, or to any successor statute or statutory provision relating to the same subject as the statutory

provision so referred to in this Agreement, and to any then applicable rules or regulations promulgated thereunder. Whenever the words "include," "includes" or "including" are used in this Agreement, they shall be deemed, unless the context clearly indicates to the contrary, to be followed by the words "but (is/are) not limited to." The words "herein," "hereof," "hereunder" and words of like import shall refer to this Agreement as a whole (including its Schedules and Exhibits), unless the context clearly indicates to the contrary. Words used herein, regardless of the number and gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine or neuter, as the context indicates is appropriate. Any reference made in this Agreement to another Master Operative Document shall be deemed, unless the context clearly indicates to the contrary, to refer to such Master Operative Document as such Master Operative Document may be amended or supplemented from time to time.

(d) Order of Precedence. To the extent that a provision in this Agreement expressly conflicts with another Master Operative Document, then the provisions of this Agreement will control as to such conflict; *provided*, *however*, that unless otherwise provided herein, the provisions of the Master Operative Documents remain in effect.

(e) Other Clarifications. Unless the context clearly indicates the contrary, any reference in this Agreement to (i) actions by, or events relating to, KIC and occurring prior to April 1, 2017 shall refer to actions by, or events relating to, Toshiba, and (ii) rights, obligations, or allocations ascribed to WD hereby, but which are set forth in a Master Operative Document to which WD is not a party, shall refer to the corresponding rights, obligations, or allocations of the applicable SanDisk party to such Master Operative Document, as if WD were named *in lieu* of such applicable SanDisk party. For the avoidance of doubt, (A) nothing herein shall be deemed an assignment or transfer to WD of any rights or allocations ascribed to a SanDisk party in any Master Operative Document and (B) sub-clause (A) does not alter any rights or obligations of any Party pursuant to the Undertaking.

16.11 Notices and Contact Information. All notices, reports and other communications to be given or made under this Agreement shall be in writing and shall be deemed received (x) if delivered by hand, courier or overnight delivery service, when delivered, or (y) if delivered by e-mail, the earlier of: (I) when the recipient, by an email sent to the email address for the sending Party stated in this Section 16.11 or by a notice delivered by another method in accordance with this Section 16.11, acknowledges having received that email (*provided*, *however*, that an automatic "read receipt" will not constitute acknowledgment of an email for purposes of this Section 16.11(y)(I)), and (II) when the email is delivered, if followed within two (2) Business Days by delivery of a copy by hand, courier or overnight delivery service, or (z) if delivered by mail, five (5) days after being mailed by certified or registered mail, return receipt requested,

with appropriate postage prepaid, and, in each case, shall be directed to the address of such Party specified below (or at such other address as such Party shall designate by like notice):

(a) If to WD or SanDisk:

Western Digital Corporation
5601 Great Oaks Parkway
San Jose, CA 95119 USA
Telephone: [***]
E-mail: [***]
Attention: Executive Vice President, Global Operations

With a copy to:

Western Digital Corporation
5601 Great Oaks Parkway
San Jose, CA 95119 USA
Telephone: [***]
E-mail: [***]
Attention: Chief Legal Officer

(b) If to KIC:

Kioxia Corporation
1-21, Shibaura 3-Chome
Minato-ku, Tokyo 108-0023 Japan
Telephone: [***]
E-mail: [***]
Attention: Executive Vice President and Chief Operating Officer

With a copy to:

Kioxia Corporation
1-21, Shibaura 3-Chome
Minato-ku, Tokyo 108-0023 Japan
Telephone: [***]
E-mail: [***]
Attention: Managing Executive Officer, General Manager, Legal Affairs Division

(c) If to KIW:

Kioxia Iwate Corporation
6-6, Kita-kogyodanchi, Kitakami-shi,
Iwate 024-8510 Japan
Telephone: [***]
E-mail: [***]
Attention: Representative Director

With a copy to:

Kioxia Corporation
1-21, Shibaura 3-Chome
Minato-ku, Tokyo 108-0023 Japan
Telephone: [***]
E-mail: [***]
Attention: Managing Executive Officer, General Manager, Legal Affairs Division

(d) If to any of the JVs, then to each of the addressees at (a) and (b) above.

16.12 Assignment. Except as separately agreed by the Parties in writing, none of the Parties may transfer this Agreement or any of its rights hereunder (except for any transfer to an Affiliate or in connection with a merger, consolidation or sale of all or substantially all the assets or the outstanding securities of such Party, which transfer will not require any consent of the other Parties hereunder) without the prior written consent of the each of the other Parties (which consent may be withheld by each such other Party in such other Party's sole discretion), and any such purported transfer without such consents will be void.

16.13 Amendment and Waiver. This Agreement may not be amended, modified or supplemented except by a written instrument executed by each Party. No waiver of any provision of this Agreement shall be effective unless set forth in a written instrument signed by the Party waiving such provision. No failure or delay by a Party in exercising any right, power or remedy under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of the same preclude any further exercise thereof or the exercise of any other right, power or remedy. Without limiting the foregoing, no waiver by a Party of any breach by any other Party of any provision hereof shall be deemed to be a waiver of any subsequent breach of that or any other provision hereof.

16.14 Severability. If a term of any New Agreement or the application of any such term is or becomes illegal, invalid or unenforceable in any respect under any jurisdiction, that will not affect (a) the legality, validity or enforceability in that jurisdiction of any other term of the New Agreements or (b) the legality, validity or enforceability in any other jurisdictions of that or any other term of the New Agreements. To the extent permitted by applicable law, the Parties waive any provision of Law that renders any provision of this Agreement invalid, illegal or unenforceable in any respect. Such term shall be replaced by a mutually acceptable provision, which being valid, legal and enforceable comes closest to the intention of the Parties underlying such illegal, invalid or unenforceable provision.

16.15 Counterparts; Effectiveness. This Agreement may be executed in counterparts, each of which shall be binding as of the date first written above, and all of which shall constitute one and the same instrument. Each such counterpart shall be deemed an original, and it shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart. The exchange of copies of this Agreement and of signature pages by facsimile transmission, portable document format (.pdf) or other electronic format shall be deemed to be their original signatures for all purposes. This Agreement shall not become effective until one or more counterparts have been executed by each Party and delivered to the other Parties.

[*The remainder of this page is intentionally left blank.*]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective duly authorized representatives as of the date first written above.

**WESTERN DIGITAL CORPORATION**

By: /s/ David Goeckeler
Name: David Goeckeler
Title: Chief Executive Officer

**SANDISK LLC**

By: /s/ Alper Ilkbahar
Name: Alper Ilkbahar
Title: Chief Executive Officer

**SANDISK (CAYMAN) LIMITED**

By: /s/ Bernard Shek
Name: Bernard Shek
Title: Director

**SANDISK (IRELAND) LIMITED**

By: /s/ Bernard Shek
Name: Bernard Shek
Title: Director

**SANDISK FLASH B.V.**

By: /s/ Bernard Shek
Name: Bernard Shek
Title: Director

**KIOXIA CORPORATION**

By: /s/ Nobuo Hayasaka
Name: Nobuo Hayasaka
Title: President and Chief Executive Officer

**KIOXIA IWATE CORPORATION**

By: /s/ Koichiro Shibayama
Name: Koichiro Shibayama
Title: Representative Director

**FLASH PARTNERS, LTD.**

By: /s/ Shinichi Nitta
Name: Shinichi Nitta
Title: Representative Director

**FLASH ALLIANCE, LTD.**

By: /s/ Hirofumi Watatani
Name: Hirofumi Watatani
Title: Representative Director

**FLASH FORWARD, LTD.**

By: /s/ Shinichi Nitta
Name: Shinichi Nitta
Title: President

**EXHIBIT A**
**DEFINITIONS**

**Common Definitions**

"3D Collaboration Agreement" means that certain 3D Collaboration Agreement, dated as of June 13, 2008, between SanDisk LLC and KIC.

"3D Memory" has the meaning set forth in the 3D Collaboration Agreement.

"Affiliate" means, with respect to any specified Person, any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with, the Person specified, and "control", when used with respect to any Person, means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities or otherwise, and the terms "controlling" and "controlled" have meanings correlative to the foregoing; *provided*, *however*, that the term Affiliate (a) when used in relation to any JV or Subsidiary thereof, shall not include the Parent Parties or any Affiliate of either of them, and (b) when used in relation to WD or KIC or their respective Affiliates, shall not include any JV or Subsidiary thereof.

"Amended FFL Services Agreement" means that certain Amended and Restated Services Agreement, dated as of May 15, 2019, by and among KIC, KIW and FFL.

"Amended JMD Agreement" and "Amended JMDY Agreement" mean that certain Amended and Restated Joint Memory Development Agreement, dated as of even date herewith, by and between KIC and SanDisk LLC.

[***]

"BiCS Conversion" means the conversion of the Parties' then-existing production capacity for NAND Flash Memory Products (including NAND capacity in the JVs and Kioxia Capacity) into production capacity for BiCS Products.

[***]

"BiCS LDA" means that certain BiCS License & Development Agreement, dated as of March 1, 2011, by and between KIC and SanDisk LLC.

[***]

"BiCS Products" has the meaning set forth for the term "BiCS Memory Products" in the BiCS LDA.

"BiCS Technology" has the meaning set forth in the BiCS LDA.

"BiCS Technology Transitions" means transitions of the Parties' then-existing production capacity for a given technology node of BiCS Products to production capacity for another technology node of BiCS Products.

"Board of Directors" has the meaning set forth in the FPL Operating Agreement or FAL Operating Agreement, as applicable.

"Board of Executive Officers" has the meaning set forth in the FFL Operating Agreement.

"Business Day" means any day (other than a day which is a Saturday, Sunday or legal holiday in the State of California or Japan) on which commercial banks are open for business in the State of California or Tokyo, Japan.

[***]

"CIM" means a computer-integrated manufacturing system.

"Common R&D Agreement" means that certain Fifth Amended and Restated Common R&D and Participation Agreement, dated as of March 1, 2011, by and between KIC and SanDisk LLC.

[***]

[***]

"Equivalent Lot" means [***]

"EUV Memorandum of Understanding" means that certain Memorandum of Understanding, dated as of November 12, 2009, between KIC and SanDisk LLC.

"Existing Facility BiCS Expansion" has the meaning set forth in Section 4.2(a).

[***]

"FAL" has the meaning set forth in the preamble to this Agreement.

"FAL Commitment and Extension Agreement" means that certain FAL Commitment and Extension Agreement, dated as of December 12, 2017, by and among KIC, WD, SanDisk LLC and SanDisk Ireland.

"FAL Foundry Agreement" means that certain Flash Alliance Foundry Agreement, dated as of July 7, 2006, by and between KIC and FAL.

"FAL Lease Agreement" means that certain Equipment Lease Agreement, dated as of July 7, 2006, by and between FAL and KIC.

"FAL Master Agreement" means that certain Flash Alliance Master Agreement, dated as of July 7, 2006, by and among KIC, SanDisk LLC and SanDisk Ireland.

"FAL MCEIA" means that certain Flash Alliance Mutual Contribution and Environmental Indemnification Agreement, dated as of July 7, 2006, by and among KIC, SanDisk LLC and SanDisk Ireland.

"FAL Operating Agreement" means that certain Operating Agreement of Flash Alliance, Ltd. dated as of July 7, 2006 between KIC and SanDisk Ireland.

"FAL Purchase and Supply Agreement" means (a) with respect to KIC, that certain Purchase and Supply Agreement, dated as of July 7, 2006, by and between FAL and KIC, or (b) with respect to SanDisk Ireland, that certain Purchase and Supply Agreement, dated as of July 7, 2006, by and between FAL and SanDisk Ireland.

"FFL" has the meaning set forth in the preamble to this Agreement.

"FFL Commitment and Extension Agreement" means that certain FFL Commitment and Extension Agreement, dated as of December 12, 2017, by and among KIC, WD, SanDisk LLC and SanDisk Flash.

"FFL Foundry Agreement" means that certain Flash Forward Foundry Agreement, dated as of March 2, 2011, by and between KIC and FFL.

"FFL Lease Agreement" means that certain Equipment Lease Agreement, dated as of October 20, 2015, by and between FFL and KIC.

"FFL Master Agreement" means that certain Flash Forward Master Agreement, dated as of July 13, 2010, by and among KIC, SanDisk LLC and SanDisk Flash.

"FFL MCEIA" means that certain Flash Forward Mutual Contribution and Environmental Indemnification Agreement, dated as of July 13, 2010, by and among KIC, SanDisk LLC and SanDisk Flash.

"FFL Operating Agreement" means that certain Operating Agreement of Flash Forward, Ltd., dated as of March 1, 2011 between KIC and SanDisk Flash.

"FFL Purchase and Supply Agreement" means (a) with respect to KIC, that certain Purchase and Supply Agreement, dated as of March 1, 2011, by and between FFL and KIC, or (b) with respect to SanDisk Flash, that certain Purchase and Supply Agreement, dated as of March 1, 2011, by and between FFL and SanDisk Flash.

"FFL Second Extension Agreement" means that certain FFL Second Commitment and Extension Agreement, dated as of May 15, 2019, by and among Kioxia, WD, SanDisk and the JVs.

[***]

[***]

[***]

[***]

[***]

[***]

[***]

[***]

"Former JV Capacity" has the meaning set forth in the K1 Agreement.

"Foundry Agreements" means the FAL Foundry Agreement, FFL Foundry Agreement and FPL Foundry Agreement.

"FPL" has the meaning set forth in the preamble to this Agreement.

"FPL Commitment and Extension Agreement" means that certain FPL Commitment and Extension Agreement, dated as of October 20, 2015, by and between KIC and SanDisk LLC.

"FPL Foundry Agreement" means that certain Flash Partners Foundry Agreement, dated September 10, 2004, by and between KIC and FPL.

"FPL Lease Agreement" means that certain Equipment Lease Agreement, dated as of September 10, 2004, by and between FPL and KIC.

"FPL Master Agreement" means that certain Flash Partners Master Agreement, dated as of September 10, 2004, by and among KIC, SanDisk LLC and SanDisk Cayman.

"FPL MCEIA" means that certain Mutual Contribution and Environmental Indemnification Agreement, dated as of September 10, 2004, by and among KIC, SanDisk LLC and SanDisk Cayman.

"FPL Operating Agreement" means that certain Operating Agreement of Flash Partners, Ltd., dated as of September 10, 2004 between KIC and SanDisk Cayman.

"FPL Purchase and Supply Agreement" means (a) with respect to KIC, that certain Purchase and Supply Agreement, dated as of September 10, 2004, by and between FPL and KIC, or (b) with respect to SanDisk Cayman, that certain Purchase and Supply Agreement, dated as of September 10, 2004, by and between FPL and SanDisk Cayman.

"Governmental Authority" means any (a) nation, principality, state, commonwealth, province, territory, county, municipality, district or other jurisdiction of any nature; (b) federal, state, local, municipal, foreign or other government; (c) governmental or quasi-governmental authority of any nature (including any governmental division, subdivision, department, agency, bureau, branch, office, commission, council, board, instrumentality, officer, official, representative, organization, unit, body or Person and any court or other tribunal); or (d) individual, Person or body (including any stock exchange) exercising, or entitled to exercise, any executive, legislative, judicial, administrative, regulatory, police, military or taxing authority or power of any nature.

"Information Security Agreement" means that certain Information Security Agreement, dated as of October 20, 2015, by and between KIC and SanDisk LLC.

"ISCO Supplement" means that certain Supplement to Information Security and Confidentiality Obligations, dated as of December 12, 2018, by and among KIC, WD, SanDisk and the JVs.

"JMD Project" and "JMDY Project" have the meaning set forth for the term "JMD Project" in the Amended JMD Agreement.

"Joint Operative Documents" means the Common R&D Agreement, the Product Development Agreement, the 3D Collaboration Agreement, the Amended JMD Agreement, the JVRA, the EUV Memorandum of Understanding, the Information Security Agreement, the BiCS LDA, the Settlement Agreement, the Undertaking, the WD-KIC PCLA and the ISCO Supplement.

[***]

"JV" has the meaning set forth in the Recitals.

"JV Agreements" means the JV Master Agreements, the JV Operating Agreements, the Foundry Agreements, the Purchase and Supply Agreements, the JV Lease Agreements, the JV

MCEIAs, the FPL Commitment and Extension Agreement, the FAL Commitment and Extension Agreement, the FFL Commitment and Extension Agreement, the FFL Second Extension Agreement, the JV Services Agreements, the New Y2 Agreement, the Y6 Agreement, the K1 Agreement, the Y7 Ph1 Agreement and this Agreement.

"JV BiCS Products" means IV Y3 BiCS Products, IV Y4 BiCS Products, IV Y5 BiCS Products, JV New Y2 BiCS Products, JV Y6 BiCS Products, JV K1 BiCS Products, JV Y7 Ph1 CS BiCS Products and K2 Ph1 BiCS Products.

"JV BiCS Space" means, at any given time, the cleanroom space actually utilized for the production of JV BiCS Products at such time in the Y3 Facility, the Y4 Facility, the Y5 Facility, the New Y2 Facility, the Y6 Facility, the K1 Facility, the Y7 Ph1 CS and the K2 Ph1 Facility.

"JV BiCS Tools" means IV tools used in the IV BiCS Space.

"JV Business Plan" has, with respect to a IV, the meaning given to the term "Business Plan" in the respective IV's IV Master Agreement.

"JV Capacity" means production capacity for IV Products.

"JV K1 BiCS Products" has the meaning set forth in the K1 Agreement.

"JV K2 Ph1 BiCS Products" has the meaning set forth in Section 3.1(b).

"JV K2 Ph1 Products" means the JV K2 Ph1 BiCS Products plus any other products manufactured using K2 Ph1 Facility cleanroom space in accordance with Article 3 that are identified [***] as K2 Ph1 lots and allocated to a IV under the applicable IV's IV Master Agreement.

"JV K2 Ph1 NAND Flash Memory Products" has the meaning set forth in Section 3.4.

"JV Lease Agreements" means the FPL Lease Agreement, the FAL Lease Agreement and FFL Lease Agreement.

"JV Master Agreements" means the FAL Master Agreement, the FFL Master Agreement and the FPL Master Agreement.

"JV MCEIAs" means the FPL MCEIA, the FAL MCEIA, the FFL MCEIA, the New Y2 MCEIA, the Y6 MCEIA, the K1 MCEIA, the Y7 Ph1 MCEIA and the K2 Ph1 MCEIA.

"JV New Y2 BiCS Products" has the meaning set forth in the New Y2 Agreement.

"JV Operating Agreements" means the FPL Operating Agreement, the FAL Operating Agreement and the FFL Operating Agreement.

"JV Products" means NAND Flash Memory Products and BiCS Products, in each case manufactured for the JVs.

"JV Services Agreements" means, collectively, that certain:

(a) Services Agreement, dated as of September 10, 2004, between FPL and KIC;

(b) Services Agreement, dated as of July 7, 2006, between FAL and KIC;

(c) Services Agreement, dated as of July 7, 2006, between FAL and SanDisk Ireland;

(d) Amended and Restated FFL Services Agreement, dated as of May 15, 2019, among FFL, KIC and KIW;

(e) Services Agreement, dated as of March 1, 2011, between FFL and SanDisk Flash; and

(f) Amended and Restated SanDisk Services Agreement, dated as of May 15, 2019, among SanDisk, KIC and KIW.

"JV Space" means, at any given time, JV BiCS Space and the cleanroom space actually utilized for the production of NAND Flash Memory Products for the JVs in the Y3 Facility, the Y4 Facility, the Y5 Facility, the New Y2 Facility, the Y6 Facility, the K1 Facility, the Y7 Ph1 CS and the K2 Ph1 Facility.

"JV Y3 BiCS Products" has the meaning set forth in the New Y2 Agreement.

"JV Y4 BiCS Products" has the meaning set forth in the New Y2 Agreement.

"JV Y5 BiCS Products" has the meaning set forth in the New Y2 Agreement.

"JV Y6 BiCS Products" has the meaning set forth in the Y6 Agreement.

"JV Y7 Ph1 CS BiCS Products" has the meaning set forth in the Y7 Ph1 Agreement.

"JVRA" means that certain Joint Venture Restructure Agreement, dated as of January 29, 2009, by and among the Parties, the JVs and certain of their respective Affiliates.

"K2 Ph1 Capacity Ratio" for either WD or KIC means [***]

"K1 Agreement" means that certain K1 Facility Agreement, dated as of May 15, 2019, among the Parties.

[***]

"K1 Facility" means the production facility within the Kitakami Facility described in the K1 Agreement.

"K1 MCEIA" means that certain K1 Mutual Contribution and Environmental Indemnification Agreement, dated as of May 15, 2019, by and among Kioxia, SanDisk Cayman, SanDisk Ireland and SanDisk Flash.

"K1 Products" has the meaning set forth in the K1 Agreement.

"K1 Unilateral BiCS Expansion" means a Unilateral BiCS Expansion made within the K1 Facility.

"K2 Facility" means the production facility owned by KIC known to the Parties as the "K2 Facility" that is currently under construction in Iwate, Japan and forming part of the Kitakami Facility, including a building shell, cleanroom and all culverts, piping, ducting and associated infrastructure connecting thereto.

"K2 Ph1 BiCS Products" has the meaning set forth in Section 3.1(b).

[***]

"K2 Ph1 Facility" means the production facility owned by KIC known to the Parties as the "K2 Ph1 Facility" that is currently under construction in Iwate, Japan and forms part of the K2 Facility, including the building shell, cleanroom, and all culverts, piping, ducting and associated infrastructure connecting thereto. For the avoidance of doubt, the K2 Ph1 Facility also includes any office space used for JV or Kioxia Capacity operations in the K2 Ph1 Facility, as specified in Exhibit B hereto; *provided*, *however*, that the K2 Ph1 Facility shall not include, and KIC shall be solely responsible for all costs incurred in connection with the construction and usage of, any office space used by KIC for non-JV operations (marked in light purple in Exhibit B, and labeled as "Future space", "1F KIC," "2F KIC" or "KIC"); *provided*, *further*, that KIC shall track and allocate costs for suchnon-JV space based on the then-applicable area ratio, including separate monitoring of any traceable consumption of material or resources. When the area ratio for the K2 Ph1 Facility changes, KIC will notify WD in writing.

"K2 Ph1 Fixed Manufacturing Costs" means the K2 Ph1 Manufacturing Costs described on Schedule 8.4(b)(i).

"K2 Ph1 JV BiCS Space" has the meaning set forth in Section 3.2(a)(i).

"K2 Ph1 JV Engineers" has the meaning set forth in Section 7.1(a).

"K2 Ph1 JV Headcount Plan" has the meaning set forth in Section 7.2.

"K2 Ph1 JV Space" means the K2 Ph1 JV BiCS Space plus any cleanroom space used for the production of NAND Flash Memory Products by the JVs in the K2 Ph1 Facility.

"K2 Ph1 Manufacturing Costs" has the meaning set forth in Section 8.1.

"K2 Ph1 MCEIA" means that certain K2 Ph1 Mutual Contribution and Environmental Indemnification Agreement, dated as of even date herewith, by and among Kioxia, SanDisk Cayman, SanDisk Ireland and SanDisk Flash.

"K2 Ph1 Minimum Commitment" has the meaning set forth in Section 4.1(a).

"K2 Ph1 NAND Flash Memory Products" has the meaning set forth in Section 3.4.

"K2 Ph1 Operating Committee" has the meaning set forth in Section 6.1.

"K2 Ph1 Product Fixed Manufacturing Costs" has the meaning set forth in Section 8.4(b)(i).

"K2 Ph1 Product Manufacturing Costs" has the meaning set forth in Section 8.4(a).

"K2 Ph1 Product Variable Manufacturing Costs" has the meaning set forth in Section 8.4(b)(ii).

"K2 Ph1 Products" means K2 Ph1 BiCS Products plus any other products manufactured using K2 Ph1 Facility cleanroom space in accordance with Article 3 that are identified by KIC as K2 Ph1 lots.

[***]

"K2 Ph1 Unilateral BiCS Expansion" means a Unilateral BiCS Expansion made within the K2 Ph1 Facility.

[***]

"K2 Ph1 Unilateral BiCS Products" has the meaning set forth in Section 3.1(b).

[***]

"K2 Ph1 Unilateral Space" means (a) any K2 Ph1 Unilateral Production Space within the K2 Ph1 Facility and (b) any K2 Ph1 Kioxia R&D Space.

"K2 Ph1 Variable Manufacturing Costs" means the K1 Manufacturing Costs described on Schedule 8.4(b)(ii).

"KIC" has the meaning set forth in the preamble to this Agreement.

"Kioxia" has the meaning set forth in the preamble.

"Kioxia Capacity" has the meaning ascribed to the term "Toshiba Capacity" in the JVRA (which has been replaced with the term "Kioxia Capacity") and includes, for the avoidance of doubt, any capacity (a) that constituted "Toshiba Capacity" under any Existing Agreement and (b) in any Toshiba Unilateral Expansion Space (as defined in the FFL Master Agreement), Yokkaichi Unilateral BiCS Expansion Space (as defined in each of the New Y2 Agreement and the Y6 Agreement), any K1 Unilateral Production Space (as defined in the K1 Agreement), any Y7 Ph1 CS Unilateral Production Space (as defined in the Y7 Ph1 Agreement) and any K2 Ph1 Unilateral Production Space (as defined in this Agreement).

[***]

[***]

[***]

[***]

[***]

"Kitakami Facility" means [***] including the K1 Facility and K2 Ph1 Facility.

"KIW" has the meaning set forth in the preamble to this Agreement.

"L/M" means either lots per month or Equivalent Lots per month, in each case as mutually agreed by the Parties.

"Law" means all applicable provisions of all (a) constitutions, treaties, statutes, laws (including common law), rules, regulations, ordinances or codes; (b) orders, decisions, judgments, awards or decrees; and (c) requests, guidelines or directives (whether or not having the force of law), in each case of any Governmental Authority of any applicable jurisdiction.

"Management Representatives" has the meaning set forth in the JV Agreements.

"Master Operative Documents" means the Existing Agreements and the New Agreements.

[***]

"NAND Flash Memory Products" has the meaning set forth in the JV Agreements.

"New Y2 Agreement" means that certain New Y2 Facility Agreement, dated as of October 20, 2015, by and among KIC, SanDisk LLC, SanDisk Cayman, SanDisk Ireland, SanDisk Flash, FPL, FAL and FFL.

[***]

"New Y2 Facility" means the production facility within the Yokkaichi Facility described in the New Y2 Agreement.

"New Y2 MCEIA" means that certain New Y2 Mutual Contribution and Environmental Indemnification Agreement, dated as of October 20, 2015, by and among KIC, SanDisk Cayman, SanDisk Ireland and SanDisk Flash.

"New Y2 Products" has the meaning set forth in the New Y2 Agreement.

"New Y2 Unilateral BiCS Expansion" means a Unilateral BiCS Expansion made within the New Y2 Facility.

"Non-NAND Products" means any technology or product other than NAND Flash Memory Products.

"Operating Committees" means the Y3 Operating Committee, Y4 Operating Committee, Y5 Operating Committee (each as defined in the JV Agreements), the New Y2 Operating Committee (as defined in the New Y2 Agreement), the Y6 Operating Committee (as defined in the Y6 Agreement), the K1 Operating Committee (as defined in the K1 Agreement), the Y7 Ph1 CS Operating Committee (as defined in the Y7 Ph1 Agreement) and the K2 Ph1 Operating Committee (as defined in this Agreement).

[***]

[***]

"Parent Parties" has the meaning set forth in the preamble to this Agreement.

"Person" means any individual or entity, including any private or public real estate operating company or real estate investment trust, exempted company, exempted limited partnership, private limited company, corporation, partnership, limited partnership, limited liability company, trust, charitable trust or other legal entity, wherever organized, or any unincorporated association or Governmental Authority.

[***]

[***]

"Product Development Agreement" means that certain Third Amended and Restated Product Development Agreement, dated as of March 1, 2011, between SanDisk LLC and KIC.

[***]

[***]

"Proprietary BiCS Products" means BiCS Products that are proprietary to a Parent Party.

"Proprietary Flash Products" means Proprietary NAND Flash Memory Products and Proprietary BiCS Products.

"Proprietary NAND Flash Memory Products" means NAND Flash Memory Products which are proprietary to a Parent Party.

"Purchase and Supply Agreements" means the FPL Purchase and Supply Agreements, the FAL Purchase and Supply Agreements, and the FFL Purchase and Supply Agreements.

[***]

"SanDisk Cayman" has the meaning set forth in the preamble to this Agreement.

"SanDisk Flash" has the meaning set forth in the preamble to this Agreement.

"SanDisk Ireland" has the meaning set forth in the preamble to this Agreement.

"SanDisk LLC" has the meaning set forth in the preamble to this Agreement.

"Settlement Agreement" means that certain Confidential Settlement and Mutual Release Agreement, dated as of December 12, 2017, among Toshiba, KIC, WD and SanDisk.

[***]

[***]

[***]

"Undertaking" means that certain Parent Guarantee and Undertaking as to Collaboration, dated as of December 12, 2017, entered into by and among WD, Toshiba and KIC, and acknowledged and agreed by SanDisk and the JVs.

[***]

"WD" has the meaning set forth in the preamble to this Agreement.

"WD-KIC PCLA" means that certain Patent Cross License Agreement Between Western Digital Corporation and KIC, dated as of December 12, 2017, among WD, SanDisk Storage Malaysia Sdn. Bhd., SanDisk Bermuda Limited and KIC.

[***]

"Y3 Facility" means the production facility within the Yokkaichi Facility described in the FPL Master Agreement.

"Y3 Products" has the meaning set forth in the New Y2 Agreement.

[***]

"Y4 Facility" means the production facility within the Yokkaichi Facility described in the FAL Master Agreement.

"Y4 Products" has the meaning set forth in the New Y2 Agreement.

[***]

"Y5 Facility" means the production facility within the Yokkaichi Facility described in the FFL Master Agreement.

"Y5 Products" has the meaning set forth in the New Y2 Agreement.

"Y6 Agreement" means that certain Y6 Facility Agreement, dated as of December 12, 2017, by and among KIC, WD, SanDisk LLC, SanDisk Cayman, SanDisk Ireland, SanDisk Flash, FPL, FAL and FFL.

[***]

"Y6 Facility" means the production facility within the Yokkaichi Facility described in the Y6 Agreement.

"Y6 MCEIA" that certain Y6 Mutual Contribution and Environmental Indemnification Agreement, dated as of December 12, 2017, by and among KIC, SanDisk Cayman, SanDisk Ireland and SanDisk Flash.

"Y6 Products" has the meaning set forth in the Y6 Agreement.

"Y6 Unilateral BiCS Expansion" means a Unilateral BiCS Expansion made within the Y6 Facility.

"Y7 Ph1 Agreement" means that certain Y7 Ph1 Facility Agreement, dated as of January 31, 2022, by and among Kioxia, WD, SanDisk LLC, SanDisk Cayman, SanDisk Ireland, SanDisk Flash, FPL, FAL and FFL.

"Y7 Ph1 Collaboration Space" and "Y7 Ph1 CS" have the meaning set forth in the Y7 Ph1 Agreement

[***]

"Y7 Ph1 CS Products" has the meaning set forth in the Y7 Ph1 Agreement.

[***]

"Y7 Ph1 Facility" means the production facility within the Yokkaichi Facility described in the Y7 Ph1 Agreement.

"Y7 Ph1 MCEIA" means that certain Y7 Ph1 Mutual Contribution and Environmental Indemnification Agreement, dated as of January 31, 2022, by and among KIC, SanDisk Cayman, SanDisk Ireland and SanDisk Flash.

[***]

[***]

[***]

[***]

"Yokkaichi Facility" means [***] including the New Y2 Facility, the Y3 Facility, the Y4 Facility, the Y5 Facility, the Y6 Facility, the Y7 Ph1 Facility and [***] facility.

**Other Definitions**

"Action" means a lawsuit, arbitration or other legal proceeding pending by or against or affecting a Party or any of its Affiliates or any of their respective properties.

"Adjustment Payment" has the meaning set forth in Section 4.7(b)(iii).

"Agreement" has the meaning set forth in the preamble to this Agreement.

[***]

"Building Depreciation Prepayment" has the meaning set forth in Section 2.5(a).

"Confidential Information" means information disclosed in written, recorded, graphical or other tangible form which is marked as "Confidential", "Proprietary" or in some other manner to indicate its confidential nature, and/or orally or in other intangible form, identified as confidential at the time of disclosure and confirmed as confidential information in writing within [***] of its initial disclosure.

[***]

[***]

"Disclosing Party" has the meaning set forth in Section 13.2(a).

"Employer" has the meaning set forth in Section 7.6.

"Existing Agreements" means the JV Agreements and the Joint Operative Documents, but excluding the New Agreements.

"First JV Wafer Out Date" means the date on which the first production of wafers utilizing capacity at the K2 Ph1 Facility resulting from the implementation of the K2 Ph1 Minimum Commitment for a portion of such production's manufacturing process is completed.

"Intellectual Property" has the meaning set forth in Section 15.7.

[***]

[***]

[***]

"Material Breach" has the meaning set forth in Section 14.3.

"New Agreements" has the meaning set forth in the Recitals.

"Parties" has the meaning set forth in the preamble to this Agreement.

"Payment Amount" means the payment amount set forth for each Payment Due Date in Schedule 2.5(a)(i).

"Payment Due Date" means each of the payment due dates set forth in Schedule 2.5(a)(i).

"Personnel" has the meaning set forth in Section 7.1(d).

[***]

"Ramp-Up Commitment" means the investment necessary to implement an agreed BiCS Expansion, BiCS Technology Transition, BiCS Conversion, or Kitakami Capacity Transfer, in each case using the K2 Ph1 Facility, as set forth in a JV's Investment Plan (as defined in the JV Agreements), after the K2 Ph1 Minimum Commitment has been fulfilled.

"Receiving Party" has the meaning set forth in Section 13.2(a).

[***]

"SanDisk" has the meaning set forth in the preamble to this Agreement.

[***]

[***]

[***]

[***]

[***]

[***]

"Subsidiary" of any Person means any other Person:

(a) more than fifty percent (50%) of whose outstanding shares or securities (representing the right to vote for the election of directors or other managing authority) are, or

(b) which does not have outstanding shares or securities (as may be the case in a partnership, joint venture or unincorporated association), but more than fifty percent (50%) of whose ownership interest representing the right to make decisions (equivalent to those generally reserved for the board of directors of a corporation) for such other Person is,

now or hereafter owned or controlled, directly or indirectly, by such Person, but such other Person shall be deemed to be a Subsidiary only so long as such ownership or control exists; *provided*, *however*, that the term Subsidiary, when used in relation to a Party or any of its Affiliates, shall not include any JV or any of the JVs' Subsidiaries (except that, when used in relation to a Party that is a JV, the term Subsidiary shall include such JV's own Subsidiaries).

[***]

[***]

"Toshiba" means Toshiba Corporation.

"WD Personnel" has the meaning set forth in Section 7.1(c).

"WD Representative" has the meaning set forth in Section 6.1.

"WD Team" has the meaning set forth in Section 7.1(e).

**Exhibit B**
**Office Space Allocation**

[***]

**Schedule 2.5(a)(i)**
**Building Depreciation Prepayments**

[***]

**Schedule 2.5(a)(ii)**
**Credit Against Depreciation Expenses**

[***]

[***]

**Schedule 4.7(c)**
**Adjustment Payment Threshold Ratios**

**Threshold Direct Capacity Ratio**

| | WD Share | | KIC Share | | Total |
|---|---|---|---|---|---|
| **Calculation Date** | **(L/M)** | **(% of total)** | **(L/M)** | **(% of total)** | **(L/M)** |
| June 2024 | 0 | — | 0 | — | 0 |

**Threshold Supported Capacity Ratio**

| | WD Share | | KIC Share | | Total |
|---|---|---|---|---|---|
| **Calculation Date** | **(L/M)** | **(% of total)** | **(L/M)** | **(% of total)** | **(L/M)** |
| June 2024 | 0 | — | 0 | — | 0 |

**Schedule 4.8(d)(x)**
**Capacity Transfer Credits**

[***]

**Schedule 8.1(a)**

[***]

**Schedule 8.1(b)**

[***]

**Schedule 8.4(b)(i)**

[***]

**Schedule 8.4(b)(ii)**

[***]

**Schedule 11.1**
**Management and Operating Reports**

[***]

[***]

Schedule 11.1 - 2

**Schedule 12.1(f)**
**Y3, Y4, Y5, New Y2, Y6, K1, Y7 Ph1 CS and K2 Ph1 Capacity Ratios**

[***]

[***]

Schedule 12.1(f) - 2

**Exhibit 10.23**

CERTAIN CONFIDENTIAL PORTIONS HAVE BEEN REDACTED FROM THIS EXHIBIT BECAUSE THEY ARE BOTH (i) NOT MATERIAL AND (ii) A TYPE THAT THE REGISTRANT TREATS AS PRIVATE OR CONFIDENTIAL. INFORMATION THAT HAS BEEN OMITTED HAS BEEN IDENTIFIED IN THIS DOCUMENT WITH A PLACEHOLDER IDENTIFIED BY THE MARK "[***]".

*Execution Version*

**BICS LICENSE & DEVELOPMENT AGREEMENT**

This BICS LICENSE & DEVELOPMENT AGREEMENT, executed on the last date of the signature hereof and effective as of March 1, 2011, ("Effective Date") is made and entered into by and between Toshiba Corporation, a Japanese corporation with a principal place of business at 1-1, Shibaura 1-chome, Minato-ku, Tokyo 105-8001, Japan ("Toshiba"), and SanDisk Corporation, a Delaware corporation, with a principal place of business at 601 McCarthy Boulevard, Milpitas, CA 95035, U.S.A. ("SanDisk"). Toshiba and SanDisk are each referred to as a "Party" and collectively as the "Parties".

WHEREAS, the Toshiba and SandDisk have entered into the Joint Memory Development Yokkaichi Agreement, dated as of February 19, 2008, ("JMDY Agreement") to pursue certain joint development and research projects that are mutually beneficial to the Parties; and

WHEREAS, Toshiba and SanDisk have entered into the 3D Collaboration Agreement, dated as of June 13, 2008, under which the Parties are jointly developing certain 3D Memory Products (as defined therein) based [***];

WHEREAS, Toshiba, SandDisk and SanDisk Flash B.V. have entered into the Flash Forward Master Agreement, dated as of July 13, 2010 ("FF Master Agreement," and together with the agreements contemplated thereby, the "FF Agreements");

WHEREAS, the Parties desire to further expand their collaboration through a project for the joint development of and other technical collaboration based on Toshiba's proprietary BiCS Technology (as defined below);

NOW, THEREFORE, the Parties agree as follows:

**Article 1. DEFINITIONS**

Unless otherwise indicated, capitalized terms used in this Agreement without definition have the meanings given to them in the FF Agreements.

1.1 "Affiliate" of any person means any other person which directly or indirectly controls, is controlled by or is under common control with, such Person; *provided*, *however*, that the term Affiliate, (a) when used in relation to any joint venture formed by the Parties so long as such entity remains a joint venture, shall not include SanDisk or Toshiba or any Affiliate of either of them, and (b) when used in relation to SandDisk or Toshiba or any Affiliate of either of them, shall not include any joint venture formed by the Parties so long as such entity remains a joint venture.

1.2 "BiCS Technology" shall mean [***].

1.3 "BiCS Memory Products" shall mean [***]. All BiCS Memory Products are governed by this Agreement, unless otherwise mutually agreed in writing by the Parties.

1.4 "BiCS Project" shall mean the joint development of BiCS Technology and associated CMOS Process to be performed under this Agreement.

1.5 "Agreement" shall mean this BiCS License Agreement together with any Exhibits, Schedules, Appendices and Attachments hereto.

1.6 "Authorized Recipients" is defined in Section 11.3.

1.7 "Background Technology" shall mean the BiCS Technology and, if applicable, CMOS Process which have been or will be developed by or for each Party independently of the BiCS Project, owned or controlled by such Party during the term of this Agreement and has been or will be contributed to the BiCS Project hereunder. Background Technology may be SanDisk Background Technology or Toshiba Background Technology, as the context requires.

1.8 "CMOS Process" shall mean Toshiba's process technology for making anynon-memory circuitry necessary as part of BiCS Memory Product.

1.9 "Confidential Information" is defined in Section 11.1.

1.10 "Disclosing Party" is defined in Section 11.2.

1.11 "ICC" is defined in Section 13.6.

1.12 "Jointly Developed Inventions" shall mean inventions jointly made by the employees of Toshiba and SanDisk or their respective Subsidiaries during the performance of joint research and development relating to the BiCS Project.

1.13 "Jointly Developed Patents" shall mean Patents (excluding design patents) that arise out of the Jointly Developed Inventions.

1.14 "Memory Integrated Circuit" shall mean [***].

1.15 "Net Sales Price" shall mean

(a) For sales or transfers of BiCS Memory Products to any person or entity that is [***]; or

(b) For sales or transfers of BiCS Memory Products to any person or entity that is [***].

1.16 "Non-Patent Intellectual Property Rights" shall mean all U.S. and foreign rights in and to all: (a) copyrights and moral rights, (b) unpatented information, trade secrets, know-how, invention disclosures, engineering notebooks, confidential information, data, or materials, (c) mask work rights, and (d) any other similar intellectual or other proprietary rights in any jurisdiction.

1.17 "Patent Family" means all worldwide patents and patent applications, including all continuations, continuations-in-part, divisions, reexaminations, and reissues thereof, that claim priority to one or more common patent applications.

1.18 "Patents" shall mean all U.S. and foreign rights in and to all patents, patent applications and utility models, including all divisions, substitutions, continuations, continuation-in-part applications, and reissues, re-examinations and extensions thereof.

1.19 "Person" means any individual, firm, company, corporation, limited liability company, unincorporated association, partnership, trust, joint venture, governmental authority or other entity, and shall include any successor (by merger or otherwise) of such entity.

1.20 "Receiving Party" is defined in Section 11.2.

1.21 "Residuals" shall mean that Confidential Information which may be unintentionally retained in the memories of personnel of either Party who have been assigned by such Party to the BiCS Project and who have had rightful access to the other Party's confidential information including ideas, concepts, know-how or techniques contained therein.

1.22 "Solely Developed Inventions" shall mean inventions made solely by the employees of either Party or such Party's Subsidiaries during the performance of joint research and development among the Parties relating to the BiCS Project.

1.23 "Subsidiaries" shall mean any corporation, company or other entity (other than any joint venture formed by the Parties so long as such entity remains a joint venture):

(a) more than fifty percent (50%) of whose outstanding shares or stocks entitled to vote for the election of directors (other than any shares or stocks whose voting rights are subject to restriction) is now or hereafter owned or controlled by SanDisk or Toshiba, as applicable, directly or indirectly, but such corporation, company or other entity shall be deemed to be a Subsidiary only so long as such ownership or control exists; or

(b) which does not have outstanding shares or securities, as may be the case in a partnership, joint venture or unincorporated association, but more than fifty percent (50%) of whose ownership interest representing the right to make the decisions for such corporation, company or other entity is now or hereafter, owned or controlled, directly or indirectly, by SanDisk or Toshiba, as applicable , but such corporation, company or other entity shall be deemed to be a Subsidiary only so long as such ownership or control exists. SanDisk 3D LLC, a Delaware limited liability company, with a principal place of business at 601 McCarthy Boulevard, Milpitas, CA 95035, U.S.A., which owns or controls all intellectual property rights that had been owned or controlled by Matrix Semiconductor, Inc., as of the date of its acquisition by SanDisk, shall be considered SanDisk's Subsidiary.

**Article 2. CONTRIBUTIONS, DEVELOPMENT**

2.1 Toshiba Contributions. Subject to SanDisk's payment to Toshiba of the fee provided for in Section 6.1, Toshiba will disclose and contribute its Background Technology as existing on the Effective Date to the BiCS Project immediately after the Effective Date, part of which details are described in Exhibit A attached hereto, and continue to contribute its Background Technology (subject to Section 2.3 below and to the extent permitted under applicable contracts) which shall be deemed reasonably necessary to perform the BiCS Project.

2.2 SanDisk Contributions. SanDisk will disclose and contribute its Background Technology to the BiCS Project (subject to Section 2.3 below and to the extent permitted under other applicable contracts) which shall be deemed reasonably necessary to perform the BiCS Project.

2.3 Separately Developed Contributions. In the event either Party is to introduce to the BiCS Project any of its Background Technology developed with or by a third party, the disclosure and contribution thereof will be subject to prior written consent of the other Party and such Party's securing either: (a) a no charge sublicense for use by the Parties in the joint development and manufacturing of BiCS Memory Products; or (b) the ability for the other Party to directly secure a license for such Background Technology from such third party on terms that are no less favorable for such other Party than the terms granted by such third party to such licensed Party. If any development activities with such third party are continuing with respect to any Background Technology agreed to be introduced to the BiCS Project, the Parties agree to enter into good faith discussion regarding the potential sharing of costs associated therewith.

2.4 Development of BiCS Technology and BiCS Memory Products

(a) The Parties agree that equal partnership is important and the Parties will form teams, dedicate each Party's engineers to perform the BiCS Project as determined by the JMDY Committee and begin work on the development of BiCS Technology, CMOS Process (if applicable) and BiCS Memory Products as of the Effective Date in accordance with the guidelines set forth in the JMDY Agreement. The JMDY Committee will determine (in accordance with the JMDY Agreement) the roadmap and budget of the BiCS Project and will be responsible for the Parties' implementation and execution of such roadmap.

(b) The JMDY Line located at the Y4 Facility will be used for the BiCS Project, with any development activities for such BiCS Project to start as of the Effective Date in accordance with the guidelines set forth in the JMDY Agreement.

**Article 3. OWNERSHIP**

3.1 Toshiba IP. During and after the term of this Agreement, Toshiba will exclusively retain all right, title and interest in and to all intellectual property rights created, conceived, owned or developed by or for Toshiba and its Subsidiaries (a) with respect to Toshiba Background Technology or (b) which result from Toshiba's Solely Developed Inventions(collectively, "Toshiba IP").

3.2 SanDisk IP. During and after the term of this Agreement, SanDisk or its Subsidiaries, as determined by the ownership relationships separately established among members of the SanDisk group, will exclusively retain all right, title and interest in and to all intellectual property rights created, conceived, owned or developed by or for SanDisk and its Subsidiaries (a) with respect to SanDisk Background Technology or (b) which result from SanDisk's Solely Developed Inventions (collectively, "SanDisk IP").

3.3 Jointly Developed IP.

(a) Any right, title and interest in, to and under Jointly Developed Inventions and Jointly Developed Patents shall be jointly owned by Toshiba and SanDisk. Both Parties shall promptly agree on which of them shall file and prosecute the first patent application and in which countries corresponding applications shall be filed and by whom. All expenses incurred in obtaining and maintaining such patents shall be equally shared by the Parties; *provided* that if one Party elects not to seek or maintain such patents in any particular country or not to share equally in the expense thereof, the other Party shall have the right to seek or maintain such patents in said country at its own expense and shall have full control over the prosecution and maintenance thereof even though title to any patent issuing thereon shall be joint. The Party electing not to seek or maintain such patents shall give the other Party any necessary assistance required for the preparation and prosecution of such patents filed or maintained by the other Party.

(b) Each Party shall be free to use such Jointly Developed Inventions an Jointly Developed Patents for any purpose and, each Party shall have the right to grant non-exclusive licenses to [***]; and, provided further, that: [***].

**Article 4. LICENSES**

4.1 Toshiba BiCS License. Subject to and in consideration of SanDisk's payment as provided for in Article 6, Toshiba hereby grants to SanDisk and its Subsidiaries a non-exclusive, non-sublicensable, non-transferable and world wide license, to use Toshiba IP under [***] Intellectual Property Rights thereof, to develop, have developed, make, have made, use, sell, offer for sale, import and otherwise dispose of any of SanDisk's BiCS Memory Products, any other SanDisk semiconductor products and SanDisk integrated circuit memory system containing BiCS Memory Products.

4.2 SanDisk BiCS License. SanDisk hereby grants to Toshiba and its Subsidiaries a non-exclusive, non-sublicensable, non-transferable, world wide and [***] license, to use SanDisk IP under [***] Intellectual Property Rights thereof, to develop, have developed, make, have made, use, sell, offer for sale, import and otherwise dispose of any of Toshiba's BiCS Memory Products, any other Toshiba semiconductor products and Toshiba integrated circuit memory system containing BiCS Memory Products.

4.3 Notwithstanding anything to the contrary in Sections 4.1 and 4.2, neither Party shall disclose [***] Intellectual Property Rights to any third party without the consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed.

4.4 Subject to each Party's obligations under the provisions of Articles 3, 9, 10 and 13, each Party shall be free to use, improve or modify without additional compensation to the other Party, the Residuals, including the use, improvement or modification of such Residuals in the development and manufacture of such Party's products; *provided* that this Section, by itself, shall not be deemed to grant to such Party any rights or licenses under any Patents of the other Party nor shall this Section operate to waive such Party's confidentiality obligations under Article 11. In no event shall such either Party or its Personnel publish or disseminate said Residuals to any third party.

**Article 5. IP LITIGATION**

5.1 General. If one Party is sued, but not the other, in litigation relating to a claim by a third party that BiCS Technology infringes or BiCS Memory Products infringe any patent owned by such third party, the Party that is the defendant in the litigation shall take the lead on the defense and the Party not sued shall reasonably assist such Party named as the defendant.

5.2 Jointly Developed IP; Defense. Toshiba and SanDisk will jointly defend against claims for infringement of third party patents to the extent arising from Jointly Developed Inventions *provided* that each Party shall have a responsibility to resolve the issue at its own discretion, subject to the consent of the other, which consent shall not be unreasonably withheld, conditioned or delayed. The Parties shall discuss in good faith the respective role of each Party for such joint defense (including who would take the lead on defense) on a case-by-case basis considering various factors such as jurisdiction where litigation has been filed.

5.3 Jointly Developed IP; Enforcement. [***] In the event that either party desires to litigate such infringement and the other party refuses or fails to do so, [***], the party desiring litigation may in his or its sole discretion, and at his or its sole cost and expense (including reimbursement of unavoidable expenses of the other party), bring and proceed [***]. For the avoidance of doubt, a license under a Jointly Developed Patent as result of such suit shall be subject to the limitation set forth in Section 3.3 (b).

**Article 6. PAYMENT**

6.1 [***]

6.2 [***]

6.3 All payments under this Article 6 shall be made in USD by wire transfer of immediately available funds to the following account or such other account as may be designated by Toshiba to SanDisk in writing:

[***]

6.4 Where the provisions of this Agreement require the conversion of an amount initially computed in another currency into USD, the USD amount payable shall be calculated for JPY using the bid side Bfix rate, and for all other currencies using the mid composite rates published by Bloomberg at 7:00 am PST/PDT on the last business day of the SanDisk fiscal month of each applicable period.

6.5 All payments provided for in this Article 6 shall be made without deduction of taxes;*provided*, however, that in the event any withholding income tax is imposed by U.S. tax law on any amount payable to Toshiba hereunder, SanDisk may withhold such tax from such amount. In the event tax is withheld on any amount, SanDisk shall without undue delay obtain and send to Toshiba tax documentation evidencing the tax amount withheld and paid to the U.S. tax authorities. Upon request from SanDisk, Toshiba shall prepare, or update, and provide without undue delay any completed U.S. withholding tax exemption forms, such as Form W-8BEN or similar forms, requested and deemed appropriate by SanDisk for the U.S. portion of such payments to comply with U.S. tax law.

6.6 SanDisk shall keep for a period of five (5) years after each payment hereunder detailed and accurate records and books of accounts as may be necessary to ascertain and verify the amount payable to Toshiba hereunder. Toshiba is entitled at Toshiba's cost to have such records and books of SanDisk inspected by an independent public accountant acceptable to SanDisk during normal business hours, upon reasonable notice and not more frequently than once per year. In the event that any report understates the payable amounts due to Toshiba for the period under such audit by more than [***] SanDisk shall pay, upon request of Toshiba, any shortfall and reimburse Toshiba for the cost of such audit.

6.7 In the event any compensation payable to Toshiba by SanDisk under this Agreement becomes overdue other than as a result of any action or inaction on the part of Toshiba, Toshiba shall be entitled to request SanDisk to pay interest at a rate per annum equal to [***] in excess of the "Prime Rate" of Bank of Japan at the time the applicable payment is due and for the period until such compensation is paid.

**Article 7. COSTS**

All costs and expenses associated with the BiCS Project shall be shared and allocated in accordance with [***].

**Article 8. PRODUCTION**

Notwithstanding any other provisions of this Agreement or unless otherwise expressly mutually agreed upon by the Parties, all BiCS Memory Products for SanDisk and its Affiliates shall be produced within the Parties joint ventures, and all BiCS Memory Products for Toshiba and its Affiliates shall be produced within the Parties joint ventures and Toshiba facilities.

**Article 9. WARRANTY**

9.1 Each Party provides to the other Party its technical information on an"AS-IS" basis only, and does not make any warranty or representation with respect to such technical information for any purpose.

9.2 Each Party represents and warrants to the other that:

(a) it has the corporate power and authority and the legal right to enter in to this Agreement and to perform its obligations hereunder; and

(b) the execution and delivery of this Agreement and the performance of its obligations hereunder, including the contributions to be made and the licenses to be granted hereunder by such Party, do not conflict with or constitute a default under any of its contractual obligations with any third party.

9.3 Nothing contained in this Agreement shall be construed as:

(a) a warranty or representation that the manufacture, use, sale or other disposal of semiconductor products by the other Party using any technical information received under this Agreement will be free from infringement of Patents or any other intellectual property rights of any third Party;

(b) conferring the other Party any right to use in advertising, publicity or otherwise any trademark, trade name or names, or any contraction, abbreviation or simulations thereof of either Party;

(c) conferring the other Party, by implication, estoppel or otherwise, any license or other right, except for the licenses and rights expressly granted hereunder; and

(d) an obligation to furnish any technical information orknow-how except as otherwise specifically provided herein.

9.4 Warranty Disclaimer. EXCEPT TO THE EXTENT EXPRESSLY SET FORTH HEREIN, EACH PARTY MAKES NO WARRANTIES AND DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, STATUTORY, IMPLIED OR OTHERWISE, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS REGARDING BICS TECHNOLOGY, CMOS PROCESS, BICS MEMORY PRODUCT AND ANY TECHNOLOGY OR CONFIDENTIAL INFORMATION SHARED BY EITHER PARTY PURSUANT TO THIS AGREEMENT.

**Article 10. LIMITATION OF LIABILITY**

IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL. PUNITIVE OR INDIRECT DAMAGES OF ANY KIND, (INCLUDING LOSS OF PROFIT OR DATA, LOST REVENUES OR LOSS OF USE) RESULTING FROM, ARISING OUT OF OR IN CONNECTION WITH THE SUBJECT MATTER OF THIS AGREEMENT OR PERFORMANCE OR FAILURE TO PERFORM HEREUNDER WHETHER DUE TO BREACH OF CONTRACT, BREACH OF WARRANTY, TORT, OR NEGLIGENCE OF THAT PARTY AND WHETHER OR NOT SUCH PARTY WAS ADVISED OF OR SHOULD HAVE BEEN AWARE OF THE POSSIBILITY OF SUCH LOSS.

**Article 11. CONFIDENTIALITY**

11.1 In this Agreement, "Confidential Information" means information disclosed in written, recorded, graphical or other tangible from which is marked as "Confidential", "Proprietary" or in some other manner to indicate its confidential nature, and/or orally or in other intangible form, identified as confidential at the time of disclosure and confirmed as confidential information in writing within [***] of its initial disclosure.

11.2 For a period of [***] from the date of receipt of the Confidential Information disclosed by one Party ("Disclosing Party") hereunder, the receiving Party ("Receiving Party") agrees to safeguard the Confidential Information and to keep it in confidence and to use reasonable efforts, consistent with those used in the protection of its own confidential information, to prevent its disclosure to third parties other than its majority-owned subsidiaries, except that the Receiving Party shall not be obligated hereunder in any way with respect to information which:

(a) is already known to the Receiving Party at the time of its receipt from the Disclosing Party as reasonably evidenced by its written records;

(b) is or becomes publicly available without breach of this Agreement by the Receiving Party;

(c) is made available to a third party by the Disclosing Party without restriction on disclosure;

(d) is rightfully received by the Receiving Party from a third party without restriction and without breach of this Agreement;

(e) is independently developed by the Receiving Party as reasonably evidenced by its written records contemporaneous with such development;

(f) is disclosed with the prior written consent of the Disclosing Party, *provided* that each recipient from the Receiving Party shall execute a confidentiality agreement prohibiting further disclosure of the Confidential Information, under terms no less restrictive that those provided in this Agreement;

(g) is required to be disclosed by the order of a governmental agency or legislative body of a court of competent jurisdiction *provided* that the Receiving Party shall give the Disclosing Party prompt notice of such request so that the Disclosing Party has an opportunity to defend, limit or protect such disclosure; or

(h) is required to be disclosed by applicable securities or other laws or regulations, *provided* that either Party shall, prior to any such disclosure, provide the other Party with notice which includes a copy of the proposed disclosure. Further, the disclosing Party shall consider the other Party's timely input with respect to the disclosure.

11.3 Receiving Party shall use its reasonable best efforts to limit dissemination of the Disclosing Party's Confidential Information to such of its employees and employees of its majority-owned subsidiaries who have a need to know such information for the purpose for which such information was disclosed to it and who are bound to retain the confidentiality under provisions similar to those set forth herein ("Authorized Recipients"). Receiving Party understands that disclosure or dissemination of the Disclosing Party's Confidential Information not expressly authorized hereunder would cause irreparable injury to the Receiving Party, for which monetary damages would not be an adequate remedy and the Disclosing Party shall be entitled to equitable relief in addition to any remedies the Disclosing Party may have hereunder or at law.

11.4 Except as otherwise expressly provided herein, nothing contained in this Agreement shall be construed as granting or conferring any rights, licenses or relationships by the transmission of the Confidential Information.

11.5 All Confidential Information disclosed hereunder shall remain the property of the Disclosing Party. Upon request by the Disclosing Party, the Receiving Party shall return all Confidential Information, including any and all copies thereof, or certify in writing that all such Confidential Information had been destroyed.

**Article 12. TERM AND TERMINATION**

12.1 This Agreement shall become effective on the Effective Date and continue in full force and effect until the later of the termination of the: (a) FP Master Agreement, (b) FA Master Agreement, or (c) FF Master Agreement, unless earlier terminated as hereinafter provided. The term of this Agreement may be extended by mutual agreement of both Parties.

12.2 If either Party fails to perform or breaches any of its material obligations under this Agreement, then, upon [***] written notice specifying such failure or breach, the non-defaulting Party shall have the right to terminate this Agreement forthwith, unless the failure or breach specified in the notice has been cured during the [***] period. Termination of this Agreement pursuant to this Section 12.2 shall not relieve the breaching Party from any liability arising from any breach of this Agreement and such termination shall be without prejudice to any other rights and remedies of the non-breaching Party provided at law or in equity, in addition to the rights and remedies set forth in this Agreement. Notwithstanding anything to the contrary herein, any claims of breach shall follow the dispute resolution procedures set forth in Section 1.04(e) of [***].

12.3 Either Party shall have the right to terminate this Agreement by giving written notice to the other Party upon the occurrence of any of the following events:

(a) the filing by the other Party of a voluntary petition in bankruptcy or insolvency;

(b) any adjudication that such other Party is bankrupt or insolvent;

(c) the filing by such other Party of any legal action or document seeking reorganization, readjustment or arrangement of its business under any law relating to bankruptcy or insolvency;

(d) the appointment of a receiver for all or substantially all of the property of such other Party; or

(e) the making by such other Party of any assignment of whole or substantial assets for the benefit of creditors.

This Agreement shall terminate on the thirtieth (30th) day after such notice of termination is given.

12.4 The provisions of Articles and Sections 3, 9, 10, 11 and 13, and any payments which become due pursuant to Article 6 as of the date of termination or expiration of this Agreement, shall survive any termination or expiration of this Agreement. Upon expiration of this Agreement pursuant to Section 12.1, all rights and licenses granted under Article 4 shall survive such expiration subject to the applicable royalty payments and terms provided for in Article 6. Upon termination of this Agreement by one Party hereto (the "terminating Party") pursuant to Article 12.2 or 12.3, all rights and licenses granted hereunder to the other Party on which the termination takes effect (the "terminated Party") shall immediately terminate according to the terms thereof and such terminated Party shall take reasonable steps to destroy or, at the terminating Party's request, return to such terminating Party all technical information received from the terminating Party in tangible form. All rights and licenses granted hereunder to the terminating Party shall not be affected by such termination.

**Article 13. GENERAL PROVISIONS**

13.1 Entire Agreement. This Agreement, together with the exhibits, schedules, appendices and attachments thereto, constitutes the agreement of the Parties to this Agreement with respect to the subject matter hereof and supersedes all prior written and oral agreements and understandings with respect to such subject matter.

13.2 Amendment and Waiver. No amendment to or waiver of this Agreement shall be effective unless it shall be in writing, identify with specificity the provisions of this Agreement that are thereby amended or waived and be signed by each Party hereto. Any failure of a Party to comply with any obligation, covenant, agreement or condition contained in this Agreement may be waived by the Party entitled to the benefits thereof only by a written instrument duly executed and delivered by the Party granting such waiver, but such waiver or failure to insist upon strict compliance with such obligation, covenant, agreement or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure of compliance.

13.3 Severability. If any provision of this Agreement or the application of any such provision is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement (except as may be expressly provided in this Agreement) or invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law, the Parties hereto waive any provision of law that renders any provision of this Agreement invalid, illegal or unenforceable in any respect. The Parties hereto shall, to the extent lawful and practicable, use their reasonable efforts to enter into arrangements to reinstate the intended benefits, net of the intended burdens, of any such provision held invalid, illegal or unenforceable. If the intent of the Parties for entering into this Agreement cannot be preserved, this Agreement shall either be renegotiated or terminated by mutual agreement of the Parties.

13.4 Assignment. Except as may otherwise be specifically provided in this Agreement, no Party hereto shall assign or otherwise transfer this Agreement or any of its rights hereunder (except for any assignment or transfer to an Affiliate or in connection with a merger, consolidation or sale of all or substantially all the assets or the outstanding securities of such Party, which transfer shall not require any consent of the other Party, [***] without the prior written consent of each other Party hereto (which consent may be withheld in each such other Party's sole discretion), and any such purported transfer without such consent shall be void. Notwithstanding the foregoing, this Agreement, any rights and licenses granted to SanDisk and any obligations of Toshiba hereunder shall not be assigned (and any purported assignment shall be considered null and void), if a Change of Control occurs with respect to SanDisk and the successor in interest to the business of SanDisk is a Toshiba competitor.

13.5 Remedies.

(a) Except as may otherwise be specifically provided in this Agreement, the rights and remedies of the Parties under this Agreement are cumulative and are not exclusive of any rights or remedies which the Parties hereto would otherwise have.

(b) Equitable relief, including the remedies of specific performance and injunction, shall be available with respect to any actual or attempted breach of this Agreement; *provided*, however, in the absence of exigent circumstances, the Parties shall refrain from commencing any lawsuit or seeking judicial relief in connection with such actual or attempted breach that is contemplated to be addressed by the dispute resolution process set forth in Section 13.6 hereof until the Parties have attempted to resolve the subject dispute by following said dispute resolution process to its conclusion.

13.6 Arbitration. In the event there is a dispute between the Parties: (a) that relates to this Agreement, and (b) for which there is no specific dispute resolution process already set forth in this Agreement to resolve such dispute, the Parties to this Agreement shall endeavor to settle any dispute that arises between or among them through good faith discussion and mutual agreement. If the Parties cannot resolve such dispute through good faith discussion and mutual agreement, then such dispute will be settled by binding arbitration in San Francisco, California. The dispute shall be heard by a panel of three arbitrators pursuant to the rules of the International Chamber of Commerce (the "ICC"). The awards of such arbitration shall be final and binding upon the Parties thereto. Each Party will bear its own fees and expenses associated with the arbitration. Filing fees and arbitrator fees charged by the ICC shall be borne equally by the Parties.

13.7 Parties in Interest; Limitation on Rights of Others. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their permitted successors and assigns. Nothing in this Agreement, whether express or implied, shall give or be construed to give any Person (other than the parties hereto and their permitted successors and assigns) any legal or equitable right, remedy or claim under or in respect of this Agreement, unless such Person is expressly stated in such agreement or instrument to be entitled to any such right, remedy or claim.

13.8 Headings. The Article and Section headings of this Agreement are for convenience of reference only and shall not affect the construction of or be taken into consideration in interpreting any such agreement or instrument.

13.9 Counterparts; Effectiveness. This Agreement may be executed by the Parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all of which counterparts shall together constitute but one and the same contract. This Agreement shall not become effective until one or more counterparts have been executed by each Party hereto and delivered to the other Parties hereto.

13.10 Construction. References in this Agreement to any gender include references to all genders, and references in this Agreement to the singular include references to the plural and vice versa. Unless the context otherwise requires, the term "party" when used in this Agreement means a party to this Agreement. References in this Agreement to a party or other Person include their respective permitted successors and assigns. The words "include", "includes" and "including", when used in this Agreement, shall be deemed to be followed by the phrase "without limitation". Unless the context otherwise requires, references used in this Agreement to Articles, Sections, Exhibits, Schedules, Appendices and Attachments shall be deemed references to Articles and Sections of, and Exhibits, Schedules, Appendices and Attachments to, this Agreement. Unless the context otherwise requires, the words "hereof", "hereby" and "herein" and words of similar meaning when used in this Agreement refer to this Agreement in its entirety and not to any particular Article, Section or provision of this Agreement.

13.11 Official Language. The official language of this Agreement is the English language only, which language shall be controlling in all respects, and all versions of this Agreement in any other language shall not be binding on the parties hereto or nor shall such other versions be admissible in any legal proceeding, including arbitration, brought under this Agreement. All communications and notices to be made or given pursuant to this Agreement shall be in the English language.

13.12 No Implied Licenses. All rights not expressly granted hereunder by a Party are hereby retained in their entirety by such Party. Moreover, there are no implied grants or licenses hereunder and the only rights or licenses granted to either Party are limited to those rights and licenses expressly set forth herein.

13.13 No Implied Consent Requirement. Except for consent requirements that are expressly set forth herein, no obligations to obtain any consent shall be implied under this Agreement.

13.14 Notices. All notices and other communications to be given to any party under this Agreement shall be in writing and any notice shall be deemed received when delivered by hand, courier or overnight delivery service, or by e-mail or facsimile (if confirmed within three Business Days by delivery of a copy by hand, courier or overnight delivery service), or five days after being mailed by certified or registered mail, return receipt requested, with appropriate postage prepaid and shall be directed to the address of such party specified below (or at such other address as such party shall designate by like notice):

(a) If to Toshiba:

Toshiba Corporation Semiconductor Company
1-1 Shibaura 1-Chome Minato-Ku,
Tokyo 105-8001 Japan
Attention: Vice President, Memory Division
Telephone: [***]
Facsimile: [***]

With a copy to:

Toshiba Corporation Semiconductor Company
Legal Affairs Division
1-1 Shibaura 1-Chome Minato-Ku
Tokyo 105-8001 Japan

Attention: General Manager
Telephone: [***]
Facsimile: [***]

(b) If to SanDisk:

SanDisk Corporation
601 McCarthy Boulevard
Attention: President and CEO
Milpitas, CA 95035 USA
Telephone: [***]
Facsimile: [***]

With a copy to:

SanDisk Corporation
601 McCarthy Boulevard
Milpitas, CA 95035 USA
Attention: Senior Vice President and General Counsel
Telephone: [***]
Facsimile: [***]

13.15 Export Laws. Neither Party shall export or re-export, directly or indirectly, any technical information disclosed hereunder or direct product thereof to any destination prohibited or restricted by the export control regulations of Japan or the United States, including the U.S. Export Administration Regulations, without the prior authorization from the appropriate governmental authorities. Neither Party will use technical information supplied by the other Party hereunder for any purpose to develop or manufacture nuclear, chemical, biological weapons or missiles (hereafter "weapons of mass destruction"). Each Party agrees that it will not knowingly sell any products manufactured using the other Party's technical information to any third party if it knows that the end-user of the products will use them for the development and/or manufacture of the weapons of mass destruction.

13.16 Resolution of Conflicts. In the event of a conflict between the terms and conditions set forth in various agreement referenced herein, the order of precedence for such terms and conditions with respect to the subject matter hereof shall be as follows:

(a) this Agreement;

(b) [***]; and then

(c) [***].

13.17 Governing Law. This Agreement shall in all respects be governed by and construed in accordance with the internal laws of the State of California applicable to agreements made and to be performed entirely within such state without regard to the conflict of laws principles of such state, except where Japanese law is mandatory.

13.18 [***]

**[*Rest of Page Intentionally Blank*]**

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate by their duly authorized officers or representatives.

| Toshiba Corporation | | SanDisk Corporation | |
|---|---|---|---|
| By: | /s/ Kiyoshi Kobayashi | By: | /s/ Sanjay Mehrotra |
| Name: | Kiyoshi Kobayashi | Name: | Sanjay Mehrotra |
| Title: | Corporate Senior Vice President President and CEO Semiconductor Company | Title: | President and CEO |
| Date: | Mar 9, 2011 | Date: | March 3, 2011 |

[Signature page to BiCS License & Development Agreement]

**Exhibit 10.24**

CERTAIN CONFIDENTIAL PORTIONS HAVE BEEN REDACTED FROM THIS EXHIBIT BECAUSE THEY ARE BOTH (i) NOT MATERIAL AND (ii) A TYPE THAT THE REGISTRANT TREATS AS PRIVATE OR CONFIDENTIAL. INFORMATION THAT HAS BEEN OMITTED HAS BEEN IDENTIFIED IN THIS DOCUMENT WITH A PLACEHOLDER IDENTIFIED BY THE MARK "[***]".

Execution Version

**AMENDED AND RESTATED**
**JOINT MEMORY DEVELOPMENT AGREEMENT**

This Amended and Restated Joint Memory Development Agreement (this "***Agreement***"), effective as of June 27, 2024 (the "***Effective Date***"), is made and entered into by and among Kioxia Corporation, a Japanese corporation with a principal place of business at 1-1, Shibaura 1-chome, Minato-ku, Tokyo 105-0023, Japan ("***KIC***") and SanDisk LLC, a Delaware limited liability company, with a registered address at 951 SanDisk Drive, Milpitas, CA 95035, U. S. A. ("***SanDisk***", together with KIC, the "***Parties***").

WHEREAS, concurrently with this Agreement, KIC, Kioxia Iwate Corporation, a Japanese corporation, Western Digital Corporation ("***WD***"), SanDisk, SanDisk (Cayman) Limited, SanDisk (Ireland) Limited, SanDisk Flash B.V., Flash Partners, Ltd. ("***Flash Partners***"), Flash Alliance, Ltd. ("***Flash Alliance***"), and Flash Forward, Ltd. ("***Flash Forward***") are entering into that certain K2 Ph1 Facility Agreement (the "***K2 Ph1 Agreement***"), which sets forth, among other things, the terms and conditions for investments in, and the foregoing parties' rights and obligations with respect to, the K2 Ph1 Facility (as defined in the K2 Ph1 Agreement);

WHEREAS, pursuant to the Master Operative Documents (as defined in the K2 Ph1 Agreement), the Parties have a collaboration for the development and manufacture of NAND Flash Memory Products and BiCS Products and a collaboration for the development of 3D Memory Products;

WHEREAS, the Undertaking (as defined in the K2 Ph1 Agreement) sets forth, among other things, certain rights and obligations of the parties thereto with respect to WD's participation in activities related to the Collaboration (as defined in the Undertaking), including those contemplated by this Agreement;

WHEREAS, pursuant to that certain Amended and Restated Joint Memory Development Agreement, dated January 31, 2022, between the Parties (the "***Prior Agreement***") the Parties have a joint development project to cooperate on the development and management of a pilot line (the "***JMD Line***") for the research and development of memory products (the "***JMD Project***") pursuant to the roadmap agreed pursuant to the Prior Agreement (as updated from time to time by the Parties pursuant to this Agreement, the "***Roadmap***") at the Y1 Facility, Y3 Facility, Y4 Facility, Y5 Facility, New Y2 Facility, Y6 Facility, K1 Facility and the Y7 Ph1 Collaboration Space (each as defined in the K2 Ph1 Agreement and collectively, the "***Existing JMD Facilities***"); and

WHEREAS, KIC and SanDisk desire to amend and restate the Prior Agreement with the effect of superseding the Prior Agreement from and after the date of this Agreement to reflect the expansion of the JMD Line to the K2 Ph1 Facility (together with the Existing JMD Facilities, the "***JMD Facilities***"), in addition to the Existing JMD Facilities.

NOW, THEREFORE, the parties agree as follows:

Capitalized terms used but not otherwise defined in this Agreement shall have the respective meanings assigned to them in the K2 Ph1 Agreement or Exhibit A thereto or other referenced agreements.

**ARTICLE I.**
**PURPOSE, JMD COMMITTEE AND EMPLOYEES**

Section 1.01 Purpose. The Parties agree to undertake at KIC facilities (primarily at Yokkaichi and Kitakami, as decided by the Committee) the development projects on the detailed development schedule as set forth in the Roadmap in accordance with this Agreement.

Section 1.02 JMD Committee.

(a) Each Party has previously designated three (3) representatives (the "***Representatives***") who shall continue to collectively constitute the JMD Committee (the "***Committee***"). The Parties agree that at least one of the Representatives of each Party shall be based at the Yokkaichi Facility or, if the Kitakami Facility is the only facility used for the JMD Project, at Kitakami (unless otherwise agreed by the Parties) on a substantially full-time basis and involved in day-to-day operations of the JMD Project. The Committee will meet regularly to review, discuss and determine the direction of the JMD Project, including the Roadmap.

(b) The Committee shall be responsible for executing the Roadmap and, among other things, establishing and approving an annual and quarterly budget for the JMD Project. In addition, the Committee shall be responsible for budgeting and including in the Roadmap the transfer of successful technology from the JMD Project into mass production for the joint ventures between the Parties; provided, however, that such transfer shall be considered achieved when the first product in new technology passes qualification testing (such event, the "***Qualification Testing***"). After Qualification Testing, the JMD Personnel shall provide assistance from time to time to the manufacturing and product engineering organizations with the yield ramp for a technology transferred from the JMD Project.

(c) The Committee may, from time to time, amend and revise the Roadmap, with such amended and restated Roadmap to be provided to each Party and uploaded to the Database (as defined below).

(d) The Committee shall meet at least once during each calendar quarter of the year.

(e) Subject to the prior approval of the Committee, each Party may conduct development activity for Proprietary Products (as defined below) at its sole responsibility and cost, subject to the terms and conditions in this Agreement and any other terms and restrictions imposed by the Committee; provided, that such approval shall not be unreasonably withheld or delayed (the "***Proprietary Project***"). "***Proprietary Product***" shall mean any product [***].

(f) [***].

(g) KIC may conduct development activity for technology or products other than NAND Flash Memory Products and BiCS Memory Products ("***Non-NAND/BiCS Products***") at its sole discretion and cost; provided [***].

(h) Subject to the approval of JMD Committee and KIC, SanDisk may conduct development activity onNon-NAND/BiCS Products technology on any tool used for the JMD Project under to the same conditions as outlined in subsection (g) above and other terms to be mutually agreed upon using SanDisk's own resources, with assistance from KIC if necessary to facilitate such use provided that the level of such assistance shall be preapproved by KIC and any actual costs or expenses accruing from such assistance shall be borne by SanDisk. For the avoidance of doubt, such development activity shall not be considered as any commitment or intent of either Party to manufacture any products based on such Non-NAND/BiCS Products technology at the Parties' joint ventures.

Section 1.03 Committee Appointments.

(a) Each Party shall be entitled to appoint an alternate Representative to serve in the place of any Representative appointed by such Party should any such Representative be unable to attend a meeting. Each Party shall be entitled to invite a reasonable number of observers to all Committee meetings.

(b) Each Representative or alternate Representative shall serve at the pleasure of the designating Party and may be removed as such, with or without cause, and his or her successor designated, by the designating Party. Each Party shall have the right to designate a replacement Representative in the event of any vacancy among such Party's appointees.

(c) Unless otherwise agreed by the Parties, Flash Alliance shall bear any cost and expense incurred by any Representative based in Yokkaichi and Flash Forward shall bear any cost and expense incurred by any Representative based in Kitakami. For Representatives not based in Yokkaichi or Kitakami, each Party shall bear any cost and expense incurred by any Representative or alternate Representative designated by such Party to serve on the Committee, and no Representative or alternate Representative shall be entitled to compensation from Flash Alliance or Flash Forward for serving in such capacity.

(d) Each Party shall notify the other Party in writing of the name, business address, business telephone,e-mail address and facsimile numbers of each Representative and each alternate Representative that such Party has been appointed to the Committee. Each Party shall promptly notify the other Party, Flash Alliance and Flash Forward of any change in such Party's appointments or of any change in any such address or number.

(e) Each appointment to the Committee shall remain in effect until the Party making such appointment notifies the other Party, Flash Alliance and Flash Forward in writing of a change in such appointment. The resignation or removal of a Representative shall not invalidate any act of such Representative taken before the giving of such written notice of the removal or resignation of such Representative (or alternate Representative).

Section 1.04 Operation of the Committee.

(a) For purposes of any approval or action taken by the Committee, each of the six (6) Representatives shall have one vote. All of the votes eligible to be cast at any meeting must be voted in favor of any action to be taken by the Committee at such meeting for such action to be approved.

(b) At any meeting of the Committee, a Representative, in the absence of one or more other Representatives appointed by the same Party or an alternate Representative, may cast the vote(s) such absent Representative(s) would otherwise be entitled to cast.

(c) Meetings of the Committee shall be held (i) at Yokkaichi or, if the Kitakami Facility is the only facility used for the JMD Project, at Kitakami or (ii) if agreed by the Committee members, via web conference; provided that the Committee may determine to hold meetings at other locations from time to time.

(d) Regular meetings of the Committee shall be held at least quarterly on such dates and at such times as shall be determined by the Committee and may also be held as jointly required or jointly requested by the Parties.

(e) If the Committee is unable to decide an issue (by agreement of its members), then such issue shall be referred for resolution to the Management Committee (as defined in the FAL Master Agreement) or, if the FAL Master Agreement has been terminated, to the Management Representatives (as defined in the FFL Master Agreement), which shall be vested with final decision making authority. If the Management Committee (as defined in the FAL Master Agreement) or the Management Representatives (as defined in the FFL Master Agreement), as applicable, is unable to resolve the issue, the Parties agree to submit the matter to arbitration pursuant to Section 5.08 of this Agreement.

Section 1.05 [***]

(a) [***]

(b) [***]

(c) [***]

(i) [***]

(ii) [***]

(d) [***]

(i) [***]

(ii) [***]

(iii) [***]

(iv) [***]

(e) [***]

(f) [***]

(g) [***]

(h) [***]

(i) [***]

(ii) [***]

(iii) [***]

(iv) [***]

(v) [***]

(vi) SanDisk JMD Personnel will remain employees of SanDisk. Each Party will indemnify the other Party and Flash Alliance or Flash Forward, as applicable, from any claim by any of such Party's employees, consultants or agents (such Party being the "***Employer***") (A) based on other than willful misconduct of such Employer, its employees, consultants or agents; or (B) that he or she has rights, or is owed obligations, as an employee of the Party that is not the Employer.

(vii) [***]

(viii) [***]

## ARTICLE II.
## COSTS AND EQUIPMENT ACQUISITION

Section 2.01 Purchased Tools.

(a) In addition to tools owned or controlled by Flash Alliance as of the Effective Date, subject to the appropriate approvals by Flash Alliance and Flash Forward, as applicable, Flash Alliance and Flash Forward, as applicable, shall acquire the applicable tools, as agreed upon from time to time by the Committee and included on a list of Flash Alliance and Flash Forward tools (the "***Tool List***"), for use by the JMD Project.

(b) From time to time, the Committee shall recommend to the Board of Directors of Flash Alliance (the "***FA Board***") or Flash Forward (the "***FF Board***"), as applicable, additional tools for Flash Alliance or Flash Forward to acquire for the JMD Project.

(c) Once a transaction has been approved by the FA Board and/or the FF Board, an amendment to the Tool List may be made by the Committee with each such amendment to be provided to each Party and uploaded to the Database (as defined below).

(d) The costs of each tool purchased by Flash Alliance or Flash Forward for joint JMD Projects (each a "***Joint Tool***") shall be shared 50/50 by the Parties, unless the Parties mutually agree otherwise. Each tool that is assigned to the JMD Project by either Party shall be deemed a "***Solely Owned Tool***". Each tool on the Tool List shall be labeled either a Joint Tool or a Solely Owned Tool.

(e) All tools acquired for the JMD Project shall be located at the Y3 Facility, Y4 Facility, Y5 Facility, Y6 Facility, the Y7 Ph1 Collaboration Space and, if the Kitakami Facility is used for the JMD Project, at a JMD Facility at Kitakami, and, only to the extent necessary, the other JMD Facilities, or as otherwise mutually agreed by the Parties.

(f) The Committee will discuss the location of future JMD tools to ensure the overall efficiency of JMD operations.

(g) The Tool List shall be updated on a monthly basis, no later than five days after the last calendar day of each month.

Section 2.02 To the extent that the JMD Project acquires a tool but such tool is not fully utilized by the JMD Line, KIC's divisions other than its memory division may request to lease and utilize such tools with the compensation calculated on a time usage basis. Such request shall be brought to the Committee for review and shall be granted if the Committee unanimously approves such request.

Section 2.03 Tool Usage Costs of JMD Line.

(a) Each JMD project shall be deemed to be either a joint project or a Proprietary Project.

(b) For joint projects, the tool usage costs shall be as follows:

(i) In the event a Joint Tool is used in Yokkaichi, Flash Alliance shall solely bear the costs of [***], and such costs shall be allocated by Flash Alliance to each Party on a 50/50 basis.

(ii) In the event a Joint Tool is used in Kitakami, Flash Forward shall solely bear the costs of [***], and such costs shall be allocated by Flash Forward to each Party on a 50/50 basis.

(iii) In the event a Solely Owned Tool is used in Yokkaichi, Flash Alliance shall bear the costs of [***], as agreed to by the Parties for the JMD Project, and such costs shall be allocated by Flash Alliance to each Party on a 50/50 basis.

(iv) In the event a Solely Owned Tool is used in Kitakami, Flash Forward shall bear the costs of [***], as agreed to by the Parties for the JMD Project, and such costs shall be allocated by Flash Forward to each Party on a 50/50 basis.

(c) For Proprietary Projects, the tool costs shall be as follows:

(i) In the event a Joint Tool is used, the Proprietary Project sponsor shall solely bear the actually accrued costs of [***], as agreed to by the Parties for the JMD Project.

(ii) In the event a Solely Owned Tool is used, the Proprietary Project sponsor shall bear the costs of [***], as agreed to by the Parties for the JMD Project.

(d) As part of the JMD budget process, the Parties shall meet once every three months to discuss in good faith and agree on the appropriate labor, materials, facilities and other applicable costs of [***] to be applied for the subsequent three-month period using the methodology in this Section 2.03. Each Party shall provide [***] information reasonably necessary for JMD cost allocation, including relevant actual cost information for the prior three-month period, related to the labor, materials, facilities and other applicable costs so that the Parties will have the information necessary to allocate those costs among JMD projects and each Party.

Section 2.04 [***]

(a) [***]

(i) [***]

(ii) [***]

(iii) [***]

(1) [***]

(2) [***]

(3) [***]

(b) [***]

(c) [***]

(d) [***]

(i) [***]

(ii) [***]

(iii) [***]

Section 2.05 No Duplication of Costs or Expenses. It is the intent of the Parties that any payments made by SanDisk under or pursuant to this Agreement and any other agreement between the Parties shall not be duplicative and SanDisk shall in no event be required to pay or contribute more than once for any service, product or research and development work provided under such agreements, if the same service, product or research and development work is provided under more than one agreement.

## ARTICLE III.
## INTELLECTUAL PROPERTY

Section 3.01 Project Classification. The Committee shall classify each project on the Roadmap and such classification shall appear on the Roadmap contained in the Database (as defined below).

Section 3.02 NAND Projects. For NAND projects on the Roadmap ("***NAND Projects***"), the intellectual property shall be treated as follows:

(a) Definitions for this Section 3.02:

(i) "***Background Technology***" shall mean the Technology which has been or will be developed by or for either Party independently of the Development Projects and owned or controlled by such Party prior to or during the term of this Agreement, and which shall be deemed reasonably necessary for the other Party to perform the Development Projects. Background Technology may be either SanDisk Background Technology or KIC Background Technology, as the context requires.

(ii) "***Controller Technology***" shall mean all developments, ideas, inventions and technical information (whether or not patentable) relating to Flash Memory Controllers and intellectual property rights relating thereto, including, but not limited to, trade secrets, copyrights and maskwork rights, but specifically excluding Patents.

(iii) "***Developed Controller Technology***" shall mean Controller Technology solely developed by either Party during the term of this Agreement.

(iv) "***Developed Products***" shall mean Products solely developed by either Party during the term of this Agreement, including solely developed derivatives of Jointly Developed Products; provided, however, that Developed Products shall not include cut-downs of Jointly Developed Products.

(v) "***Developed Technology***" shall mean Technology solely developed by either Party in the course of the Development Projects.

(vi) "***Development Project***" shall mean all NAND flash memory development activities undertaken pursuant to the Roadmap.

(vii) "***Flash Memory Controller***" shall mean any firmware, hardware and/or software that is necessary to operate a NAND flash memory device.

(viii) "***Joint Products and Technology***" shall mean Jointly Developed Products and Jointly Developed Technology.

(ix) "***Jointly Developed Controller***" shall mean a Flash Memory Controller developed by KIC and SanDisk during the term of this Agreement.

(x) "***Jointly Developed Controller Technology***" shall mean Controller Technology developed by KIC and SanDisk during the term of this Agreement.

(xi) "***Jointly Developed Patents***" shall mean Patents which arise out of the inventions jointly made by the employees of KIC or SanDisk in the course of the Development Projects.

(xii) "***Jointly Developed Products***" shall mean Products jointly developed by KIC and SanDisk during the term of this Agreement.

(xiii) "***Jointly Developed Technology***" shall mean Technology jointly developed by KIC and SanDisk in the course of the Development Projects.

(xiv) "***KIC Developed Controller***" shall mean a Flash Memory Controller solely developed by KIC during the term of this Agreement, including solely developed derivatives of Jointly Developed Controllers.

(xv) "***KIC Products and Technology***" shall mean KIC Developed Products, KIC Background Technology, KIC Developed Technology, KIC Developed Controller Technology and KIC Developed Controllers.

(xvi) "***Patents***" shall mean all classes of types of patents, utility models (excluding design patents) and any applications therefor in all countries of the world, which are, now or hereafter, owned or controlled by either Party hereto.

(xvii) "***Products***" shall mean the NAND Flash Memory devices developed hereunder, but excluding Flash Memory Controllers.

(xviii) "***SanDisk Controllers***" shall mean SanDisk Developed Controllers, Jointly Developed Controllers, SanDisk Developed Controller Technology and Jointly Developed Controller Technology.

(xix) "***SanDisk Developed Controller***" shall mean a Flash Memory Controller solely developed by SanDisk during the term of this Agreement, including solely developed derivatives of Jointly Developed Controllers.

(xx) "***SanDisk Products and Technology***" shall mean SanDisk Developed Products, SanDisk Background Technology, SanDisk Developed Technology and SanDisk Controllers.

(xxi) "***Technology***" shall mean all developments, ideas, inventions, Test Technology and other technical information (whether or not patentable) relating to Products as well as intellectual property rights relating thereto, including trade secrets, copyrights and maskwork rights, but specifically excluding Patents.

(xxii) "***Test Technology***" shall mean all developments, ideas, inventions, test programs, test methods, configured and developed hardware and other technical information (whether or not patentable) for all stages of product manufacture, as well as intellectual property rights relating thereto, but specifically excluding Patents, concerning testing of Products and Flash Memory Controllers.

(b) Ownership for NAND Projects.

(i) KIC Products and Technology shall be and remain the exclusive property of KIC, subject to the license granted in accordance with this Section 3.02. From time to time, upon request of SanDisk, KIC shall offer SanDisk, based upon reasonable terms, anon-exclusive, worldwide, non-transferable license, without right to sublicense, to develop, have developed, make, have made, use, sell, modify and otherwise dispose of all or a portion of the KIC Products and Technology.

(ii) KIC Patents shall be and remain the exclusive property of KIC, subject to the licenses granted in accordance with theWD-KIC PCLA (as defined in the K2 Ph1 Agreement).

(iii) SanDisk Products and Technology shall be and remain the exclusive property of SanDisk, subject to the licenses granted in accordance with this Section 3.02. From time to time, upon request of KIC, SanDisk shall offer KIC, based upon reasonable terms, anon-exclusive, worldwide, non-transferable license, without right to sublicense, to develop, have developed, make, have made, use, sell, modify and otherwise dispose of all or a portion of the SanDisk Products and Technology.

(iv) SanDisk Patents shall be and remain the exclusive property of SanDisk, subject to the licenses granted in accordance with theWD-KIC PCLA.

(v) Any right, title and interest in and to Joint Products and Technology shall be jointly owned by KIC and SanDisk. With the exception that neither Party may sublicense or transfer Joint Products and Technology without the prior written consent of the other Party, each of KIC and SanDisk has the right to use, fully exploit, disclose or otherwise dispose of such Joint Products and Technology for any purpose without consent of nor accounting to the other Party.

(vi) Any right, title and interest in and to Jointly Developed Patents shall be jointly owned by KIC and SanDisk. Each Party shall be free to use such Jointly Developed Patents for any purpose and shall have the right to grant non-exclusive licenses to any [***]. Both Parties shall promptly agree on which of them shall file and prosecute the first patent application and which countries' corresponding applications shall be filed and by whom. All expenses incurred in obtaining and maintaining such patents shall be shared equally by the Parties; provided that if one Party elects not to seek or maintain such patents in any particular country or not to share equally in the expense thereof, the other Party shall have the right to seek or maintain such patents in said country at its own expense and shall have full control over the prosecution and maintenance thereof even though title to any patent issuing thereon shall be joint. The Party electing not to seek or maintain such patents shall give the other Party any necessary assistance required for the preparation and prosecution of such patents filed or maintained by the other Party. Jointly Developed Patents shall not be considered "WD Licensed Patents" or "TMC Licensed Patents" as defined in the WD-KIC PCLA.

(c) License for NAND Projects.

(i) Subject to the terms and conditions of this Agreement, KIC hereby grants to SanDisk anon-exclusive, non-transferable, worldwide and royalty-free license, without the right to sublicense, to use KIC Background Technology provided to SanDisk hereunder to develop, have developed, make, have made, use, sell, modify and otherwise dispose of Products, SanDisk Controllers and any other controller products designed by or for SanDisk.

(ii) Subject to the terms and conditions of this Agreement, SanDisk hereby grants to KIC anon-exclusive, non-transferable, worldwide and royalty-free license, without the right to sublicense, to use SanDisk Background Technology provided to KIC hereunder to develop, have developed, make, have made, use, sell, modify and otherwise dispose of Products, KIC Developed Controllers and other controller products not designed or used for file storage.

(iii) Subject to the terms and conditions of this Agreement, SanDisk hereby grants to KIC anon-exclusive, non-transferable, worldwide and royalty-free license, without the right to sublicense, to make, have made, use, sell, modify and otherwise dispose of any Jointly Developed Controllers.

(iv) It is understood that SanDisk has the right to use, fully exploit, disclose, sublicense, transfer or otherwise dispose of SanDisk Controllers and any other controller product designed by or for SanDisk without consent from or accounting to KIC, even if such SanDisk Controllers or other controller products incorporate any KIC Background Technology.

## ARTICLE IV.
## OPERATIONS

Section 4.01 Hours of Operation.

(a) KIC, SanDisk and the Parties' Affiliates shall cause the JMD Line to operate 24 hours per day.

(b) The shift structure of the JMD Project shall be determined by the Committee to ensure that: (a) the JMD Line will function 24 hours a day, seven days a week; (b) the line engineers will be staffed 24 hours a day, seven days a week to provide continuous coverage for the JMD Line; (c) development and support engineers and all other JMD Personnel other than those described in (a) and (b) in this sentence will be staffed as determined by the Committee; provided that the staffing of the JMD Project shall be subject to the operating hours of the Yokkaichi or Kitakami fabs, as applicable.

Section 4.02 Storage of Information and Access to Information.

(a) The JMD Project shall maintain a database (the "***Database***") that includes key documents and technical matters related to the JMD Line.

(b) The Database shall include:

(i) the Roadmap, including any amendments thereto;

(ii) the JMD Headcount Plan, including any amendments thereto;

(iii) the JMD Tool List, including any amendments thereto;

(iv) and the items set forth on the Access Rights Table.

(c) Access to the Database will be governed by an access rights table prepared by the Committee (the "***Access Rights Table***"). The access guidelines will provide access based on the level of each person's position and job assignment within the JMD Project.

(d) The Committee may, from time to time, amend and revise the Access Rights Table, with such amended and restated Access Rights Table provided to each Party and uploaded to the Database.

## ARTICLE V.
## MISCELLANEOUS

Section 5.01 Term; Survival.

(a) This Agreement shall become effective on the Effective Date and continue in full force and effect until the later of the termination of (i) the FPL Master Agreement; (ii) the FAL Master Agreement; or (iii) the FFL Master Agreement, unless earlier terminated as hereinafter provided. The term of this Agreement may be extended by mutual agreement of the Parties. This Agreement shall automatically terminate upon termination of the FPL Master Agreement, the FAL Master Agreement or the FFL Master Agreement, whichever is later.

(b) If either Party fails to perform or breaches any of its material obligations under this Agreement, then, upon [***] written notice specifying such failure or breach, the non-defaulting Party shall have the right to terminate this Agreement forthwith, unless the failure or breach specified in the notice has been cured during the [***] period. Termination of this Agreement pursuant to this Section 5.01 shall not relieve the breaching Party from any liability arising from any breach of this Agreement and such termination shall be without prejudice to any other rights and remedies of the non-breaching Party provided at law or in equity, in addition to the rights and remedies set forth in this Agreement

(c) Either Party shall have the right to terminate this Agreement by giving written notice to the other Party upon the occurrence of any of the following events:

(i) the filing by the other Party of a voluntary petition in bankruptcy or insolvency;

(ii) any adjudication that such other Party is bankrupt or insolvent;

(iii) the filing by such other Party of any legal action or document seeking reorganization, readjustment or arrangement of its business under any law relating to bankruptcy or insolvency;

(iv) the appointment of a receiver for all or substantially all of the property of such other Party; or

(v) the making by such other Party of any assignment of whole or substantial assets for the benefit of creditors.

This Agreement shall terminate on the thirtieth (30th) day after such notice of termination is given.

(d) Article III and Article V of this Agreement shall each survive the termination or expiration of this Agreement.

Section 5.02 Entire Agreement. This Agreement, together with the exhibits, schedules, appendices and attachments thereto, constitutes the agreement of the Parties to this Agreement with respect to the subject matter hereof and supersedes all prior written and oral agreements and understandings with respect to such subject matter. For the avoidance of doubt, the BiCS LDA and the 3D Collaboration Agreement shall continue in full force and effect and nothing in this Agreement supersedes any provision of the BiCS LDA or of the 3D Collaboration Agreement.

Section 5.03 Governing Law. This Agreement shall in all respects be governed by and construed in accordance with the internal laws of the State of California applicable to agreements made and to be performed entirely within such state without regard to the conflict of laws principles of such state.

Section 5.04 Amendment and Waiver. No amendment to or waiver of this Agreement shall be effective unless it shall be in writing, identify with specificity the provisions of this Agreement that are thereby amended or waived and be signed by each party hereto. Any failure of a party to comply with any obligation, covenant, agreement or condition contained in this Agreement may be waived by the party entitled to the benefits thereof only by a written instrument duly executed and delivered by the party granting such waiver, but such waiver or failure to insist upon strict compliance with such obligation, covenant, agreement or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure of compliance.

Section 5.05 Severability. If any provision of this Agreement or the application of any such provision is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement (except as may be expressly provided in this Agreement) or invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law, the Parties hereto waive any provision of law that renders any provision of this Agreement invalid, illegal or unenforceable in any respect. The Parties hereto shall, to the extent lawful and practicable, use their reasonable efforts to enter into arrangements to reinstate the intended benefits, net of the intended burdens, of any such provision held invalid, illegal or unenforceable. If the intent of the Parties for entering into this Agreement cannot be preserved, this Agreement shall either be renegotiated or terminated by mutual agreement of the Parties.

Section 5.06 Assignment. Except as may otherwise be specifically provided in this Agreement, no party hereto shall transfer (as defined below) this Agreement or any of its rights hereunder (except for any transfer to an Affiliate or in connection with a merger, consolidation or sale of all or substantially all the assets or the outstanding securities of such party, which transfer shall not require any consent of the other Parties) without the prior written consent of each other party hereto (which consent may be withheld in each such other party’s sole discretion), and any such purported transfer without such consent shall be void.

Section 5.07 Remedies.

(a) Except as may otherwise be specifically provided in this Agreement, the rights and remedies of the Parties under this Agreement are cumulative and are not exclusive of any rights or remedies which the Parties hereto would otherwise have.

(b) Equitable relief, including the remedies of specific performance and injunction, shall be available with respect to any actual or attempted breach of this Agreement; provided, however, in the absence of exigent circumstances, the Parties shall refrain from commencing any lawsuit or seeking judicial relief in connection with such actual or attempted breach that is contemplated to be addressed by the dispute resolution process set forth in Section 5.08 hereof until the Parties have attempted to resolve the subject dispute by following said dispute resolution process to its conclusion.

(c) "***Business Day***" shall mean any day (other than a day which is a Saturday, Sunday or legal holiday in the State of California or Japan) on which commercial banks are open for business in the State of California or Tokyo, Japan.

Section 5.08 Arbitration. In the event there is a dispute between the Parties (a) that relates to this Agreement and (b) for which there is no specific dispute resolution process already set forth in this Agreement to resolve such dispute, the Parties to this Agreement shall endeavor to settle any dispute that arises between or among them through good faith discussion and mutual agreement. If the Parties cannot resolve such dispute through good faith discussion and mutual agreement, then such dispute will be settled by binding arbitration in San Francisco, California. The dispute shall be heard by a panel of three arbitrators pursuant to the rules of the International Chamber of Commerce (the "***ICC***"). The awards of such arbitration shall be final and binding upon the Parties thereto. Each Party will bear its own fees and expenses associated with the arbitration. Filing fees and arbitrator fees charged by the ICC shall be borne equally by the Parties.

Section 5.09 Indemnity for Bodily Injury and Property Damages. Each Party shall be solely responsible for, and indemnify and hold harmless the other Party from, any direct liability, loss and expense, including those based on claims from a third party, arising out of bodily injury and property damages caused directly by the acts of its own employees.

Section 5.10 Damages Limited. IN THE ABSENCE OF ACTUAL FRAUD, IN NO EVENT SHALL ANY PARTY BE LIABLE TO OR BE REQUIRED TO INDEMNIFY ANY OTHER PARTY OR ANY OF THEIR RESPECTIVE AFFILIATES FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL OR INDIRECT DAMAGE OF ANY KIND, (INCLUDING WITHOUT LIMITATION LOSS OF PROFIT OR DATA), WHETHER OR NOT ADVISED OF THE POSSIBILITY OF SUCH LOSS.

Section 5.11 Parties in Interest; Limitation on Rights of Others. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their permitted successors and assigns. Nothing in this Agreement, whether express or implied, shall give or be construed to give any Person (other than the parties hereto and their permitted successors and assigns) any legal or equitable right, remedy or claim under or in respect of this Agreement, unless such Person is expressly stated in such agreement or instrument to be entitled to any such right, remedy or claim.

Section 5.12 Warranty.

(a) Each Party provides to the other Party its technical information on an "as-is" basis only, and does not make any warranty or representation with respect to such technical information for any purpose.

(b) Nothing contained in this Agreement shall be construed as:

(i) a warranty or representation that the manufacture, use, sale or other disposal of semiconductor products by the other Party using any technical information received under this Agreement will be free from infringement of patents or any other intellectual property rights of any third party;

(ii) conferring the other Party any right to use in advertising, publicity or otherwise any trademark, trade name or names, or any contraction, abbreviation or simulations thereof of either Party;

(iii) conferring the other Party, by implication, estoppel or otherwise, any license or other right, except for the licenses and rights expressly granted hereunder; and

(iv) an obligation to furnish any technical information or know-how except as otherwise specifically provided herein.

Section 5.13 Resolution of Conflicts. In the event of a conflict between this Agreement and any of the FPL Master Agreement, the FAL Master Agreement, the Flash Forward Master Agreement, the New Y2 Agreement, the Y6 Agreement, the K1 Agreement, the Y7 Ph1 Agreement, the K2 Ph1 Agreement or any of the FP Operative Documents, FA Operative Documents, or FF Operative Documents that relates to the JMD Project, the JMD Line or the Roadmap, the terms of this Agreement shall govern. The terms of the BiCS LDA or the 3D Collaboration Agreement shall govern in the event of any conflict between any provision of this Agreement and such other agreements with respect to any rights or obligations (including without limitation intellectual property rights) relating to BiCS Memory Products or 3D Memory Products, respectively.

Section 5.14 Headings. The Article and Section headings of this Agreement are for convenience of reference only and shall not affect the construction of or be taken into consideration in interpreting any such agreement or instrument.

Section 5.15 Counterparts; Effectiveness. This Agreement may be executed by the Parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all of which counterparts shall together constitute but one and the same contract. This Agreement shall not become effective until one or more counterparts have been executed by each Party hereto and delivered to the other Parties hereto.

Section 5.16 Construction. References in this Agreement to any gender include references to all genders, and references in this Agreement to the singular include references to the plural and vice versa. Unless the context otherwise requires, the term "party" when used in this Agreement means a party to this Agreement. References in this Agreement to a party or other Person include their respective permitted successors and assigns. The words "include", "includes" and "including", when used in this Agreement, shall be deemed to be followed by the phrase "without limitation". Unless the context otherwise requires, references used in this Agreement to Articles, Sections, Exhibits, Schedules, Appendices and Attachments shall be deemed references to Articles and Sections of, and Exhibits, Schedules, Appendices and Attachments to, this Agreement. Unless the context otherwise requires, the words "hereof", "hereby" and "herein" and words of similar meaning when used in this Agreement refer to this Agreement in its entirety and not to any particular Article, Section or provision of this Agreement.

Section 5.17 Official Language. The official language of this Agreement is the English language only, which language shall be controlling in all respects, and all versions of this Agreement in any other language shall not be binding on the parties hereto or nor shall such other versions be admissible in any legal proceeding, including arbitration, brought under this Agreement. All communications and notices to be made or given pursuant to this Agreement shall be in the English language.

Section 5.18 Notices. All notices and other communications to be given to any party under this Agreement shall be in writing and any notice shall be deemed received (x) if delivered by hand, courier or overnight delivery service, when delivered, or (y) if delivered by e-mail, the earlier of (i) when the recipient, by an email sent to the email address for the sending Party stated in this Section 5.18 or by a notice delivered by another method in accordance with this Section 5.18, acknowledges having received that email (provided, however, that an automatic "read receipt" will not constitute acknowledgment of an email for purposes of this Section 5.18(y)(i)) or (ii) when the email is delivered, if followed within two Business Days by delivery of a copy by hand, courier or overnight delivery service, or (z) if delivered by mail, five days after being mailed by certified or registered mail, return receipt requested, with appropriate postage prepaid and, in each case, shall be directed to the address of such party specified below (or at such other address as such party shall designate by like notice):

(a) If to SanDisk:

SanDisk LLC
5601 Great Oaks Parkway
San Jose, CA 95119 USA
Attention: Chief Executive Officer
Telephone: [***]
Email: [***]

With a copy to:

Western Digital Corporation
5601 Great Oaks Parkway
San Jose, CA 95119 USA
Attention: Chief Legal Officer
Telephone: [***]
Email: [***]

(b) If to KIC:

Kioxia Corporation
1-21, Shibaura 3-Chome,
Minato-ku, Tokyo 108-0023 Japan
Attention: Chief Technology Officer
Telephone: [***]
Email: [***]

With a copy to:

Kioxia Corporation
1-21, Shibaura 3-Chome,
Minato-ku, Tokyo 108-0023 Japan
Attention: Executive Officer, General Manager
Telephone: [***]
E-mail: [***]

(c) If to Flash Alliance:

Flash Alliance
800 Yamanoisshikicho
Yokkaichi, Mie Japan
Attention: President and CEO

With a copy to:

SanDisk LLC
5601 Great Oaks Parkway
San Jose, CA 95119 USA
Attention: Chief Executive Officer
Telephone: [***]
Email: [***]

and

Kioxia Corporation
1-21, Shibaura 3-Chome,
Minato-ku, Tokyo 108-0023 Japan
Attention: Executive Officer, General Manager
Telephone: [***]
E-mail: [***]

(d) If to Flash Forward:

Flash Forward
800 Yamanoisshikicho
Yokkaichi, Mie Japan
Attention: President and CEO

With a copy to:

SanDisk LLC
5601 Great Oaks Parkway
San Jose, CA 95119 USA
Attention: Chief Executive Officer
Telephone: [***]
Email: [***]

and

Kioxia Corporation
1-21, Shibaura 3-Chome,
Minato-ku, Tokyo 108-0023 Japan
Attention: Executive Officer, General Manager
Telephone: [***]
E-mail: [***]

Section 5.19 Non-Disclosure Obligations. Each party hereto agrees as follows:

(a) In this Agreement, "***Confidential Information***" means information disclosed in written, recorded, graphical or other tangible from which is marked as "Confidential", "Proprietary" or in some other manner to indicate its confidential nature, and/or orally or in other intangible form, identified as confidential at the time of disclosure and confirmed as confidential information in writing within [***] of its initial disclosure.

(b) For a period of [***] from the date of receipt of the Confidential Information disclosed by one Party (the "***Disclosing Party***") hereunder, the receiving Party (the "***Receiving Party***") agrees to safeguard the Confidential Information and to keep it in confidence and to use reasonable efforts, consistent with those used in the protection of its own confidential information, to prevent its disclosure to third parties other than its majority-owned subsidiaries, except that the Receiving Party shall not be obligated hereunder in any respect to information which:

(i) is already known to the Receiving Party at the time of its receipt from the Disclosing Party as reasonably evidenced by its written records;

(ii) is or becomes publicly available without breach of this Agreement by the Receiving Party;

(iii) is made available to a third party by the Disclosing Party without restriction on disclosure;

(iv) is rightfully received by the Receiving Party from a third party without restriction and without breach of this Agreement;

(v) is independently developed by the Receiving Party as reasonably evidenced by its written records contemporaneous with such development;

(vi) is disclosed with the prior written consent of the Disclosing Party, provided that each recipient from the Receiving Party shall execute a confidentiality agreement prohibiting further disclosure of the Confidential Information, under terms no less restrictive that those provided in this Agreement;

(vii) is required to be disclosed by the order of a governmental agency or legislative body of a court of competent jurisdiction, provided that the Receiving Party shall give the Disclosing Party prompt notice of such request so that the Disclosing Party has an opportunity to defend, limit or protect such disclosure; or

(viii) is required to be disclosed by applicable securities of other laws or regulations, provided that either Party shall, prior to any such disclosure, provide the other Party with notice which includes a copy of the proposed disclosure. Further, the disclosing Party shall consider the other Party's timely input with respect to the disclosure.

(c) Receiving Party shall use its reasonable best efforts to limit dissemination of the Disclosing Party's Confidential Information to such of its employees and employees of its majority-owned subsidiaries who have a need to know such information for the purpose for which such information was disclosed to it. Receiving Party understands that disclosure or dissemination of the Disclosing Party's Confidential Information not expressly authorized hereunder would cause irreparable injury to the Disclosing Party, for which monetary damages would not be an adequate remedy and the Disclosing Party shall be entitled to equitable relief in addition to any remedies the Disclosing Party may have hereunder or at law.

(d) Nothing contained in this Agreement shall be construed as granting or conferring any rights, licenses or relationships by the transmission of the Confidential Information.

(e) All Confidential Information disclosed hereunder shall remain the property of the Disclosing Party. Upon request by the Disclosing Party, the Receiving Party shall return all Confidential Information, including any and all copies thereof, or certify in writing that all such Confidential Information had been destroyed.

*[Signature Page Follows]*

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate by their duly authorized officers or representatives.

**Kioxia Corporation**

By: /s/ Nobuo Hayasaka
Name: Nobuo Hayasaka
Title: President and Chief Executive Officer

**SanDisk LLC**

By: /s/ Alper Ilkbahar
Name: Alper Ilkbahar
Title: Chief Executive Officer

**Exhibit 10.25**

CERTAIN CONFIDENTIAL PORTIONS HAVE BEEN REDACTED FROM THIS EXHIBIT BECAUSE THEY ARE BOTH (i) NOT MATERIAL AND (ii) A TYPE THAT THE REGISTRANT TREATS AS PRIVATE OR CONFIDENTIAL. INFORMATION THAT HAS BEEN OMITTED HAS BEEN IDENTIFIED IN THIS DOCUMENT WITH A PLACEHOLDER IDENTIFIED BY THE MARK "[***]".

EXECUTION VERSION

---

**AMENDED AND RESTATED**

**EQUITY PURCHASE AGREEMENT**

dated as of

September 12, 2024

by and between

SanDisk China Limited

and

JCET Management Co., Ltd. (长电科技管理有限公司)

---

**TABLE OF CONTENTS**

SCHEDULES AND EXHIBITS



SELLER DISCLOSURE LETTER

## INDEX OF DEFINED TERMS

**AMENDED AND RESTATED EQUITY PURCHASE AGREEMENT**

THIS AMENDED AND RESTATED EQUITY PURCHASE AGREEMENT (this "Agreement"), dated as of September 12, 2024, is entered into by and between SanDisk China Limited, a company organized under the Laws of the Republic of Ireland ("Seller") and JCET Management Co., Ltd. (长电科技管理有限公司), a limited liability company established under the Laws of the PRC ("Purchaser"). Seller and Purchaser may each be referred to herein as a "Party" or collectively as the "Parties."

**RECITALS**

WHEREAS, SanDisk Semiconductor (Shanghai) Co. Ltd. (晟碟半导体（上海）有限公司) (the "Company") is a limited liability company established under the Laws of the PRC;

WHEREAS, Seller owns 100% of all rights and interests in the registered capital of the Company;

WHEREAS, upon the terms and subject to the conditions set forth herein, Seller desires to sell and assign to Purchaser, and Purchaser desires to purchase and assume from Seller, 80% equity interest in the Company;

WHEREAS, the Parties entered into that certain Equity Purchase Agreement, dated as of March 4, 2024 (the "Original Agreement") with respect to the transactions referenced in the foregoing recital; and

WHEREAS, the Parties desire to enter into this Agreement to amend and restate the Original Agreement in its entirety, in accordance with the terms and conditions of the Original Agreement (including without limitation, Section 9.4 thereof), with effect from the execution and delivery of the Original Agreement.

NOW, THEREFORE, in consideration of the representations, warranties, covenants and agreements contained in this Agreement and for good and valuable consideration, the receipt and sufficiency of which the parties hereby acknowledge, and intending to be legally bound hereby, the parties hereto agree as follows:

## ARTICLE I
## DEFINITIONS

Section 1.1 Definitions

When used in this Agreement, the following terms shall have the respective meanings set forth below:

"Accounting Principles" means the accounting principles generally accepted in the PRC consistently applied in accordance with the Company's past practice.

"Action" means any charge, claim, action, complaint, petition, investigation, appeal, suit, arbitration, litigation, grievance, inquiry or other proceeding, whether administrative, civil, regulatory or criminal, whether at law or in equity, or otherwise under any applicable Law, and whether or not before any mediator, arbitrator or Governmental Authority.

"Actual Net Debt Amount" means the amount equal to (a) Closing Debt, *minus* (b) Closing Cash. For the avoidance of doubt, the Actual Net Debt Amount may be a negative number.

"Actual Working Capital Amount" means as of 12:01 a.m. Beijing time on the Closing Date, (a) the current assets of the Company as of such time (excluding Closing Cash), *minus* (b) the current liabilities of the Company as of such time (excluding Closing Debt), in each case, calculated in accordance with the Accounting Principles on a basis consistent with the illustrative sample calculation set forth on Schedule I attached hereto. For purposes of the calculation of Actual Working Capital Amount, (i) current assets shall include all current Tax assets allocable to the Taxable period that is deemed to end on the Closing Date pursuant to, and in accordance with, Section 5.10(a) and shall expressly exclude all deferred Tax assets; and (ii) current liabilities shall expressly exclude: (w) Indebtedness; (x) Company Transaction Expenses; (y) all deferred Tax liabilities; and (z) all current Tax liabilities not allocable to the Taxable period that is deemed to end on the Closing Date (or any earlier Taxable period) pursuant to Section 5.10(a).

"Actual Working Capital Adjustment Amount" means the amount equal to (a) the Actual Working Capital Amount, *minus* (b) the Target Working Capital Amount. For the avoidance of doubt, the Actual Working Capital Adjustment Amount may be a negative number.

"Acquisition Proposal" means any agreement, offer, proposal or bona fide indication of interest (other than (i) this Agreement or any other offer, proposal or indication of interest by Purchaser or any of its Affiliates, and (ii) any offer, proposal or indication of interest with respect to or as a result of a Flash Spin-off), or any public announcement of intention to enter into any such agreement or of (or intention to make) any such offer, proposal or bona fide indication of interest, relating to, or involving: (a) any acquisition or purchase of the Company or any merger, amalgamation, arrangement, consolidation, business combination or similar transaction involving the Company; (b) any sale, lease, mortgage, pledge, exchange, transfer, license, acquisition, or disposition (other than in the ordinary course of business consistent with past practice) of all or substantially all of the assets or business of the Company in any single transaction or series of related transactions; (c) any liquidation, winding-up, dissolution, recapitalization or other corporate reorganization of the Company, or any extraordinary dividend, whether of cash or other property; or (d) any other transaction undertaken by Seller, the Company or any of their Representatives which would reasonably be expected to prevent, impede or delay the consummation of the transactions contemplated by this Agreement.

"Affiliate" means, with respect to any Person, any other Person that, directly or indirectly Controls, Controlled by or under common Control with, such first Person.

"Amended and Restated Articles of Association" means the Amended and Restated Articles of Association of the Company, with effect from the date on which the Company submits the application for the AMR Approval.

"AMR Approval" means that SAMR has issued a registration notice ("登记通知书"), together with a new business license for the Company, evidencing that (a) Purchaser is the owner

of an 80% equity interest in the Company and Seller is the owner of a 20% equity interest in the Company; and (b) the Amended and Restated Articles of Association of the Company, the appointment of directors, supervisors and legal representative nominated by Purchaser and Seller pursuant to the Shareholders Agreement and the Amended and Restated Articles of Association, and the resignation of such Persons from such positions of the Company as set forth in Section 2.9(a)(iii) have been filed with SAMR.

"AMR Submission Date" means the official acceptance date by SAMR of the application for the AMR Approval.

"Ancillary Agreements" means, collectively, the Shareholders Agreement, the Amended and Restated Articles of Association, the Supply Agreement, the Transition Services Agreement and the Registration ETA, each as defined herein.

"Anti-Corruption Laws" means all applicable PRC and non-PRC Laws for the prevention of public or commercial corruption and bribery.

"Base Purchase Price" means US$436,800,000.

"Business Day" means any day that is not a Saturday, Sunday, legal holiday, or other day on which commercial banks are required or authorized to be closed for general business in, Shanghai, PRC or the State of California, United States.

"Cash" means, as of a given time, all cash, cash equivalents and other similar deposits at such time, as determined in accordance with the Accounting Principles; provided, however, that "Cash" shall: (a) be calculated net of issued but uncleared checks, wire transfers and drafts written or issued by the Company at such time and (b) include all uncleared checks, wire transfers and drafts deposited or pending deposit for the account of the Company at such time.

"Closing Cash" means, as of 12:01 a.m. Beijing time on the Closing Date, all Cash of the Company.

"Closing Debt" means, as of 12:01 a.m. Beijing time on the Closing Date, all Indebtedness of the Company for borrowed money, together with accrued and unpaid interest thereon, required to be reflected as Indebtedness on the balance sheet of the Company as of such time.

"Company Material Adverse Effect" means any event, development or change that has had or would reasonably be expected to have a material adverse effect on the businesses, assets, liabilities, properties, financial or other conditions or operations, or results of operations of the Company, other than any event, development or change, either alone or in combination, relating to or arising out of: (a) general economic, regulatory or political conditions, global, international, national or regional political, economic, financial or social conditions, or conditions in the financial, credit, debt, currency, capital or securities markets (including changes in interest or currency exchange rates); (b) (i) any acts of God (including weather, meteorological conditions or climate, pandemics, storms, earthquakes, floods, hurricanes, tornadoes, volcanic eruptions, natural disasters or other acts of nature), or (ii) any effect, event, change, development or occurrence resulting from an outbreak, or any escalation, worsening or diminution of, terrorism, hostilities, sabotage, cyber attack, war, military actions, political instability or other regional,

national or international calamity, crisis or emergency, or any governmental or other response to any of the foregoing; (c) any event, development or change in any of the industries or markets in which the Company operates, including cyclical fluctuations and trends; (d) any enactment of, change in, or change in the interpretation of, applicable Law or in the Accounting Principles or other applicable accounting standards, or in each case any change in the interpretation thereof or the adoption or addition of any new Laws or rules, or the rescission, expiration or retirement of any current Law or rule; (e) the announcement, pendency or performance of the transactions contemplated hereby, including by reason of the identity of Purchaser, or any Affiliate of Purchaser, or any communication by Purchaser regarding the plans or intentions of Purchaser with respect to the conduct of the business of the Company, and including the impact of any of the foregoing on any relationships, contractual or otherwise, with customers, suppliers, distributors, collaboration partners, employees or regulators; (f) any action taken, or failure to take any action, in each case, to the extent such action or failure to take action is required by the express terms of this Agreement or to which Purchaser has approved, consented or requested; or (g) any effect, event, change, development, occurrence or circumstance resulting from any breach of this Agreement by Purchaser.

"Company Capital Account Bank" means the Shanghai Municipal branch of Industrial and Commercial Bank of China, where the Company maintains its capital account.

"Company Real Property Leases" means the real property leases, subleases, licenses, and other agreements with respect to the Company Real Property (as defined below), including all amendments, modifications, supplements, extensions, renewals, guaranties or other agreements with respect thereto, pursuant to which the Company is a party.

"Company Transaction Expenses" means, except as otherwise set forth in this Agreement, the aggregate amount of all reasonableout-of-pocket fees and expenses (whether or not yet invoiced), incurred by, or on behalf of, or to be paid by, the Company as of the Closing relating to the performance of the Company's obligations (including the payments payable to any Company Employee under the Post-Closing Bonus Plan in accordance with Section 5.6(b)(iii), but excluding any post-Closing liabilities or obligations arising as a result of the occurrence of one or more additional post-Closing events under so-called "double-trigger" severance provisions contained in any Employee Benefit Plan). For the avoidance of doubt, "Company Transaction Expenses" excludes costs and expenses incurred by the Company in connection with the termination, transition or transfer of the Excluded Employees.

"Consent" means any consent, approval, authorization, release, waiver, permit, grant, franchise, concession, agreement, license, exemption or order of, registration, certificate issued by any Person, including any Governmental Authority.

"Contract" means a contract, agreement, indenture, note, bond, loan, instrument, lease, mortgage, franchise, license, commitment, purchase order, and other legally binding arrangement, whether written or oral, but excluding all Employee Benefit Plans.

"Control" of a given Person means the power or authority, whether exercised or not, to direct the business, management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by Contract or otherwise; provided, that such power or

authority shall conclusively be presumed to exist upon possession of beneficial ownership or power to direct the vote of more than fifty percent (50%) of the votes entitled to be cast at a meeting of the members or shareholders of such Person or power to control the composition of a majority of the board of directors of such Person. The terms "Controlled" and "Controlling" have meanings correlative to the foregoing.

"Determination Date" means the date on which the Completion Accounts, the Actual Net Debt Amount, the Actual Working Capital Amount and the Actual Working Capital Adjustment Amount become final and binding on Seller and Purchaser pursuant to Section 2.5(c) or Section 2.5(d), as applicable.

"Environmental Law" means any appliable Law relating to environmental impact assessment, environmental related permits/filings, the pollution of the environment or natural resources or the protection of human health and safety from the presence of Hazardous Materials.

"Employee Benefit Plan" means each plan, program, policy, agreement, or arrangement: (a) that is sponsored or maintained by the Company; (b) to which the Company is a party or with respect to which the Company has any present liability; or (c) the Offshore Plans, in each case of clauses (a) and (b), that is (i) an employment, profit-sharing, deferred compensation, bonus, stock option, phantom stock, stock units, stock purchase, performance unit, stock appreciation right, employee stock ownership, equity compensation, pension, retirement, severance, change of control, retention, supplemental unemployment benefits, employee loan, welfare or incentive compensation plan, policy, program, agreement or arrangement; (ii) any plan, policy, program, agreement or arrangement providing for "fringe benefits," perquisites or "survivor benefits"; and (iii) any plan, policy, program, agreement or arrangement providing for hospitalization, health, welfare, dental, disability, life insurance or other similar payments or benefits; provided, however, that for purposes of this definition, in no event shall an Employee Benefit Plan include any arrangement maintained by a Governmental Authority to which the Company is required to contribute under applicable Law.

"Estimated Closing Payment" means US$218,400,000, *minus* 80% of the Estimated Net Debt Amount, *plus* 80% of the Estimated Working Capital Adjustment Amount.

"Flash Spin-off" means a disposition or spin-off of all, or substantially all, of the flash business of Western Digital Corporation.

"Fraud" means, with respect to a Party, an actual and intentional misrepresentation of a material existing fact pursuant to any representation or warranty in Article III or Article IV given by such Party, where (i) such Party had Knowledge of the falsity of such fact, (ii) the misrepresentation was made for the purpose of inducing the other Party to act, (iii) other Party justifiably relied upon such misrepresentation and suffered resulting Losses, and (iv) such misrepresentation would entitle the other Party to revocation of this Agreement (or the transactions contemplated under this Agreement) under Article 148 and/or Article 149 of the Civil Code of the People's Republic of China. For the avoidance of doubt, Fraud shall not include any claim for negligent misrepresentations or any tort based on negligence or any theory of fraud otherwise not recognized by Article 148 or Article 149 of the Civil Code of the People's Republic of China.

"General Enforceability Exceptions" means, collectively, (a) applicable bankruptcy, reorganization, insolvency, moratorium or other similar Laws affecting the enforcement of creditors' rights generally from time to time in effect; and (b) the availability of specific performance, injunctive relief, protective order or similar remedies.

"Governmental Authority" means any government of any nation, federation, province or state or any other political subdivision thereof, any entity, authority or body exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, including any governmental authority, agency, department, board, commission or instrumentality of the PRC or any other country, or any political subdivision thereof, any court, tribunal or arbitrator, and any self-regulatory organization.

"Hazardous Materials" means any substance regulated or classified as hazardous, toxic, radioactive, dangerous, a pollutant, a contaminant, petroleum, oil or words of similar meaning or effect under any Law relating to pollution, waste or the environment.

"Hong Kong" means the Hong Kong Special Administrative Region of the PRC.

"Indebtedness" means, with respect to the Company, without duplication: (a) indebtedness for borrowed money; (b) obligations evidenced by bonds, notes, debentures or other similar instruments or, in each case and only to the extent drawn by the counterparty thereto, letters of credit or performance bonds; (c) obligations under derivative financial instruments, including interest rate swaps; (d) obligations for any deferred purchase price of property, services, stocks or assets with respect to which the Company is liable (but excluding trade payables, accrued expenses and accruals incurred in the ordinary course of business and earn-outs not yet earned); (e) that portion of any obligations under any capitalized lease that is classified, in conformity with the Accounting Principles, as a liability on the balance sheet of the Company; (f) accrued and unpaid interest, if any, on and all make-whole amounts, prepayment penalties, breakage fees and other exit fees paid or payable in the event that any of the foregoing is to be repaid or otherwise discharged; and (g) all guarantees of the obligations of other Persons described in the immediately precedent clauses (a) through (f). For purposes of this Agreement, "Indebtedness" shall expressly exclude: (i) all current liabilities, calculated in accordance with the Accounting Principles; (ii) Company Transaction Expenses; (iii) all Tax liabilities; and (iv) all Purchaser fees and expenses.

"Intellectual Property" means all intellectual property, including all: (a) patents, patent applications, invention disclosures and all related continuations, continuations-in-part, divisionals, reissues, re-examinations, substitutions and extensions thereof; (b) trademarks, service marks, domain names, logos, business name, slogans, trade dress, design rights and other similar designations of source or origin; (c) copyrights; (d) trade secrets; and know-how; and (e) all applications and registrations for any of the foregoing.

"Interim Period" means the period from and after the date of the Original Agreement until the earlier to occur of (a) the Closing and (b) the date this Agreement is otherwise terminated pursuant to Article VII.

"Knowledge of Purchaser" has the meaning set forth in Exhibit B attached hereto.

"Knowledge of Seller" has the meaning set forth in Exhibit C attached hereto.

"Labor Organization" means any labor union, labor organization, workers' association or works council.

"Law" means any and all provisions of any applicable constitution, treaty, statute, law, regulation, ordinance, code, rule, or rule of common law, any governmental approval, concession, grant, franchise, license, agreement, directive, requirement, or other governmental restriction or any similar form of decision of, or determination by, or any interpretation or administration of any of the foregoing by, any Governmental Authority, in each case as amended, and any and all applicable Orders.

"Letter of Guarantee" means the Letter of Guarantee issued by the Purchaser Guarantor in favor of Seller, to guarantee the payment obligations of Purchaser with respect to the Estimated Closing Payment, any adjustment to the Estimated Closing Payment payable to Seller, the Second Installment Payment and, each Deferred Payment, pursuant to the terms of this Agreement, substantially in the form as set forth in Exhibit A hereto, which shall provide, among other things, that the aggregate amount payable by the Purchaser Guarantor thereunder does not exceed US$680,000,000 and the obligations of the Purchaser Guarantor thereunder will expire as of December 31, 2029.

"Lien" means, with respect to any asset, any mortgage, lien, pledge, charge, hypothecation, claim, encroachment, easement, adverse claim, option, security interest or encumbrance of any kind with respect to such asset. For the avoidance of doubt, the license or other grant of rights with respect to Intellectual Property as explicitly set out in the Seller Disclosure Letter, in and of itself, shall not be deemed to be a Lien.

"Losses" means, with respect to a breach of any representation or warranty or any breach or non-fulfillment by a Party of any of its covenants or agreements under this Agreement, all costs, expenses, damages, obligations, liabilities, assessments, judgments, losses, settlements, awards and fees (including any reasonable legal fees and other reasonable expenses incurred in connection with, and any amounts paid in settlement of, any pending or threatened Action) actually suffered, sustained, incurred or paid by the relevant Person(s) to be indemnified, to the extent directly arising out of or resulting from the breach of any such representation, warranty, covenant or agreement (as the case may be).

"Order" means any applicable order, ruling, decision, verdict, decree, writ, subpoena, mandate, precept, command, directive, consent, approval, award, judgment, injunction or other similar determination or finding by, before or under the supervision of any Governmental Authority.

"Organizational Documents" with respect to a particular legal entity, the articles of incorporation, certificate of incorporation, formation or registration (including, if applicable, certificates of change of name), memorandum of association, articles of association, bylaws, articles of organization, limited liability company agreement, trust deed, trust instrument, operating agreement, joint venture agreement, business license, or similar or other constitutive, governing, or charter documents, or equivalent documents, of such entity.

"Offshore Plans" means, all material benefit or compensation plans, policies or programs that are sponsored or maintained by Seller or its offshore Affiliates and covering all or part of the employees of the Company, including, without limitation, the Western Digital Corporation Amended and Restated 2017 Performance Incentive Plan, amended and restated as of August 11, 2020, and Western Digital Corporation Amended and Restated 2021 Long-Term Incentive Plan, amended and restated as of August 22, 2023.

"Permitted Lien" means all: (a) Liens for Taxes or other governmental charges not yet due or payable or that are being contested in good faith; (b) statutory mechanics', carriers', workers', repairers' and similar statutory Liens incurred in the ordinary course of business; (c) easements, rights of way, zoning ordinances or other, similar encumbrances, as identified in real property ownership certificates or title reports or compulsorily permitted by applicable Laws, affecting the Company Real Property; (d) Liens that shall be released prior to or as of the Closing; (e) Liens with respect to any obligations as lessee under capitalized leases as disclosed in the VDR; (f) rights, interests, Liens or titles of, a licensor, sublicensor, licensee, sublicensee, lessor or sublessor under any license, lease or other similar agreement or in the property being leased or licensed to the Company incurred in the ordinary course of business; and (g) Liens (if any) set forth in Section 1.1 of the Seller Disclosure Letter.

"Person" means any individual, corporation, partnership, limited partnership, proprietorship, association, limited liability company, firm, trust, estate or other enterprise or entity.

"PRC" means the People's Republic of China, solely for purposes of this Agreement, excluding Hong Kong, the Macau Special Administrative Region and the region of Taiwan.

"PRC Anti-Monopoly Law" means the Anti-Monopoly Law of the PRC promulgated on August 30, 2007, amended on June 24, 2022 and effective as so amended as of August 1, 2022, and any amendment thereto.

"PRC Antitrust Clearance" means (i) a decision or other document issued by SAMR approving the transactions contemplated hereby pursuant to the PRC Anti-Monopoly Law or (ii) the relevant statutory periods for a decision by SAMR prescribed by the PRC Anti-Monopoly Law, including any extensions thereof, having expired and no Restraint having been raised or imposed by SAMR with respect to the transactions contemplated hereby.

"PRC Withholding Tax" means the amount of any withholding Tax imposed on the transfer of the Purchased Interest by Seller to Purchaser pursuant to this Agreement (including any Tax imposed on the payment of any contingent or deferred payments relating thereto) as assessed and finally determined by a competent PRC Taxing Authority.

"Pre-Closing Tax Period" shall mean any taxable period ending on or before the Closing Date, and, with respect to any taxable period beginning on or before and ending after the Closing Date, the portion of such taxable period ending at the end of the Closing Date.

"Purchaser Guarantor" means Bank of Communications, Ltd., Singapore Branch.

"Purchaser Material Adverse Effect" means any event, development or change that has had, or would reasonably be expected to have, a material adverse effect on the ability of Purchaser to perform its obligations under this Agreement, or that would prevent or materially impede, interfere with, hinder or delay the consummation by Purchaser of the transactions contemplated hereby.

"Representative" means, with respect to any Person, its officers, directors, employees, Affiliates, financial advisors, attorneys, accountants, actuaries, consultants and other agents, advisors and representatives.

"SAFE Registration Voucher" means the registration voucher ("业务登记凭证") affixed with the seal of the Company Capital Account Bank acknowledging completion of the registration of the updated shareholder information for the Company as a result of the Purchaser's acquisition of the Purchased Interest pursuant hereto.

"SAMR" means the State Administration for Market Regulation of the PRC, or, with respect to the issuance of any business license or filing or registration to be effected by or with the Administration for Market Regulation of the PRC, any Governmental Authority which is similarly competent to issue such business license or accept such filing or registration under the Laws of the PRC.

"Sanctioned Person" means any individual or entity that is the subject or target of sanctions or restrictions under Sanctions Laws, including: (i) any individual or entity listed on any applicable U.S. or non-U.S. sanctions- or export-related restricted party list, including, without limitation, OFAC's Specially Designated Nationals and Blocked Persons List and the EU Consolidated List; or (ii) any entity that is, in the aggregate, fifty percent (50%) or greater owned, directly or indirectly, or otherwise Controlled by a person or persons described in clause (i) above.

"Sanctions Laws" means all applicable U.S. and non-U.S. Laws relating to economic or trade sanctions, including, without limitation, the Laws administered or enforced by the United States (including by OFAC or the U.S. Department of State), those promulgated by the European Union as required to be enforced by its member states and as promulgated by the United Nations as required to be enforced by its member states.

"Seller Disclosure Letter" means the written disclosure letter, dated as of the date of the Original Agreement, delivered by Seller to Purchaser in connection with the execution and delivery of the Original Agreement.

"Seller Fundamental Representations" means the representations and warranties of Seller contained in Section 3.1 (Organization and Qualification), Section 3.2 (Authorization; Enforceability), Section 3.3(a) (solely with respect to clause (i) thereof) and Section 3.3(b) (Consents and Approvals; No Violations), Section 3.5 (Ownership of Equity Interests), Section 3.6(a) (Organization and Qualification), Section 3.7 (Capitalization and Corporate Structure), and Section 3.29 (Brokers).

"Seller Material Adverse Effect" means any event, development or change that has had, or would reasonably be expected to have, a material adverse effect on (i) the ability of Seller to perform its obligations under this Agreement, or that would prevent or materially impede, interfere with, hinder or delay the consummation by Seller of the transactions contemplated hereby; and/or (ii) the ability of Western Digital Technologies, Inc. to assume joint and several liability with Seller for any amounts payable by Seller to Purchaser under this Agreement.

"Shareholders Agreement" means the Shareholders Agreement, substantially in the form of Exhibit D hereto.

"SOFR" means the one (1)-month CME Term SOFR published by CME Group Inc..

"Solvent" when used with respect to any Person, means that, as of any date of determination: (a) the amount of the "fair saleable value" of the assets of such Person shall, as of such date, exceed: (i) the value of all "liabilities of such Person, including contingent and other liabilities," as of such date, as such quoted terms are generally determined in accordance with applicable Laws governing determinations of the insolvency of debtors; and (ii) the amount that shall be required to pay the probable liabilities of such Person on its existing debts (including contingent liabilities) as such debts become absolute and matured; (b) such Person shall not have, as of such date, an unreasonably small amount of capital for the operation of the businesses in which it is engaged or proposed to be engaged following such date; and (c) such Person shall be able to pay its liabilities, including contingent and other liabilities, as they mature. For the purpose of this definition, "not have an unreasonably small amount of capital for the operation of the businesses in which it is engaged or proposed to be engaged" and "able to pay its liabilities, including contingent and other liabilities, as they mature" means that such Person shall be able to generate enough cash from operations, asset dispositions or refinancing, or a combination thereof, to meet its obligations as they become due.

"Subsidiary" means, with respect to any specified Person, any other Person that is Controlled directly or indirectly by such given Person.

"Supply Agreement" means the Manufacturing and Supply Agreement to be entered into by and between the Company and Seller as of the Closing, which shall, among other terms, include the provisions set forth in Exhibit E.

"Target Working Capital Amount" means US$72,205,000.

"Tax Return" means any return, declaration, report, claim for refund or information return, certificate, bill, statement or other written information required to be filed with any Taxing Authority relating to Taxes, including any supplement, schedule or attachment thereto, and including any amendment thereof.

"Taxes" means any and all taxes, fees, levies, duties, tariffs, imposts, and other charges of any kind (together with any and all interest, penalties, additions to tax and additional amounts imposed with respect thereto) imposed by any Taxing Authority, including taxes or other charges on or with respect to income, franchises, windfall or other profits, gross receipts, property, sales, use, capital stock, payroll, employment, social security, workers' compensation, unemployment compensation, or net worth; taxes or other charges in the nature of excise, withholding, ad valorem, stamp, transfer, value added, or gains taxes; license, registration and documentation fees; and customs' duties, tariffs, and similar charges. The term "Taxable" has meanings correlative to the foregoing.

"Taxing Authority" means the State Taxation Administration of the PRC and its local counterparts, and any other Governmental Authority in China and/or other countries and jurisdictions responsible for the collection or enforcement of any Taxes.

"Transaction Deductions" means all Tax losses, deductions, expenses or similar items incurred or deductible by the Company as a result of, in connection with or in anticipation of the transactions contemplated by this Agreement, including losses, deductions and expenses related to: (i) the payment of any change in control or stay bonuses, or similar compensatory amounts, to employees or other service providers to the Company; (ii) the acceleration of deferred financing fees related to the repayment of Indebtedness; and (iii) the payment of any fees or other expenses associated with the transactions contemplated by this Agreement that are not required to be capitalized, including fees, costs, expenses, brokerage fees, commissions, finders' fees and disbursements of financial advisors, investment banks, data room administrators, attorneys, accountants and other advisors, service providers and third-party fees and expenses paid or payable by the Company (whether or not billed or accrued for) as a result of or in connection with the negotiation, documentation and consummation of the transactions contemplated by this Agreement.

"Transition Services Agreement" means the Transition Services Agreement to be entered into by and between the Company and Seller as of the Closing.

"U.S." or "United States" means the United States of America.

"US$" or "U.S. Dollar" means the legal tender of the United States.

"VDR" means Intralinks virtual data site entitled "Project Visage" maintained by Seller.

## ARTICLE II
## PURCHASE AND SALE; CLOSING

Section 2.1 Purchase and Sale

(a) Subject to the terms and conditions of this Agreement, at the Closing, Seller agrees to sell, transfer and assign to Purchaser, and Purchaser agrees to purchase, acquire and accept from Seller, legal and beneficial title and ownership to an 80% equity interest in the Company (the "Purchased Interest"), for the consideration specified in Section 2.2.

(b) As of the Closing, subject in all cases to the Purchaser's obligation to pay the Purchase Price (as defined below) hereunder: (i) Purchaser shall be deemed to have acquired the ownership of the Purchased Interest and shall assume all of the rights, responsibilities and obligations of Seller with respect to the Purchased Interest under applicable Laws and as set forth in the Organizational Documents of the Company; (ii) Seller shall cease to hold any interest in the Purchased Interest and shall cease to have any obligations attached thereto; and (iii) Purchaser will hold an 80% equity interest in the Company, and Seller will hold the remaining 20% equity interest in the Company.

Section 2.2 Purchase Price

(a) The consideration payable for the Purchased Interest shall be the "Purchase Price", which shall be an amount equal to (i) the Base Purchase Price, *minus* (ii) 80% of the Actual Net Debt Amount (as finally determined pursuant to Section 2.5(c) or Section 2.5(d), as applicable), *plus* (iii) 80% of the Actual Working Capital Adjustment Amount (as finally determined pursuant to Section 2.5(c) or Section 2.5(d), as applicable), *plus* (iv) the Deferred Payments; provided, that the Purchase Price, after any adjustments to any component thereof as provided for in this Agreement, shall in no event exceed US$680,000,000 in the aggregate.

(b) The Purchase Price shall be paid by Purchaser to Seller by wire transfer of immediately available funds in U.S. Dollar to a bank account designated by Seller, which account shall be designated by Seller no less than: (x) with respect to the Estimated Closing Payment, ten (10) Business Days prior to the Closing Date, and (y) with respect to each other payment payable pursuant to this Section 2.2(b), ten (10) Business Days prior to the date for payment thereof (the "Seller's Account"), as follows:

(i) the Estimated Closing Payment, net of applicable Taxes in accordance with Section 5.10(f), shall be paid promptly, but in no event later than five (5) Business Days, following the Closing;

(ii) subject to Section 2.4(d), any adjustment to the Estimated Closing Payment (if is a positive number) payable to Seller, net of applicable Taxes in accordance with Section 5.10(f), shall be paid promptly, but in no event later than the later of (A) payment date of the Second Installment Payment (as set forth below) and (B) the third (3rd) Business Day following the Determination Date; provided, however, that if the adjustment to the Estimated Closing Payment is a negative number, then subject to Section 2.4(d), Seller shall pay such amount to Purchaser promptly, but in no event later than the payment date of the Second Installment Payment (as set forth below), following the Determination Date;

(iii) US$218,400,000 (the "Second Installment Payment"), net of applicable Taxes in accordance with Section 5.10(f) and, to the extent any, the Controller Working Capital Amount (or the Adjusted Controller Working Capital Amount, as applicable) in accordance with Section 5.13, shall be paid promptly, but in no event later than three (3) Business Days, following the earlier to occur of (x) the date six (6) months following the Closing Date and (y) January 1, 2025; and

(iv) each Deferred Payment, net of applicable Taxes in accordance with Section 5.10(f), shall be paid promptly, but in no event later than three (3) Business Days, following the applicable Deferred Payment Date.

(c) If Purchaser fails to pay any amount payable under the preceding clauses, Purchaser shall pay Seller interest thereon at the rate of 1% above SOFR for the relevant days compounding annually, accruing daily from the payment due date under Section 2.2(b) (i.e., after expiration of such five (5) or three (3) Business Days, as applicable, as provided for in Section 2.2(b) with respect to such payment) and continuing until such amount, together with the interest payable thereon, has been paid in full.

(d) In the event that (A) the Estimated Closing Payment has not been paid (with such payment being evidenced by Purchaser's presentation to Seller a bank wire reference number(s) or the SWIFT message/document showing the full amount of the Estimated Closing Payment) as of the fifth (5th) Business Day following the Closing Date and/or (B) any adjustment to the Estimated Closing Payment payable to Seller, the Second Installment Payment or any Deferred Payment has not been paid (with such payment being evidenced by Purchaser's presentation to Seller a bank wire reference number(s) or the SWIFT message/document showing the full amount of the applicable payment) as of the third (3rd) Business Day following the date when such amount first becomes due pursuant to Section 2.2(b)(ii), Section 2.2(b)(iii) or Section 2.2(b)(iv), as applicable, then, in each case, Seller shall have the right to, upon written notice to Purchaser, immediately thereafter enforce the Letter of Guarantee for the outstanding unpaid amount of such payment according to the terms of the Letter of Guarantee. For the avoidance of doubt, (x) Seller shall not be entitled to enforce the Letter of Guarantee for the applicable payment set forth below until: (i) October 14, 2024, with respect to the Estimated Closing Payment (or any portion thereof not paid by Purchaser by such date), (ii) January 7, 2025, with respect to any adjustment to the Estimated Closing Payment payable to Seller (or any portion thereof not paid by Purchaser by such date), (iii) January 7, 2025, with respect to the Second Installment Payment (or any portion thereof not paid by Purchaser by such date), and (iv) the fourth (4th) Business Day following the first, second, third, forth and fifth anniversary of the Closing Date, with respect to each Deferred Payment due and payable following the applicable anniversary date of the Closing Date pursuant to Section 2.2(b)(iv) above (or any portion of each thereof not paid by Purchaser by the applicable date), and (y) the payments for which Seller is entitled to enforce against the Purchaser Guarantor under the Letter of Guarantee shall not include any interest accrued on such payments; provided, however, Purchaser shall remain liable for any and all interest accrued and payable on such payments as provided for in Section 2.2(c), notwithstanding Seller's recovery of any such payments following enforcement of the Letter of Guarantee.

Section 2.3 Estimated Adjustments at Closing

(a) At least five (5) Business Days before the Closing Date, Seller shall deliver to Purchaser a written notice setting forth Seller's good faith estimates of the Actual Net Debt Amount, the Actual Working Capital Amount and the Actual Working Capital Adjustment Amount (such estimates, the "Estimated Net Debt Amount", the "Estimated Working Capital Amount" and the "Estimated Working Capital Adjustment Amount", respectively), together with reasonably detailed supporting information.

(b) The Estimated Net Debt Amount, the Estimated Working Capital Amount and the Estimated Working Capital Adjustment Amount shall be used to calculate the Estimated Closing Payment.

Section 2.4 Post-Closing Adjustment

(a) Net Debt Adjustment. If 80% of the Actual Net Debt Amount (as finally determined pursuant toSection 2.5(c) or Section 2.5(d), as applicable) is:

(i) less than 80% of the Estimated Net Debt Amount then, Purchaser shall promptly, but in no event later than the date of the Second Installment Payment, pay an amount equal to such difference to Seller and the Purchase Price shall be deemed increased accordingly; or

(ii) greater than 80% of the Estimated Net Debt Amount then, Seller shall promptly, but in no event later than the date of the Second Installment Payment pay an amount equal to such difference to Purchaser and the Purchase Price shall be deemed reduced accordingly.

(b) Working Capital Adjustment. If 80% of the Actual Working Capital Adjustment Amount (as finally determined pursuant to Section 2.5(c) or Section 2.5(d), as applicable) is:

(i) less than 80 % of the Estimated Working Capital Adjustment Amount then, Seller shall promptly, but in no event later than the date of the Second Installment Payment, pay an amount equal to such difference to Purchaser and the Purchase Price shall be deemed reduced accordingly; or

(ii) greater than 80% of the Estimated Working Capital Adjustment Amount then, Purchaser shall promptly, but in no event later than the date of the Second Installment Payment, pay an amount equal to such difference to Seller and the Purchase Price shall be deemed increased accordingly.

(c) For the avoidance of doubt, if and to the extent that an item could be taken into account in one or more of the adjustments under this Section 2.4, an adjustment will only be made once for that item.

(d) The Parties agree that, to the extent any payments to be made between the Parties pursuant to this Section 2.4 are due at the same time, they shall be netted so that only one payment of the aggregate adjustments described herein will be payable by the relevant Party(ies).

(e) Each of Purchaser and Seller acknowledges and agrees that the Purchase Price adjustment provisions set forth in this Section 2.4 shall be the sole and exclusive remedy of Purchaser and Seller with respect to (i) determining whether or not any adjustment would be made to the Purchase Price pursuant to this Section 2.4 (whether or not any such adjustment was, in fact, made), (ii) determining the amount of any such adjustment and/or (iii) any other claims relating to any of the components of the Purchase Price.

Section 2.5 Completion Accounts

(a) The Parties shall engage the Independent Accountant to initiate the review of the Estimated Net Debt Amount, the Estimated Working Capital Amount and the Estimated Working Capital Adjustment Amount and the resulting calculation of the Estimated Closing Payment pursuant to Section 2.3 within ten (10) calendar days after the Closing Date, and procure the Independent Accountant to issue the draft Completion Accounts within sixty (60) days after the Closing, together with a description of the methodology used in preparation of the Completion Accounts. The Parties shall procure the Company to fully cooperate with the Independent Accountant in preparing the Completion Accounts, in particular, by fully providing all information necessary for the preparation of the Completion Accounts to the Independent Accountant during normal working hours. For purpose of this Section 2.5:

"Completion Accounts" means the closing report with respect to the balance sheet of the Company as of 12:01 a.m. Beijing time on the Closing Date, together with Independent Accountant's calculations of the Actual Net Debt Amount, the Actual Working Capital Amount and the Actual Working Capital Adjustment Amount, in each case, which shall be prepared and calculated in accordance with the Accounting Principles.

"Independent Accountant" shall be Ernst & Young's Affiliate in the PRC or, if Ernst & Young or such Affiliate declines to accept its appointment hereunder, such other accounting firm, qualified to practice in China and of international repute and standing mutually agreed upon by Seller and Purchaser.

(b) Upon delivery of the draft Completion Accounts, Purchaser shall ensure that all information and assistance reasonably requested by Seller is given to Seller, its Affiliates and Representatives to review Independent Accountant's draft Completion Accounts and shall permit Representatives of Seller to have reasonable access to the books, records and other materials of the Company and the facilities and personnel of the Company, and take extracts from, or make copies of, the records, for the sole purposes of reviewing the Independent Accountant's draft Completion Accounts. If Purchaser breaches its obligations under this Section 2.5(b), the dispute period set forth in Section 2.5(c) shall automatically be extended until such breach is cured by the breaching Party.

(c) If neither Seller nor Purchaser disputes the draft Completion Accounts within twenty (20) calendar days upon receipt of the draft Completion Accounts pursuant to Section 2.5(a) (the "Final Objection Date"), the Independent Accountant's draft Completion Accounts will be deemed to be the final Completion Accounts and the Actual Net Debt Amount, the Actual Working Capital Amount and the Actual Working Capital Adjustment Amount set forth therein will be final and binding on the Parties.

(d) If either Seller or Purchaser identifies any manifest error in the daft Completion Accounts, such Party shall provide the other Party and the Independent Accountant with written notice of dispute with respect to any aspect of the draft Completion Accounts prior to the Final Objection Date (a "Dispute Notice"), setting forth in reasonable detail each item so disputed (all such items with manifest errors, the "Disputed Matters"), then the Parties shall work together in good faith with the Independent Accountant to resolve the Disputed Matters as soon as reasonably possible. To the extent such Disputed Matters are not resolved within fifteen (15) Business Days following the Dispute Notice, the Disputed Matters shall be resolved pursuant to Section 9.8 below. For the avoidance doubt, "manifest error" shall not include, and no Party shall challenge the determination of the Independent Accountant on the basis of, any application by the Independent Accountant of the Accounting Principles or any methodology permissive thereunder or the exercise of judgment or discretion by the Independent Accountant in connection with the preparation of the Completion Accounts which, in each case, is not unreasonable on its face.

(e) Any item or matter that is not a Disputed Matter shall become final and binding, unless the resolution of any item or matter objected to in the Dispute Notice affects any such aspect, or presupposes the inaccuracy of any such aspect, in which case such aspect shall, notwithstanding the failure to specifically dispute such aspect in the Dispute Notice, be considered disputed in the Dispute Notice.

(f) All costs and expenses of the Independent Accountant shall be borne equally by Purchaser and Seller.

Section 2.6 (*Intentionally left blank*).

Section 2.7 Deferred Payments

As additional consideration for the Purchased Interest, Purchaser shall pay to Seller an amount equal to US$187,200,000, in the aggregate, in the form of five (5) equal deferred payments each in the sum of US$37,440,000 (each such payment, a "Deferred Payment") to be paid upon each twelve (12) month anniversary of the Closing Date (each, a "Deferred Payment Date") for the five (5) annual periods immediately following the Closing.

Section 2.8 Closing

(a) Closing. The closing of the purchase and sale of the Purchased Interest (the "Closing") shall take place: (i) at the offices of O'Melveny & Myers LLP, JC Plaza, 12th Floor, 1225 Nanjing Road West, Shanghai 200040, the People's Republic of China at 8:01 a.m. Beijing time, on the later of (A) September 28, 2024 and (B) the third (3rd) Business Day

following the date on which the last of the conditions required to be satisfied or waived pursuant to Section 6.1, Section 6.2 and Section 6.3 is either satisfied or waived (other than those conditions that by their nature are to be satisfied at the Closing); or (ii) at such other place, time or date as Purchaser and Seller may agree upon in writing. The date on which the Closing occurs is referred to herein as the "Closing Date."

Section 2.9 Deliveries by Seller

(a) Pre-Closing Deliveries by Seller. No later than one (1) Business Day prior to the date on which the Company submits the application for the AMR Approval, Seller shall deliver or cause to be delivered to Purchaser each of the following:

(i) a counterpart to each of the Ancillary Agreements, duly executed by an authorized signatory of Seller and/or its Affiliates;

(ii) evidence that Seller has been authorized to execute this Agreement and each Ancillary Agreement to which it is a party and to enter into the transactions contemplated hereunder and thereunder; and

(iii) duly signed letters of resignation of the following Persons from the applicable position(s) of the Company, effective as of the AMR Approval: (i) Bock Kim Lee as Director, Chairman and Legal Representative, (ii) Terry (Hairong) Yao as Director, and (iii) Lucy (Yinye) Shu as Director and duly signed letters of nomination of Persons to be nominated by Seller to the application position(s) of the Company pursuant to the Shareholders Agreement and the Amended and Restated Articles of Association.

(b) Closing Deliveries by Seller. At the Closing, Seller shall deliver or cause to be delivered to Purchaser:

(i) an updated register of shareholders of the Company, certified true, accurate and complete by an officer of the Company, reflecting Purchaser as the owner of an 80% equity interest in the Company;

(ii) the revised business license of the Company issued by SAMR, and the company chop of the Company;

(iii) financial records, all accounting books and records, copies Tax returns filed and related correspondence (if any), and cryptographic keys of all bank accounts of the Company;

(iv) a roster listing all employees of the Company as of the Closing Date, specifying their name, employee ID and position; and

(v) the electronic copy (USB) of the VDR as provided to Purchaser on the date of the Original Agreement.

Section 2.10 Deliveries by Purchaser

(a) Pre-Closing Deliveries by Purchaser. No later than one (1) Business Day prior to the date on which the Company submits the application for the AMR Approval, Purchaser shall deliver or cause to be delivered to Seller each of the following:

(i) a counterpart to each of the Ancillary Agreements, duly executed by an authorized signatory of Purchaser and/or its Affiliates;

(ii) the Letter of Guarantee, duly issued by the Purchaser Guarantor in favor of Seller;

(iii) duly signed letters of nomination of Persons to be nominated by Purchaser to the application position(s) of the Company pursuant to the Shareholders Agreement and the Amended and Restated Articles of Association; and

(iv) evidence that Purchaser has been authorized to execute this Agreement and each Ancillary Agreement to which it is a party and to enter into the transactions contemplated hereunder and thereunder.

## ARTICLE III
## REPRESENTATIONS AND WARRANTIES OF SELLER

Except as qualified or supplemented by the Seller Disclosure Letter and the general disclosure as contemplated bySection 9.2, Seller represents and warrants to Purchaser as follows:

Section 3.1 Organization and Qualification

(a) Seller is duly formed, validly existing and in good standing (to the 18 extent the applicable jurisdiction recognizes such concept) under the Laws of the Republic of Ireland.

(b) Seller is duly qualified to do business and is in good standing (to the extent the applicable jurisdiction recognizes such concept) under the Laws of each jurisdiction in which the conduct of its business, or the character of the properties owned or leased by it, requires it to be so qualified, except where the failure to be so qualified or to be in good standing would not have a Seller Material Adverse Effect.

Section 3.2 Authorization; Enforceability

Seller has the requisite corporate or other similar power, as applicable, and has the authority to execute and deliver this Agreement and all agreements and documents contemplated hereby to be executed and delivered by it, and to consummate the transactions contemplated hereby and thereby. The execution and delivery of this Agreement and such other agreements and documents and the consummation of the transactions contemplated herein and therein have been duly and validly authorized by all requisite corporate, partnership or limited liability company or other similar action, as applicable on the part of Seller. This Agreement has been, and all agreements and documents contemplated hereby to be executed and delivered by it shall be, duly and validly executed and delivered by Seller and, assuming the due authorization, execution and delivery by the parties hereto and thereto, shall upon such execution and delivery hereof and thereof be the legal, valid and binding obligations of Seller hereunder and thereunder, as applicable, enforceable against Seller in accordance with its terms, except as limited by the General Enforceability Exceptions.

Section 3.3 Consents and Approvals; No Violations

(a) Neither the execution and delivery of this Agreement by Seller, or the other agreements and documents contemplated hereby to be executed and delivered by Seller, nor the consummation by Seller of the transactions contemplated herein or therein, nor compliance by Seller with any of the provisions hereof or thereof, shall: (i) conflict with or result in a breach of any provisions of the Organizational Documents of Seller and the Company; (ii) constitute or result in any material breach of any term, condition or provision of, or constitute a default under, or give rise to any right of termination, cancellation or acceleration with respect to any Company Contract; (iii) result in the creation or imposition of a Lien (other than any Permitted Lien) upon any property or assets of the Company pursuant to any Company Contract; or (iv) subject to receipt by Seller of the requisite Consents described in Section 3.3(a) of the Seller Disclosure Letter and by Purchaser of the approvals contemplated in Section 4.3(b) below, violate any Law or Order applicable to the Company and/or Seller or its properties or assets in any material respect.

(b) No Consent from any Governmental Authority material to the Company or its business is required to be obtained by Seller and/or the Company for the consummation by Seller of the transactions contemplated by this Agreement, except in connection, or in compliance, with the PRC Antitrust Clearance and other approvals from any Governmental Authorities required under Section 5.3 and as set forth in Section 3.3(b) of the Seller Disclosure Letter.

Section 3.4 Seller Litigation

(a) There is no Action pending or, to the Knowledge of Seller, threatened, against Seller or any of its Affiliates by or before any Governmental Authority that, if determined in a manner adverse to Seller or any of its Affiliates, would have a Seller Material Adverse Effect.

(b) There is no outstanding Order binding on or, to the Knowledge of Seller, threatened, against Seller or any of its Affiliates that would have a Seller Material Adverse Effect.

Section 3.5 Ownership of Purchased Interest

(a) Seller owns as of record and beneficially owns all of the Purchased Interest free and clear of all Liens, except for any restriction on transfer pursuant to applicable Laws.

(b) Except as provided by applicable Laws or the Organizational Documents of the Company, each of Seller and the Company is not party to any option, warrant, purchase right or subscription right, convertible security or other right Contract (other than this Agreement) that could (i) require Seller to sell, transfer or otherwise dispose of or acquire any equity interests of the Company; or (ii) require the Company to issue or distribute to holders of any equity interest of the Company, or authorize any third party to subscribe for any equity interest of the Company.

(c) There are no voting trusts, proxies or another agreements or understandings with respect to the voting of equity interest of the Company, other than the Shareholders Agreement.

Section 3.6 Organization and Qualification

(a) The Company is a limited liability company duly organized, validly existing and in good standing under the Laws of the PRC.

(b) The Company is duly qualified to do business and is in good standing (to the extent the applicable jurisdiction recognizes such concept) under the Laws of each jurisdiction in which the conduct of its business, or the character of the properties owned or leased by it, requires it to be so qualified.

Section 3.7 Capitalization and Corporate Structure

(a) The registered capital of the Company as of the date of the Original Agreement is US$272,000,000, all of which has been (or will be) contributed and paid up by Seller prior to the Closing.

(b) The Company does not own or Control, directly or indirectly, any equity interests in any joint venture, partnership or similar arrangement. The Company is not and will not be obligated to make any investment in or capital contribution to or on behalf of any other Person. The Company does not have any registered or unregistered branch company.

(c) All the registered capital and shareholding changes and other historical entity changes of the Company from its establishment are valid and all requisite filings and other formalities in relation to such registered capital changes, shareholding changes and other historical entity changes required by PRC Laws and any other applicable Laws have been duly submitted, delivered, approved and registered, except for such other historical entity changes of the Company, where the failure to be valid or submitted, delivered, approved and registered would not have a Company Material Adverse Effect. Except as set forth in Section 3.7(c) of the Seller Disclosure Letter, any payments required for the above registered capital changes and shareholding changes of the Company have been fully made and settled without any potential or unsolved disputes.

Section 3.8 Financial Statements

Section 3.8 of the Seller Disclosure Letter includes true and complete copies of the Company's (a) audited balance sheets as of December 31, 2021, December 31, 2022 and unaudited balance sheet as of June 30, 2023 (the last balance sheet, the "2023 Balance Sheet", and the date thereof, the "Statement Date") and (b) audited income statements and statements of cash flows as of and for the fiscal years ended 2021 and 2022 and unaudited income statement and statement of cash flows as of and for the six (6)-month period ended June 30, 2023 ((a) and (b) collectively, the "Financial Statements"). The Financial Statements (i) were prepared in accordance with the Accounting Principles consistently applied for the periods indicated (except as otherwise noted therein) and (ii) the balance sheets present fairly, in all material respects, the financial position of the Company, as of their respective dates, and the income statements and statements of cash flows present fairly, in all material respects, the results of the Company's operations and its cash flows for the periods presented therein, all in accordance with the Accounting Principles.

Section 3.9 Conduct of Business

Except for actions taken in connection with the process of selling the Purchased Interest (including the preparation and implementation of the transactions contemplated hereunder) and except as set forth in Section 3.9 of the Seller Disclosure Letter, since the Statement Date until the date of the Original Agreement:

(a) the Company has conducted its businesses and operations in the ordinary course of business, consistent with past practice, in all material respects; and

(b) there has not been any Company Material Adverse Effect.

Section 3.10 Company Litigation

(a) There are no Actions pending or, to the Knowledge of Seller, threatened, against the Company or any Person (in his/her capacity as a director, supervisor or officer of the Company) by or before any Governmental Authority that, if determined in a manner adverse to the Company, either alone or in combination, would have a Company Material Adverse Effect.

(b) There are no outstanding Orders binding on the Company that would have a Company Material Adverse Effect.

(c) The Company is not in material default with respect to any court, administrative or arbitration order, judgment, injunction, decree or other award made by any Governmental Authority, and to the Knowledge of Seller, no circumstance or fact exists which is likely to give rise to a material default of any of the aforementioned.

Section 3.11 Taxes

(a) Except for failures that would not have a Company Material Adverse Effect, since the Statement Date the Company has timely: (i) filed (taking into account any extension of time within which to file) with the appropriate Taxing Authority all Tax Returns required to have been filed by the Company, the failure of which to file would be material to the businesses of the Company, and all such Tax Returns are true, correct and complete in all material respects; and (ii) paid all Taxes shown as due on such Tax Returns, other than Taxes being contested in good faith.

(b) Since the Statement Date the Company is not the subject of any currently pending Tax audit with respect to Taxes the liability for which would be material to the businesses of the Company. As of the date of the Original Agreement, there are no pending written requests for waivers of the time to assess any such Taxes. Since the Statement Date, the Company has not waived any statute of limitations with respect to any such Taxes, or agreed to any extension of time with respect to an assessment or deficiency with respect to any such Taxes, which waiver or extension has not since expired. Except for Permitted Liens, there are no Liens for Taxes on any of the assets of the Company. Since the Statement Date, no claim has been made in writing by a Taxing Authority of a jurisdiction where the Company has not filed Tax Returns claiming that the Company is subject to taxation by that jurisdiction, the liability for which would be material to the Company. Since the Statement Date, the Company has not received any written notification of any investigation or proceeding currently pending or being conducted against the Company with respect to Taxes, or any proposed adjustment, deficiency or underpayment of material Taxes.

(c) The Company is not a party to, or bound by, any written material Tax allocation, indemnification or sharing agreement; provided, however, that any agreement entered into in the ordinary course of business, including, for example, any Tax gross-up provision in an employee secondment or relocation agreement, a credit arrangement or similar Tax provision in any agreement entered into with third Persons in the ordinary course of business, shall not be considered material.

(d) Notwithstanding anything to the contrary contained in this Agreement, Seller is not making, and shall not be construed to have made, any representation or warranty as to (i) the amount or utilization of any Tax attribute of the Company or (ii) any position that the Purchaser or its Affiliates (including the Company) may take in a Tax period or portion thereof beginning after the Closing Date. Notwithstanding anything to the contrary contained in this Agreement, the representations and warranties contained in this Section 3.11 constitute the sole representations and warranties made by Seller in this Agreement with respect to Tax matters.

Section 3.12 Employee Benefit Plans

(a) Section 3.12(a) of the Seller Disclosure Letter sets forth a complete and accurate list, as of the date of the Original Agreement, of each Employee Benefit Plan that would be expected to have a material impact on the Company involving payments by the Company in excess of US$500,000, individually or in the aggregate, for any calendar year after the Closing. Seller has provided to Purchaser as of the date of the Original Agreement a true, correct and materially complete copy (in each case, if applicable) of: (i) each such Employee Benefit Plan and any amendment thereto, including the name list of the employees and Persons entitled to such Employee Benefit Plan, and the amount of the WDC RSUs granted to each applicable Company Employee as of the date of the Original Agreement; (ii) each funding document, including each trust, insurance, annuity or other funding Contract related thereto; and (iii) the most recent financial statements and actuarial or other valuation reports prepared with respect thereto.

(b) Except as would not have a Company Material Adverse Effect, each Employee Benefit Plan listed onSection 3.12(a) of the Seller Disclosure Letter has been established, administered, and operated in compliance with its terms and all applicable Laws.

(c) None of the Employee Benefit Plans listed onSection 3.12(a) of the Seller Disclosure Letter promises or provides post-employment medical or other welfare benefits to any Company Employee, except as required by applicable Law.

(d) Except as would not have a Company Material Adverse Effect, there are no pending or, to the Knowledge of Seller, threatened, Actions or disputes against or with respect to any Employee Benefit Plan listed on Section 3.12(a) of the Seller Disclosure Letter by any employee or beneficiary covered under any such Employee Benefit Plan or otherwise involving any such Employee Benefit Plan (other than routine claims for benefits).

(e) None of the execution and delivery of this Agreement, or the consummation of the transactions contemplated hereby shall, either alone or in combination with another event or events: (i) entitle any Company Employee to severance pay, unemployment compensation, a change of control payment or any other payment or benefit from the Company or Purchaser under any Employee Benefit Plan or (ii) accelerate the time of payment or vesting, or increase the amount of compensation (including funding of compensation or benefits through a trust or otherwise) due any Company Employee from the Company, Seller or any of Seller's Affiliates under any Employee Benefit Plan.

(f) Notwithstanding anything to the contrary contained in this Agreement, the representations and warranties contained in this Section 3.12 constitute the sole representations and warranties made by Seller in this Agreement with respect to employee benefit matters.

Section 3.13 Labor Matters

(a) There are no (i) labor strikes, slowdowns or stoppages currently pending or, to the Knowledge of Seller, threatened, against or affecting the Company, nor have there been any such labor controversies within the past three (3) years; or (ii) pending or, to the Knowledge of Seller, threatened, representation claims, certification applications or petitions before any Governmental Authority or any organizing efforts or challenges concerning representation with respect to the employees of the Company. There are no collective bargaining agreements of the Company to which any Company Employee is subject.

(b) Except as set forth inSection 3.13(b) of the Seller Disclosure Letter, the Company is in material compliance with all obligations imposed on employers pursuant to applicable Laws of the PRC, including, but not limited to, applicable Laws of the PRC regarding social insurance, housing funds, overtime, retirement fund, labor pension, tax withholding and payments (including severance pay, wages, bonuses, awards and remunerations) required to be made on behalf of or for the account of current or former directors, officers, employees and consultants in the nature of social benefits, except where failure to be in compliance would not have a Company Material Adverse Effect.

(c) Except as set forth inSection 3.13(c) of the Seller Disclosure Letter, to the Knowledge of Seller, there are no pending disputes between the Company and any of its current or former directors, officers, employees and consultants.

(d) The Company Employees include all personnel necessary for the Company to carry out its primary manufacturing business in the ordinary course of business, consistent with past practice, including, without limitation, personnel necessary for product introductions currently contemplated by Seller and its Affiliates that will be subject to the Supply Agreement. As of the Closing, each Company Employee is engaged solely for the business of the Company, and is not related to other businesses of Seller or its Affiliates.

(e) Notwithstanding anything to the contrary contained in this Agreement, the representations and warranties contained in this Section 3.13 constitute the sole representations and warranties made by Seller in this Agreement with respect to labor matters.

Section 3.14 Property and Assets

(a) Except as set forth inSection 3.14(a) of the Seller Disclosure Letter, the Company has good and valid title, validly granted land use rights or building ownership rights, as applicable, or, with respect to leased real property, a valid leasehold interest in, all of the Company Real Property (as defined in Section 3.14(b)) and all tangible personal property and other assets reflected in the 2023 Balance Sheet (except for properties and assets sold or disposed of since the Statement Date in the ordinary course of business, consistent with past practice). All Company Real Property, other than the real properties leased by the Company, and all such properties and assets are free and clear of all Liens, except for Permitted Liens.

(b) Section 3.14(b) of the Seller Disclosure Letter sets forth a list of all real property or interests in real property owned, leased or subleased by the Company, as of the date of the Original Agreement (the "Company Real Property"), and the location of such premises. As of the date of the Original Agreement, Seller has made available to Purchaser true and complete copies of each Company Real Property Lease. Except as set forth in Section 3.14(b) of the Seller Disclosure Letter, neither Seller, Seller's Affiliates nor any third party is utilizing or occupying or has any right to occupy or utilize or holds any other interests in any of the Company Real Property.

(c) Except as set forth in Section 3.14(c) of the Seller Disclosure Letter, each Company Real Property Lease is a valid and binding obligation of the Company and, the other party thereto, enforceable in accordance with its terms, except as may be limited by the General Enforceability Exceptions. To the Knowledge of Seller, none of the Company nor any other party under any Company Real Property Lease is in material default under any Company Real Property Lease, and no event has occurred that, with notice or lapse of time or both, would constitute a material default under any Company Real Property Lease.

(d) Except as set forth in Section 3.14(d) of the Seller Disclosure Letter, the Company has obtained all certificates and permits, filings or approvals required from any Governmental Authority with respect to the construction, fire safety, use and occupancy of the Company Real Property, except where a failure to obtain any such certificate or permit or approval would not materially and adversely affect, or materially disrupt, the ordinary course operation of the businesses of the Company. Except as set forth in Section 3.14(d) of the Seller Disclosure Letter, the Company has not received any written notice of any: (i) material violations of fire safety or construction related Laws; (ii) existing, pending or threatened claims, investigations or legal proceedings for the Company's failure to comply with the Laws related to fire safety, construction, occupation and operation of the Company Real Property.

(e) Except as set forth in Section 3.14(e) of the Seller Disclosure Letter, the Company Real Property and all plants, buildings and improvements located thereon conform in all material respects to all applicable building codes and zoning ordinances or other Laws, and the Company has not received any written notice of any: (i) material violations of building codes and/or zoning ordinances or other Laws affecting the Company Real Property; (ii) existing, pending or threatened-in-writing condemnation proceedings affecting the Company Real Property; or (iii) existing, pending or threatened-in-writing zoning, building code or other moratorium proceedings, or similar matters which would materially and adversely affect, or materially disrupt, the Company's use of the Company Real Property or the ordinary course operation of the businesses of the Company.

(f) The Company has not violated any covenant, condition, restriction, easement, agreement or Order affecting any portion of the Company Real Property, except where any such violation, individually or in the aggregate, would not materially and adversely affect, or materially disrupt, the Company's use of the Company Real Property or the ordinary course operation of the businesses of the Company.

(g) Section 3.14(g) of the Seller Disclosure Letter sets forth a list of the material equipment and other movables leased by the Company, with a value exceeding US$1,000,000 individually. Except as set forth in Section 3.14(g) of the Seller Disclosure Letter, the Company solely owns all material equipment and other movables necessary to conduct its business and operations as presently conducted, and has good and valid title to such equipment and movables without any Lien, other than Permitted Liens. With respect to leased equipment and movables, the Company is in compliance in all material respects with all applicable leases.

Section 3.15 Environmental Matters

Except as set forth in Section 3.15 of the Seller Disclosure Letter:

(a) the Company is in compliance with all applicable Environmental Laws (which compliance includes the possession by the Company of all Permits or governmental authorizations required under applicable Environmental Laws, and compliance with the terms and conditions thereof), except where failure to be in compliance would not have a Company Material Adverse Effect; and

(b) there are no Actions pending or, to the Knowledge of Seller, threatened, against the Company arising out of, based on, resulting from or relating to: (i) the release of, or exposure to, any Hazardous Materials; or (ii) any circumstances that form the basis of any violation of any Environmental Law, except for such Actions that would not have a Company Material Adverse Effect.

(c) Notwithstanding anything to the contrary contained in this Agreement, the representations and warranties contained in this Section 3.15 constitute the sole representations and warranties made by Seller in this Agreement with respect to environmental matters.

Section 3.16 No Undisclosed Liabilities

Except as reflected in the 2023 Balance Sheet, the Company does not have any liabilities (absolute, accrued, contingent or otherwise) that would be required to be reflected in a balance sheet prepared in accordance with the Accounting Principles, other than any liabilities: (a) incurred since the Statement Date in the ordinary course of business, consistent with past practice; and (b) incurred in connection with the transactions contemplated by this Agreement.

Section 3.17 Intellectual Property

(a) Section 3.17(a) of the Seller Disclosure Letter sets forth a true and complete list of patents and patent applications, registered copyrights, registered trademarks (including applications) and Internet domain names, in each case, owned by the Company as of the date of the Original Agreement. The Intellectual Property listed in Section 3.17(a) of the Seller Disclosure Letter has not been deemed by any Governmental Authority to be invalid or unenforceable and such has not been cancelled or abandoned.

(b) As of the date of the Original Agreement and as of the Closing Date:

(i) the Company owns or has a valid and enforceable license or otherwise possesses legally enforceable rights to use all Intellectual Property that is currently used in its business as currently conducted and that is material to the business of the Company;

(ii) to the Knowledge of Seller, (A) the conduct of the businesses of the Company as currently conducted does not infringe in any material respect any Intellectual Property of any third Person; and (B) the Company has not received any written notice since the Statement Date from any third Person alleging, and there are no pending Actions asserting, the infringement of any Intellectual Property by the Company; and

(iii) to the Knowledge of Seller, no third Person is infringing any Intellectual Property that is owned by the Company and that is material to the businesses of the Company.

(c) Notwithstanding anything to the contrary contained in this Agreement, the representations and warranties contained in this Section 3.17 constitute the sole representations and warranties made by Seller in this Agreement with respect to Intellectual Property matters.

Section 3.18 Compliance with Laws and Orders

Except as set forth in Section 3.18 of the Seller Disclosure Letter, since the Statement Date, (i) the Company has been in compliance, in all material respects, with all Laws and Orders applicable to the businesses, properties or assets thereof; and (ii) the Company has not received from any Governmental Authority any written citation, fine or written notification that asserts that the Company has violated or is not in compliance with any such Law or Order in any material manner, and to the Knowledge of Seller, no citation, fine or written notice is threatened.

Section 3.19 Company Contracts

(a) As of the date of the Original Agreement, except for the Original Agreement, this Agreement and the Ancillary Agreements, real property leases and Employee Benefit Plans, Section 3.19(a) of the Seller Disclosure Letter lists each of the following Contracts, which the Company is a party to or bound by, in each case, as of the date of the Original Agreement:

(i) any Contract with any third Person that purchases goods or services from the Company for future consideration reasonably expected to be paid to the Company of US$1,000,000 or more in any fiscal year;

(ii) any Contract for purchase, sale, lease or disposal of any real property;

(iii) any Contract for capital expenditures or the acquisition or construction of fixed assets involving future payments in excess of US$1,000,000, in the aggregate;

(iv) any Contract for the purchase or lease of goods or services (including equipment, materials, software, hardware, supplies, merchandise, parts or other property, assets or services), other than supplier or vendor Contracts entered into in the ordinary course of business, requiring aggregate future payments in excess of US$1,000,000 during any twenty (24)-month period following the date of the Original Agreement;

(v) any loan agreement, credit agreement, Contract, note, debenture, bond, indenture, mortgage, security agreement, pledge or other similar agreement under which any Indebtedness material to the Company is outstanding or may be incurred;

(vi) any Contract granting a first refusal, first offer or similar preferential right to purchase or acquire any of the capital stock, equity interests or assets of the Company;

(vii) any Contract that contains express covenants that materially restrict the Company from competing in any line of business or geographic area or with any third Person or including any provisions providing for exclusivity, and most favored nations, or any material Contract that contains change of control restrictions;

(viii) any Contract creating or relating to any partnership, joint venture or joint development agreement involving future payments or capital commitments;

(ix) any Contract, other than customer Contracts entered into in the ordinary course of business or warranties thereunder issued by the Company, containing a covenant or covenants of the Company to expressly indemnify or hold harmless another third Person unless such obligation to indemnify or hold harmless is less than US$1,000,000, in the aggregate;

(x) any Contract relating to the disposition or acquisition by the Company, with obligations remaining to be performed or liabilities continuing after the date of the Original Agreement, of any business or any amount of material assets other than in the ordinary course of business, including any "deferred" or other contingent payments or obligations;

(xi) any Contract relating to the acquisition by the Company of any operating business or the capital stock or equity interests of any Person (including Contracts under which the Company has an obligation to make an investment in or loan to any such Person); and

(xii) any Contract for licenses granted by or to the Company and material to the business of the Company, but excluding (A) licenses or services Contracts for commercially available software or services (including software as a service) available on standard terms, (B) licenses for open source software, (C) Contracts with current and former employees, contractors, and consultants of the Company, (D) non-exclusive licenses granted in the ordinary course of business, and (E) any Contract entered into by the Company in the ordinary course of business in which the only license to, or right to exploit, Intellectual Property granted in such Contract is incidental to the transaction contemplated in such Contract, the commercial purpose of which is something other than such license or right to exploit.

All Contracts of the type described in this Section 3.19(a) are hereinafter referred to as "Company Contracts."

(b) Seller has made available to Purchaser, in all material respects, copies of all Company Contracts as in effect on the date of the Original Agreement and: (i) each of the Company Contracts is in full force and effect and, assuming the due execution by the other parties thereto, is a legal, valid and binding agreement of the Company, as applicable, except to the extent any such Company Contract has expired or has been terminated in accordance with its terms, subject to General Enforceability Exceptions; and (ii) there is no default or breach by the Company or, to the Knowledge of Seller, by any other party thereto, in the timely performance of any obligation to be performed thereunder or any other material provision thereof, except any such breach or default that would not materially and adversely affect the business of the Company.

Section 3.20 Suppliers

(a) Section 3.20 of the Seller Disclosure Letter sets forth a complete and accurate list of the names of the twenty (20) suppliers to whom the Company paid the highest aggregate amounts for supplies, merchandise and other goods during the twelve-month period ended December 31, 2023 (the "Major Suppliers"). Since the Statement Date, to the Knowledge of Seller, there has been no significant adverse change in the business relationship of the Company, on the one hand, and any supplier named in Seller Disclosure Letter, on the other hand. None of the Company or its Affiliates has received any written communication from any supplier named in the Seller Disclosure Letter of any intention to terminate or materially reduce supplies to or its relationship with the Company.

(b) To the extent there are any written supply agreements (including purchase orders) between the Company and any of the Major Suppliers (the "Major Supply Agreements"), such Major Supply Agreements are valid, effective and enforceable, except as maybe limited by the General Enforceability Exceptions, and the Company is not in material breach of any such Major Supply Agreement, nor to the Knowledge of Seller, is any Major Supplier in material breach of any such Major Supply Agreement.

(c) Except as set forth inSection 3.20(c) of the Seller Disclosure Letter, the execution and the performance of this Agreement and the Ancillary Agreements do not entitle any Major Suppliers to unilaterally terminate the Material Supply Agreement or entitle any Major Suppliers to revise the terms and conditions of Material Supply Agreements in a way substantially unfavorable to the Company.

Section 3.21 Permits

The Company is in possession of all Consents from any Governmental Authorities that are material to the businesses of the Company as currently conducted (collectively, the "Permits"). The Company is: (a) in compliance in all material respects with all such Permits, all of which are in full force and effect; (b) to the Knowledge of Seller, no event has occurred or circumstance exists that would reasonably be expected to: (i) constitute or result in a material violation of, or a failure to comply in any material respect with, any term or requirement thereof; or (ii) result in the revocation, withdrawal, suspension, cancellation or termination thereof; and (c) the Company has not received any written notice, and to the Knowledge of Seller, no notice is threatened, from any Governmental Authority regarding: (i) any actual, alleged, possible or potential violation or failure to comply in any material respect with any term or requirement thereof; or (ii) any revocation, withdrawal, suspension, cancellation or termination thereof.

Section 3.22 Insurance

Section 3.22 of the Seller Disclosure Letter sets forth, as of the date of the Original Agreement, all material insurance policies maintained by the Company covering the Company and its businesses. All such policies of insurance are in full force and effect in all material respects. The Company has not received any written notice of cancellation or any other indication that any such policy of insurance is no longer in full force or effect or that the issuer of any such policy of insurance is not willing or able to perform its obligations thereunder, and, to the Knowledge of Seller, no event has occurred that will result in the cancellation of coverage under any such policy of insurance. All premiums due on all such policies have been paid and the Company is not in default in any material respect with its obligations under such policies.

Section 3.23 Transactions with Affiliates

Section 3.23 of the Seller Disclosure Letter sets forth, as of the date of the Original Agreement, all Contracts between the Company, on the one hand, and Seller or any of its Affiliates, or any officer, director, employee, stockholder or immediate family member of the foregoing on the other hand, with respect to the business, operation or assets of the Company or pursuant to which any such Affiliate or any officer, director, employee, stockholder or immediate family member of the foregoing has any interest in the property of the Company, excluding (a) any Employee Benefit Plan, (b) agreements explicitly contemplated to be entered into pursuant to this Agreement, (c) agreements with respect to employment relationships and compensation in the ordinary course of business consistent with past practice, and (d) agreements with respect to transactions conducted on an arm's length basis in the ordinary course of business (collectively, "Affiliate Transactions").

Section 3.24 Data Protection

(a) The Company is in compliance with all applicable Laws regarding personal information, data protection or cyber security ("Data Protection Laws") in all material respects (which compliance includes the possession by the Company of all Permits or governmental authorizations required under applicable Data Protection Laws, and compliance with the terms and conditions thereof).

(b) The Company has not received any written notices, claims or any other communications from any Governmental Authority or other Person, that asserts the Company has violated or is not in compliance with any Data Protection Law, and to the Knowledge of Seller, no citation, fine or written notice is threatened.

(c) To the Knowledge of Seller, during the past three (3) years, the Company has not suffered any data leakage, cybersecurity incidents. The Company is not in material breach of its obligations related to data protection.

Section 3.25 Due Diligence Materials

The materials provided in the VDR are authentic copies of those materials.

Section 3.26 Solvency

At any time during the date of the Original Agreement and the Closing Date, the Company shall (a) be Solvent, (b) have adequate capital with which to engage in its business as currently conducted consistent with past practices. The Company has neither been declared bankrupt nor found unable to pay any of its debts which are due. There are no pending or to the Knowledge of Seller, threatened, proceedings in relation to any compromise or arrangement with creditors or any winding up, bankruptcy or other insolvency proceedings concerning the Company.

Section 3.27 Product Liability

To the Knowledge of Seller: (a) the Company has not in the past five (5) years manufactured or sold any product, which does not comply with applicable Laws in force at the time of the manufacturing or sale of the product, and (b) no material product liability or similar claims under any applicable Laws or any agreement executed by the Company exist with respect to products tested, assessed or produced by the Company prior to the Closing Date nor do any facts or circumstances exist as of the date of the Original Agreement that would reasonably be expected to give rise to such a claim after the date of the Original Agreement.

Section 3.28 Anti-Corruption Laws and Sanctions

(a) None of the Company, and to the Knowledge of Seller, agents or other Persons acting for or on behalf of the Company:

(i) is currently or has been in the past three (3) years, (A) a Sanctioned Person, or (B) engaging in any dealings or transactions in violation of applicable Sanctions Laws.

(ii) has at any time in the past three (3) years made or received any unlawful payment or given, offered, promised, or authorized or agreed to give or receive, any money or thing of value, directly or indirectly, to or from any individual acting for or on behalf of any such Governmental Authority (any such individual, a "Government Official") or any other Person in violation of any applicable Anti-Corruption Laws.

(iii) has in the past three (3) years directly or indirectly offered, in violation of applicable Law, made or promised to make any unlawful contribution, gift, bribe, rebate, payoff, influence payment, kickback, or other payment or thing of value to any Government Official or other Person regardless of form, whether in money, property, or services, (i) to obtain favorable treatment or any other improper advantage in securing or retaining business, (ii) to pay for favorable treatment for business secured or retained, (iii) to obtain special concessions or for special concessions already obtained for or in respect of the Company or (iv) to unlawfully influence any act or decision of any Person in their official capacity or induce such Person to violate their lawful duties.

(b) As at the date of the Original Agreement, no Action is pending or, to the Knowledge of Seller, has been threatened by or before any Governmental Authority in relation to the Company in the past three (3) years, with respect to any applicable Anti-Corruption Laws and/or Laws on anti-money laundering and terror financing, or Sanctions Laws.

Section 3.29 Brokers

No broker, finder or similar agent has been employed by, or on behalf of, Seller, and no Person with which Seller has had any dealings or communications, is entitled to any brokerage commission or finder's fee in connection with this Agreement or the transactions contemplated hereby.

## ARTICLE IV
## REPRESENTATIONS AND WARRANTIES OF PURCHASER

Purchaser represents and warrants to Seller as follows:

Section 4.1 Organization and Qualification

(a) Purchaser is a limited liability company duly organized, validly existing and in good standing under the Laws of the PRC.

(b) Purchaser is duly qualified to do business and is in good standing (to the extent the applicable jurisdiction recognizes such concept) under the Laws of each jurisdiction in which the conduct of its business, or the character of the properties owned or leased by it, requires it to be so qualified, except where the failure to be so qualified or to be in good standing would not have a Purchaser Material Adverse Effect.

Section 4.2 Authorization; Enforceability

Purchaser has the requisite corporate or other similar power and authority to execute and deliver this Agreement and all agreements and documents contemplated hereby to be executed and delivered by it, and to consummate the transactions contemplated hereby and thereby. The execution and delivery of this Agreement and such other agreements and documents and the consummation of the transactions contemplated herein and therein have been duly and validly authorized by all requisite corporate or other similar action on the part of Purchaser. This Agreement has been, and all agreements and documents contemplated hereby to be executed and delivered by it shall be, duly and validly executed and delivered by Purchaser and, assuming the due authorization, execution and delivery by the parties hereto and thereto, shall, upon such execution and delivery hereof and thereof, be the legal, valid and binding obligations of Purchaser hereunder and thereunder, as applicable, enforceable against Purchaser in accordance with its terms, except as limited by the General Enforceability Exceptions.

Section 4.3 Consents and Approvals; No Violations

(a) Neither the execution and delivery of this Agreement by Purchaser, nor the other agreements and documents contemplated hereby to be executed and delivered by Purchaser, nor the consummation by Purchaser of the transactions contemplated herein or therein, nor compliance by Purchaser with any of the provisions hereof or thereof, shall: (i) conflict with or result in a breach of any provisions of the Organizational Documents of Purchaser; or (ii) constitute or result in the breach of any term, condition or provision of, or constitute a default under, or give rise to any right of termination, cancellation or acceleration with respect to, or result in the creation or imposition of a Lien upon any property or assets of Purchaser, excluding any Lien created in connection with the Letter of Guarantee, violate any Law or Order applicable to Purchaser or any of its properties or assets, except as would not result in a Purchaser Material Adverse Effect.

(b) No Consent by any Governmental Authority is required to be obtained by Purchaser for the consummation by Purchaser of the transactions contemplated by this Agreement that if not obtained would have a Purchaser Material Adverse Effect, except in connection, or in compliance, with the PRC Antitrust Clearance and the other approvals from any Governmental Authorities required under Section 5.3.

Section 4.4 Litigation

(a) There is no Action pending or, to the Knowledge of Purchaser, threatened, against Purchaser or any of its Affiliates by or before any Governmental Authority that, if determined in a manner adverse to Purchaser or any of its Affiliates, would have a Purchaser Material Adverse Effect.

(b) There is no outstanding Order binding on or, to the Knowledge of Purchaser, threatened, against Purchaser or any of its Affiliates that would have a Purchaser Material Adverse Effect.

Section 4.5 Solvency

Assuming (a) the representations and warranties set forth in Article III are true and correct, (b) compliance in all material respects by Seller with its obligations hereunder, (c) the satisfaction of the conditions to Purchaser's obligations to consummate the transactions contemplated by this Agreement set forth in Section 6.4 and Section 6.5 and (d) immediately prior to the Closing, the Company is Solvent, then immediately after giving effect to all of the transactions contemplated by this Agreement, Purchaser and its Subsidiaries shall be Solvent.

Section 4.6 Independent Investigation; No Reliance.

In connection with its investment decision, Purchaser expressly acknowledges that it and its Representatives have inspected the business, operations, technology, assets, liabilities, results of operations, financial condition and prospects of the Company and have conducted such independent review, investigation and analysis (financial and otherwise) of the Company as desired by Purchaser. Purchaser hereby expressly acknowledges that Seller has provided Purchaser with access to the personnel, properties, premises and books and records of the Company for this purpose. Purchaser hereby expressly acknowledges that its purchase of the Purchased Interest and the consummation of the transactions contemplated hereby are not done in reliance upon any representation or warranty or omission by, or information from, Seller or any of its Affiliates or Representatives, whether oral or written, express or implied, including any implied warranty of merchantability or of fitness for a particular purpose, except for the representations and warranties specifically and expressly set forth in Article III (as modified by the Seller Disclosure Letter), and Purchaser hereby expressly acknowledges that Seller expressly disclaims any other representations and warranties. Such purchase and consummation are instead done entirely on the basis of Purchaser's own investigation, analysis, judgment and assessment of the present and potential value and earning power of the Company, as well as those representations and warranties by Seller, as specifically and expressly set forth in Article III (as modified by the Seller Disclosure Letter). Purchaser expressly acknowledges that neither Seller nor any of its

Affiliates has made any representation or warranty to Purchaser regarding the probable success or profitability of the Company or its business. Purchaser further expressly acknowledges that neither Seller nor any of its Affiliates nor any other Person has made any representation or warranty, express or implied, as to the accuracy or completeness of any information regarding the Company, its businesses or the transactions contemplated by this Agreement, except for the information set forth in Article III (as modified by the Seller Disclosure Letter), and neither Seller nor any of its Affiliates nor any other Person shall have or be subject to any liability to, Purchaser, its Affiliates, their respective Subsidiaries, shareholders, Controlling persons or Representatives or any other Person resulting from the distribution to Purchaser or its Representatives or Purchaser's use of any such information, including the any confidential information memoranda or management presentations distributed by, or on behalf of, the Company relating to its businesses, any such information contained in the VDR or any other data room (including any electronic or "virtual" data room), or any information contained in any publication, document or other form provided or made available, or any omission thereof or therein, to Purchaser or any of its Representatives in connection with the purchase and sale of the Purchased Interest and the transactions contemplated hereby.

Section 4.7 Available Funds

Purchaser has, and will have at the Closing, cash on hand necessary to consummate the transactions contemplated by this Agreement, including (a) making payment of the Purchase Price to Seller when due and (b) paying all related fees and expenses arising from the transactions contemplated by this Agreement.

Section 4.8 Letter of Guarantee

As of the AMR Submission Date and during the period from the AMR Submission Date through the Closing, the Letter of Guarantee shall have been and remained duly issued by the Purchaser Guarantor in favor of Seller, shall be and remain in full force and effect, shall constitute the legal, valid and binding obligation of the Purchaser Guarantor, enforceable in accordance with its terms, and shall not have been amended, withdrawn or rescinded in any respect. As of the AMR Submission Date and during the period from the AMR Submission Date through the Closing, no event shall have occurred which, with or without notice, lapse of time or both, would constitute a default on the part of the Purchaser Guarantor under the Letter of Guarantee. Purchaser has not received any written notice of cancellation or any other indication that the Letter of Guarantee is no longer in full force or effect or that the Purchaser Guarantor is not willing or able to perform its obligations thereunder, and, no event has occurred that will result in the cancellation or termination of the Letter of Guarantee.

Section 4.9 Brokers

No broker, finder or similar agent has been employed by, or on behalf of, Purchaser, and no Person with which Purchaser has had any dealings or communications is entitled to any brokerage commission or finder's fee in connection with this Agreement or the transactions contemplated hereby.

## ARTICLE V
## COVENANTS

Section 5.1 Conduct of Business Prior to the Closing

(a) Except: (w) for the matters set forth in Section 5.1(a) and Section 5.1(b) of the Seller Disclosure Letter; (x) as required by the terms of any Contract set forth in the Seller Disclosure Letter or contained in the VDR or under applicable Law; (y) as otherwise contemplated by this Agreement; or (z) with the prior written consent of Purchaser (which consent shall not be unreasonably withheld, delayed or conditioned), during the Interim Period, Seller shall and shall cause the Company to:

(i) conduct the businesses of the Company in the ordinary course of business and in accordance with past practice in all material respects;

(ii) maintain the premises, facilities and assets owned, operated or used by the Company in substantially the same state of repair, order and conditions as they are on date of the Original Agreement, reasonable wear and tear excepted;

(iii) maintain sufficient Cash as required for the business operation of the Company; and

(iv) use commercially reasonable efforts to maintain its relationship with its employees (other than the Excluded Employees) and suppliers in the ordinary course of business in accordance with past practice.

(b) Without limiting the provisions of the foregoing clause (a), except (w) for the matters set forth in Section 5.1(a) and Section 5.1(b) of the Seller Disclosure Letter, (x) as required by the terms of any Contract in existence as of the date of the Original Agreement or under applicable Law, (y) as otherwise contemplated by this Agreement, or (z) with the prior written consent of Purchaser (which consent shall not be unreasonably withheld, delayed or conditioned), during the Interim Period, the Company shall not, and Seller shall cause the Company not to, other than in the ordinary course of business:

(i) change or amend the Organizational Documents of the Company;

(ii) increase or reduce registered capital, or allot or issue any securities or loan capital convertible into equity interest of the Company, purchase, redeem, dispose of, retire or acquire any such securities, or agree to do so, or sell or give any option, right to purchase or create any Lien over any such securities;

(iii) adopt a plan of complete or partial liquidation, dissolution, merger, consolidation, restructuring, recapitalization or other reorganization of the Company or authorize or undertake a dissolution, consolidation, recapitalization, merger, liquidation, or other reorganization or restructuring of the corporate structure of the Company;

(iv) establish, enter into, adopt, amend, renew, extend, or terminate any Employee Benefit Plan or any plan, program, policy, agreement, or arrangement that would be an Employee Benefit Plan except (1) as required by Section 5.6(b) below, (2) in the ordinary course of business, (3) consistent with past practice, (4) as required pursuant to any plan, program or agreement existing on the date of the Original Agreement and as disclosed in the Seller Disclosure Letter or applicable PRC Laws or (5) as otherwise permitted pursuant to this Section 5.1(b)(iv); grant or announce to grant to any director, officer, employee or staff of the Company any increase in compensation and/or bonus of over 5%;

(v) make any change in financial accounting methods, principles or practices, except as required by a change in the Accounting Principles, the auditors of the Company or applicable Law;

(vi) form any Subsidiary or directly or indirectly acquire or agree to acquire or invest in any transaction (by merger, consolidation, stock or asset purchase, investment, or otherwise) any equity interest in or business of any firm, corporation, partnership, company, limited liability company, trust, joint venture, association or other entity or division thereof, or enter into any agreement, arrangement or understanding with respect to any such acquisition or investment, including any confidentiality, exclusivity, standstill or similar agreements;

(vii) (A) other than purchases and sales of products, inventory and supplies in the ordinary course of business, consistent with past practice, acquire or agree to acquire, sell, lease, license, assign, exchange, pledge, mortgage, encumber, abandon or otherwise transfer or dispose of any tangible or intangible assets (other than real property) in excess of US$1,000,000, in the aggregate (including by merger, consolidation, acquisition of stock or assets), except for (x) sales, dispositions or transfers of products, inventory or obsolete or worn-out equipment in the ordinary course of business consistent with past practice and (y) the sales, dispositions or transfers to an Affiliate of Seller of those certain assets as set forth in Section 5.1(b)(vii) of the Seller Disclosure Letter (collectively, the "Excluded Assets"); or (B) sell, lease, mortgage, pledge, encumber, abandon, sell and leaseback or otherwise transfer or dispose of any real properties of Company or any material rights or interests therein;

(viii) other than (A) purchases and sales of products, inventory and supplies in the ordinary course of business, consistent with past practice, (B) transactions contemplated under this Agreement and the Ancillary Agreements and (C) the sales, dispositions or transfers to an Affiliate of Seller of the Excluded Assets, enter into any new Affiliate Transaction or substantially revise the conditions of any Affiliate Transaction;

(ix) change any material Tax election, change an annual Tax accounting period, adopt or change any material method of accounting for Tax purposes, file any material amended Tax Return, enter into any material closing agreement for Tax purposes, settle or compromise any material Tax liability, surrender any right to claim a material refund of Taxes, or consent to any extension or waiver of the limitation period applicable to any material Tax claim or assessment relating to the Company if such action could reasonably be expected to materially increase taxes in any Taxable period beginning on or after the Closing Date;

(x) except in the ordinary course of business, consistent with past practice, grant or acquire, agree to grant to or acquire from any Person, or dispose of or permit to lapse any rights to any Intellectual Property material to the Company (to the extent currently used in the business);

(xi) create, assume, incur, or guarantee any Indebtedness, except for: (A) Indebtedness incurred in the ordinary course of business, consistent with past practice; and (B) Indebtedness incurred under letters of credit entered into in the ordinary course of business, consistent with past practice, and accelerate the repayment of any existing Indebtedness;

(xii) settle, compromise, discharge, waive, release, assign or agree to settle or enter into any waiver, release, assignment, compromise or settlement of any pending or threatened litigation, investigation, arbitration or proceeding other than those that do not involve the payment by the Company of monetary damages in excess of US$100,000 in any individual instance, or US$300,000 in the aggregate;

(xiii) cancel, surrender, allow to expire or fail to renew, any Permits material to the Company;

(xiv) conduct any "mass layoff," as defined in the applicable PRC Laws, but excluding any proposed termination, transition or transfer of certain Company employees according to such name list as shall be agreed between the Parties in writing after the date of the Original Agreement (collectively, the "Excluded Employees"); or

(xv) agree to take any of the foregoing actions.

Section 5.2 Access to Information; Confidentiality

(a) During the Interim Period, and subject to compliance with applicable Law and this Section 5.2(a), Seller shall give Purchaser and its Representatives reasonable access during regular business hours to the properties, books and records of the Company at the request of Purchaser, with reasonable prior notice to Seller, in connection with the transactions contemplated hereby; provided, however, that Purchaser and its Representatives shall conduct any such activities in such a manner as not to unreasonably interfere with the business or operations of Seller and the Company. All contacts with any employee of the Company must be requested in writing by Purchaser and must first be approved by and coordinated through the executive officers of Seller (or their designee(s)), which approval shall not be unreasonably withheld or delayed. In no event shall Seller be obligated to provide: (i) such access or information if Seller determines, in its reasonable judgment, that doing so may: (A) violate applicable Law, an Order, a Contract or any other obligation of confidentiality or any other obligation owing to a third Person (including those relating to sensitive and personal information); or (B) jeopardize the protection of the attorney-client privilege or any other privilege or immunity; or (ii) any portion of any Tax Return (or supporting work papers or documents related thereto) of, or with respect to, Seller or any of its Affiliates (other than any Tax Return solely and directly related to the Company). In addition, during the Interim Period, Seller may designate any competitively sensitive information provided to Purchaser or its Representatives pursuant to this Agreement as "outside counsel only" and such information shall be given only to the outside counsel of Purchaser and may not be shared, conveyed, summarized or otherwise disclosed in any manner with Purchaser or any of its Subsidiaries or any of their respective Representatives (other than such outside counsel), except as may be expressly agreed in writing by Seller in advance.

(b) Without limiting the generality of that certain Non-Disclosure Agreement, dated as of May 8, 2020, by and between Western Digital Technologies, Inc. and STATS ChipPAC Semiconductor (Jiangyin) Co., Ltd. (星科金朋半导体（江阴）有限公司), as may be amended, extended or modified from time to time, each Party shall, and shall cause their respective Affiliates to, and shall instruct their respective Representatives to, hold in confidence any and all confidential, proprietary and non-public information and materials, whether in written, verbal, graphic or other form, concerning each other Party, any of their respective Affiliates, the transactions contemplated herein, or any discussion, negotiation or correspondence by any Party or their Affiliates on, prior to or after the date hereof for, relating to or in connection with the transactions contemplated herein (collectively, "Confidential Information"), except as necessary to perform any of the Party's obligations under this Agreement or under the Ancillary Documents and except that no Party shall have any obligation hereunder with respect to any Confidential Information that: (i) after the date hereof becomes generally available to the public other than through a breach by the applicable Party, any of its Affiliates or Representatives of their respective obligations hereunder; (ii) is provided to the Party or any of its Affiliates by a third party that was not known to the receiving Party to be bound by any duty of confidentiality to the other Party, (iii) is disclosed as a result of requirement by applicable Law (including stock exchange rules) or by any Governmental Authority or under any subpoena, civil investigative demand or other similar process by a court of competent jurisdiction having jurisdiction over such Party; provided, however, that, to the extent legally permissible, the disclosing Party shall give advance written notice of such compelled disclosure to the other Party, and shall cooperate with such other Party in connection with any efforts to prevent or limit the scope of such disclosure; and provided further, that such disclosing Party shall disclose only that portion of such Confidential Information which such disclosing Party is advised by its counsel is legally required to be disclosed; or (iv) is provided by Seller to certain suppliers, as reasonably agreed by Seller and Purchaser, to facilitate the arrangement of material procurement services for the Company. Notwithstanding the foregoing, a Party may disclose Confidential Information without notice to or consent of the other Party in connection with the enforcement of this Agreement and/or the Ancillary Agreements or the defense of any Action brought by the other Party, any of its Affiliates or any of its Representatives.

Section 5.3 Regulatory Filings; Reasonable Best Efforts

(a) Upon the terms and subject to the conditions set forth in this Agreement, each of the Parties shall (and to the extent applicable, shall cause their respective Affiliates and equityholders to) take, or cause to be taken, all actions, to do, or cause to be done, and to assist and cooperate with the other Parties in doing, all things necessary, proper or advisable to consummate and make effective, as promptly as practicable but, in any event, no later than the Longstop Date (as defined below), the transactions contemplated hereby in accordance with the terms of this Agreement, including, without limitation: (i) the obtaining of all necessary Consents under any applicable Laws required to give effect to the terms of this Agreement and consummate the transactions contemplated hereunder; (ii) the taking of all steps as may be necessary to avoid an Action by any Governmental Authority in respect of this Agreement and the consummation of the transactions contemplated hereunder; (iii) the obtaining of all necessary Consents from third parties required to consummate the transactions contemplated hereunder; and (iv) the execution and delivery of any additional instruments necessary to consummate the transactions contemplated

hereunder in accordance with the terms of this Agreement and to fully carry out the purposes of this Agreement. Unless otherwise expressly agreed herein, neither Seller nor any of its Affiliates shall be obligated to grant any consideration, or pay any fee or other similar payment, to any third Person from whom Consent is required or requested from or by such third Person in connection with the consummation of the transactions contemplated under this Agreement in order to obtain any such Consent. For the avoidance of doubt, Purchaser shall agree or commit to any and all divestitures, licenses, behavioral remedies, hold separate or similar arrangements, or other remedies, restrictions, limitations or commitments, in each case as a condition to obtaining the PRC Antitrust Clearance in order to consummate and make effective, as promptly as practicable and in any event by the Longstop Date, the transactions contemplated hereby, so long as such remedies, restrictions, limitations or commitments required to be taken by Purchaser shall not materially and adversely impact the economic or business benefits to Purchaser of the transactions contemplated by this Agreement. In addition, upon the terms and subject to the conditions herein provided and subject to the Parties' (and to the extent applicable, their respective Affiliates') obligations under applicable Law, none of the Parties hereto shall (and such Parties shall cause, to the extent applicable, their respective Affiliates not to) knowingly take, or cause to be taken, any action that would reasonably be expected to materially delay or prevent the satisfaction by the Longstop Date of the conditions set forth in Section 6.4.

(b) To the extent the PRC Antitrust Clearance has not been obtained as of the date hereof pursuant to the terms of the Original Agreement, Purchaser (as the filing obligor for the PRC Antitrust Clearance) undertakes and agrees (and to the extent applicable, shall cause its Affiliates and equity holders to undertake and agree) to prepare and file a set of appropriate filing materials pursuant to the PRC Anti-Monopoly Law with respect to the transactions contemplated by this Agreement as soon as reasonably practicable following the date of this Agreement and to supply as promptly as practicable any additional information and documentary material that may be requested pursuant to the PRC Anti-Monopoly Law. Purchaser shall have the responsibility for all costs and expenses associated with filings pursuant to the PRC Anti-Monopoly Law, if applicable. Seller shall exercise its best efforts to assist Purchaser in obtaining the PRC Antitrust Clearance.

(c) Each of Purchaser and Seller shall and, to the extent applicable, shall cause their respective Affiliates and equityholders to: (i) respond as promptly as practicable to any inquiries and requests received from SAMR or any other Governmental Authority, as applicable, in connection with the filing in respect of the PRC Antitrust Clearance; and (ii) not extend or cause to be extended any waiting period under the applicable Law or enter into any agreement with SAMR or any other Governmental Authority not to consummate the transactions contemplated by this Agreement, except, in each case, with the prior written consent of the other Party.

(d) In addition and subject to applicable Law, each of Purchaser, on the one hand, and Seller, on the other hand, shall and, to the extent applicable, shall cause their respective Affiliates and equityholders to: (i) promptly notify the other Party of any communication from SAMR or any other Governmental Authority (except with respect to Taxes), as applicable, concerning this Agreement or the transactions contemplated hereby and permit the other Party to review in advance any proposed communication to any of the foregoing; (ii) consult with the other Party prior to participating in any meeting (in-person or virtual), telephonic or video

call or discussion with SAMR or any Governmental Authority with respect to any filing, investigation or inquiry concerning this Agreement or the transactions contemplated hereby (except with respect to Taxes), as applicable, and provide the other Party the opportunity to attend and participate in any such meeting (in-person or virtual), telephonic or video call or discussion; (iii) furnish the other Party with copies of all correspondence, filings and written communications (or a reasonably detailed summary of any oral communications) between it and its Representatives, on the one hand, and SAMR or any Governmental Authority, on the other hand, as applicable, with respect to this Agreement or the transactions contemplated hereby (except with respect to Taxes); and (iv) provide a reasonable opportunity to the other Party to review and comment in advance on any filings, letters, presentations, whitepapers and other substantive communications with SAMR or the Governmental Authority in connection with this Agreement or the transactions contemplated hereby and consider, in good faith, any comments on such correspondences, filings and written communications.

(e) As promptly as practicable after the date hereof and in any event prior to the AMR Submission Date, each of Purchaser and Seller shall furnish or cause to be furnished to the Company (for purposes of securing the AMR Approval) and Purchaser (for purposes of securing the SAFE Registration Voucher) all executed application forms and all supporting documents and such other documents as the relevant Governmental Authority may require for obtaining AMR Approval and the SAFE Registration Voucher.

(f) Prior to the AMR Submission Date, (i) the Company (in the presence of Purchaser's Representative (to the extent permitted by SAMR and/or the Company Capital Account Bank), either in person or virtually, shall submit to SAMR and the Company Capital Account Bank for pre-review of the Registration ETA and the relevant application documents (the "Application Documents") required to apply for the AMR Approval and the SAFE Registration Voucher, respectively, and (ii) to the extent the Application Documents are amended consistent with this Section 5.3(f), the Company shall further consult with SAMR and the Company Capital Account Bank to confirm that such amendments are sufficient to satisfy the requirements of SAMR and/or the Company Capital Account Bank. If the relevant Governmental Authority and/or the Company Capital Account Bank requires any amendment (including, for purpose of this Section 5.3(f), any supplement) to the Registration ETA and the Application Documents and if, in the reasonable view of Purchaser or Seller, such amendment is materially inconsistent with, or represents substantive terms in addition to, the terms of this Agreement or the Ancillary Agreements, then the Parties shall immediately consult in good faith with each other to determine whether to make the requested amendment (for the avoidance of doubt, neither Party shall be obligated to agree to such amendment). If the Parties agree to make the requested amendment, the Parties shall, as soon as possible, take such steps as are reasonable to amend this Agreement, the Ancillary Agreements and any other documents necessary to give effect to the requested amendment. Otherwise, if the relevant Governmental Authority and/or the Company Capital Account Bank requires any amendment to the Registration ETA and the Application Documents and if, in the reasonable view of Purchaser and Seller, such amendment is not materially inconsistent with, nor represents substantive terms in addition to, the terms of this Agreement or the Ancillary Agreements, then the Parties shall, as soon as possible, take such steps as are reasonable in order to amend the Registration ETA and/or the Application Documents to incorporate the requested amendment.

(g) Subject to Purchaser's compliance with Section 2.10(a) and Section 5.3(e), within three (3) Business Days following the satisfaction or waiver of the conditions set forth in Section 6.4, Section 6.5 and Section 6.6, Seller shall cause the Company to, and the Parties shall, exercise their respective best efforts to, submit to the competent SAMR no later than September 19, 2024, Beijing time all executed application forms and all supporting documents and such other documents as the relevant Governmental Authority may require for the purpose of obtaining the AMR Approval.

(h) Within one (1) Business Day after the AMR Approval is obtained, the Parties shall cause the Company to, as soon as practicable, submit to the Company Capital Account Bank all executed application forms and all supporting documents and such other documents as the relevant Governmental Authority may require for the purpose of obtaining the SAFE Registration Voucher.

(i) As promptly as practicable after the PRC Antitrust Clearance has been obtained, but in any event no later than five (5) Business Days after the AMR Approval is obtained, Purchaser shall make the tax filing with competent Taxing Authority for overseas payment for trade in services and other items (服务贸易等项目对外支付税务备案表) and, within five (5) Business Days after receipt of such form, provide Seller with a copy of the Tax filing form for overseas payment for trade in services and other items (服务贸易等项目对外支付税务备案表) affixed with the relevant Taxing Authority's seal (or any equivalent document, including but not limited to an electronic copy of the Tax Return and settlement certificate generated by the online Tax filing system).

(j) The Parties shall use their best efforts to take, or cause to be taken, all appropriate action, and to do, or cause to be done, and to assist and cooperate with the other Parties in doing, all things necessary, proper or advisable under applicable Laws or otherwise to consummate and make effective the transaction contemplated in this Section, including, without limitation, (i) employing such resources as are necessary or desirable to obtain the AMR Approval and the SAFE Registration Voucher and cause the Purchase Price to be converted into US$ by a third-party financial institution or Person and paid to the Seller's Account, and (ii) taking any and all steps necessary or desirable to avoid or eliminate each and every impediment under applicable Laws that may be asserted by any Governmental Authority so as to enable the Parties to expeditiously consummate the transactions contemplated by this Agreement.

Section 5.4 Closing Conditions

During the Interim Period, each Party hereto shall, and Seller shall cause the Company to, use commercially reasonable efforts to take such actions as are necessary to expeditiously satisfy the closing conditions set forth in Article VI hereof, including, without limitation, negotiating the Ancillary Agreements in good faith to the extent the form thereof has not been agreed as of the date hereof.

Section 5.5 No Amendment to Letter of Guarantee

Purchaser shall (a) maintain in full force and effect the Letter of Guarantee and (b) satisfy, or cause to be satisfied, on a timely basis all conditions to the funding under the Letter of Guarantee. Without limiting the generality of the foregoing, without the prior written consent of Seller, Purchaser shall not, and shall cause its Affiliates not to, (i) amend, modify, withdraw, waive or terminate the Letter of Guarantee, or (ii) enter into or modify any other Contract relating to the transactions contemplated hereby in a manner that (y) would be inconsistent with the terms of this Agreement and any other agreements relating to the transactions contemplated hereby, or (z) would or would reasonably be expected to prevent or impede, interfere with, hinder or delay (A) the consummation by Purchaser of the transactions contemplated hereby or (B) the compliance by Purchaser of its obligations under this Agreement. Purchaser will, and will cause each of its Affiliates to, deliver to Seller within one (1) Business Day upon receipt, any notification received by Purchaser from the Purchaser Guarantor regarding adjustment to guarantee amount, termination, withdrawal or other material amendments to the Letter of Guarantee.

Section 5.6 Employee Benefits

(a) For the five (5)-year period following the Closing, the Parties shall endeavor in good faith to cause the Company to provide each employee of the Company as of the Closing Date (collectively, the "Company Employees") with: (i) base salary and target bonus opportunities that are substantially similar to or better than each such Company Employee's base salary and target bonus opportunities prior to the Closing; and (ii) all other compensation and benefits that are, in the aggregate, with respect to each Company Employee, substantially similar to or better than the compensation and benefits provided to such Company Employee under the Employee Benefit Plans immediately prior to the Closing, in each case subject to the satisfaction of the Company's financial target as agreed between Purchaser and Seller, and the performance review of each such Company Employee in normal course in accordance with the written policies of the Company.

(b) The WDC RSUs (as defined below) held by the Company Employees shall be treated as follows:

(i) At or immediately prior to the Closing, each award of Western Digital Corporation restricted stock units (each such unit, a "WDC RSU" and collectively, the "WDC RSUs") held by a Company Employee that is then outstanding and unvested shall automatically be canceled in accordance with the terms and conditions of such WDC RSUs.

(ii) The Parties acknowledge that the Company Employees who hold any WDC RSUs that are outstanding and vested (but not theretofore settled) as of the Closing (the "Vested WDC RSUs") shall be entitled to settlement thereof in accordance with their terms.

(iii) As to any WDC RSU that is outstanding and not vested as of the Closing (an "Unvested WDC RSU"), the Company shall issue new cash-settled awards to the Company Employee (excluding Excluded Employees) (collectively, the "Replacement Cash Awards") pursuant to a post-Closing cash bonus plan mutually acceptable to Seller and Purchaser (the "Post-Closing Bonus Plan") to replace such canceled Unvested WDC RSUs. The

Replacement Cash Awards issuable to the relevant Company Employees shall (x) have the equivalent cash value of the Unvested WDC RSUs (as determined in accordance with the Post-Closing Bonus Plan), (y) be subject to the same vesting terms and conditions (whether time or performance based) that applied to the Unvested WDC RSUs immediately prior to the Closing Date (provided that there is no substantial change to the terms and conditions of the Unvested WDC RSU after execution of this Agreement unless otherwise agreed to by the Parties in writing), and (z) be payable by the Company to the Company Employee only if and to the extent such vesting conditions are fully satisfied. For avoidance of doubt, the Replacement Cash Awards issuable to Company Employees shall constitute Company Transaction Expenses.

(c) From and after the Closing, the Parties shall, or shall cause the Company to, honor all obligations to any Labor Organization and, notwithstanding anything in this Agreement to the contrary, the terms and conditions of employment upon and after the Closing for all employees of the Company represented by a Labor Organization shall be governed by any such obligations.

(d) Notwithstanding anything to the contrary in this Agreement, the Company, in its sole discretion, is permitted to: (i) prior to the Closing, pay out bonuses for any completed fiscal year to its employees in the ordinary course of business; and (ii) prior to the Closing, pay to each eligible Excluded Employee a pro rata bonus in respect of its then current fiscal year through the Closing based on its determination, in good faith, of the amounts earned, based on actual performance through the Closing.

(e) Nothing contained herein, expressed or implied, is intended to confer upon any Company Employee or any other Person any benefits under any benefit plans, programs, policies or other arrangements, and the provisions of this Section 5.6(e) are solely for the benefit of the Parties to this Agreement. No provision of this Agreement shall guarantee any future employment of any Company Employee.

Section 5.7 Public Announcements

No Party shall make, or cause to be made, any press release or public announcement in respect of the negotiations of the Parties or the subject matter or provisions of this Agreement, the Ancillary Agreements or the transactions contemplated hereby or thereby or otherwise communicate with any news media without the prior written consent of the other Party (which consent shall not be unreasonably withheld, delayed or conditioned) unless otherwise required by Law or applicable stock exchange regulation (based upon the reasonable advice of counsel), and the Parties shall cooperate as to the timing and contents of any such press release, public announcement or communication.

Section 5.8 Further Assurances

At and after the Closing Date, each of Purchaser and Seller shall use its best efforts from time to time to execute and deliver at the reasonable request of the other Party or at the request of any Governmental Authority such additional documents and instruments, and to take, or refrain from taking, such other actions, as may be reasonably required to give effect to this Agreement and the transactions contemplated hereby, which shall include, without limitation, any documents, instruments or actions reasonably required to cause the Purchase Price to be converted into U.S. Dollar and paid to the Seller's Account.

Section 5.9 Notification of Certain Matters

(a) During the Interim Period, Seller shall give prompt notice to Purchaser in writing if:

(i) (A) Seller becomes aware of any representation or warranty contained in this Agreement becoming untrue or inaccurate such that the conditions set forth in either Section 6.5(a) or Section 6.6(a) would not be satisfied or (B) any failure of Seller or the Company to comply with any covenant or agreement to be complied with by it under this Agreement such that the conditions set forth in Section 6.5(b) would not be satisfied; or

(ii) Seller becomes aware of the occurrence or existence of any event, development or change that has had, or would have a Company Material Adverse Effect.

(b) During the Interim Period, Purchaser shall give prompt notice to Seller in writing if:

(i) (A) Purchaser becomes aware of any representation or warranty contained in this Agreement becoming untrue or inaccurate such that the conditions set forth in Section 6.5(a) or Section 6.6(a) would not be satisfied or (B) any failure of Purchaser to comply with any covenant or agreement to be complied with by it under this Agreement such that the conditions set forth in Section 6.6(b) would not be satisfied; or

(ii) Purchaser becomes aware of the occurrence or existence of any event, development or change that has had, or would have, a Purchaser Material Adverse Effect.

Section 5.10 Taxes

(a) Straddle Period. Taxes of the Company relating to any Taxable period beginning on or before, and ending after the Closing Date (a "Straddle Period"), shall, for purposes of this Agreement, be allocated to the portion of any Tax that is allocable to the Taxable period that is deemed to end on the Closing Date as follows: (i) in the case of property Taxes and other Taxes similarly imposed on a periodic basis, deemed to be the amount of such Taxes for the entire Straddle Period multiplied by a fraction, the numerator of which is the number of calendar days of such Straddle Period up to and including the Closing Date and the denominator of which is the number of calendar days in the entire Straddle Period, and (ii) in the case of all other Taxes (including income and similar Taxes), determined as though the Taxable year of the Company terminated on (and included) the Closing Date; provided that (A) any Taxes that are the result of or that are attributable to any transactions or actions that occur on the Closing Date but falls outside the ordinary course of business after the Closing shall not be allocated to the Taxable period that is deemed to end on the Closing Date; (B) exemptions, allowances or deductions generated by Transaction Expenses shall be treated as allocable to a Taxable period (or portion thereof) ending on or before the Closing Date.

(b) Tax Cooperation. Purchaser and Seller shall cooperate fully, as and to the extent reasonably requested by the other Party, in connection with the filing of Tax Returns and any audit, examination, litigation or other proceeding with respect to Taxes. Each of Purchaser and Seller agrees to furnish or cause to be furnished to Purchaser or Seller, as applicable, upon request, as promptly as practicable, such information and assistance relating to the Company as is reasonably necessary for the filing of any Tax Return (including the furnishing or making available during normal business hours of records, personnel (as reasonably required), books of account, powers of attorney and other materials reasonably necessary or helpful for the preparation of such Tax Returns), for the preparation for any audit, and for the prosecution or defense of any Tax Claim relating to any proposed adjustment. Each of Purchaser, Seller and the Company shall retain all books and records with respect to Taxes of the Company for a period of at least seven (7) years following the Closing Date.

(c) Tax Returns. The Company shall, and the Parties shall procure the Company to, prepare or cause to be prepared and file or cause to be filed all Tax Returns for the Company for any taxable year or period that begins on or before the Closing Date that are due (including extensions) after the Closing Date. The Company shall, and the Parties shall procure the Company to, (A) submit such Tax Returns to Seller for review and comment at least thirty (30) days prior to their filing (provided, that if any such Tax Return is due less than sixty (60) days following the end of the taxable period to which such Tax Return relates, such Tax Return shall be submitted to Seller for its review and comment as many days prior to their due date as is reasonably practicable) and (B) make any timely comments reasonably requested by Seller. All Transaction Deductions shall be reported in a Pre-Closing Tax Period to the maximum extent permitted by applicable Law. Without the prior written consent of Seller (which shall not be unreasonably delayed or withheld), the Company shall not amend any Tax Return relating to a Pre-Closing Tax Period, unless so required by the Taxing Authority in connection with a Tax Claim that is conducted in accordance with the terms of this Agreement.

(d) Tax Proceedings. After the Closing Date, Purchaser shall notify Seller within ten (10) days of the commencement of any notice of Tax deficiency, proposed Tax adjustment, Tax assessment, Tax audit, Tax examination or other administrative or court proceeding, suit, dispute or other claim with respect to Taxes of the Company for a Pre-Closing Tax Period (a "Tax Claim"). Thereafter, Purchaser shall deliver to Seller, as promptly as possible but in no event later than ten (10) days after receipt thereof, copies of all relevant notices and documents (including court papers) received by Purchaser or any of its Affiliates (including the Company). In the case of any Tax Claim relating to any Tax period ending on or before the Closing Date that, if determined adversely to the Company would be grounds for a claim for indemnity pursuant to this Agreement, Seller shall have the right to control the conduct of such Tax Claim and shall have the right to settle such Tax Claim after consultation with Purchaser.

(e) Tax Refunds. Purchaser shall pay, or cause its Affiliates (including, after the Closing, the Company) to pay, to Seller, as additional consideration for the Purchased Interest, all Tax refunds that are received by or with respect to the Company after the Closing that are attributable to a Pre-Closing Tax Period within five (5) Business Days of the receipt of such Tax refund other than to the extent such Tax refund was taken into account in the calculation of

the Actual Working Capital Amount. Purchaser shall, and shall cause its Affiliates to, take all actions to receive refunds to which Seller is entitled pursuant to this Section 5.10(e), including actions (such as preparing and filing, or causing to be prepared and filed, Tax Returns) reasonably requested by Seller to obtain such refunds. Seller shall control in its sole discretion any preparation of, and any proceeding with respect to, any Tax Return or claim for refund pursuant to this Section 5.10(e).

(f) PRC Withholding Tax

(i) Purchaser shall be entitled to deduct and withhold, or cause to be deducted and withheld, from the amount of such part of the Purchase Price as is payable by Purchaser to Seller at any given time pursuant to Section 2.2(b) of this Agreement, such amounts as it is required to deduct and withhold, or cause to be deducted and withheld with respect to the amount of such payment, by any competent PRC Taxing Authority, and pay such Tax to such competent Taxing Authority on behalf of Seller, subject to compliance with the following Section 5.10(f)(ii). For avoidance of doubt, Seller shall be solely responsible for making Tax filings/registrations with, and paying Taxes to Taxing Authority outside of China, for any Tax payable by Seller (or its Affiliates) in connection with the transactions contemplated herein.

(ii) Notwithstanding any other provision of this Section 5.10,

(A) Seller shall prepare, or cause to be prepared required Tax Returns and related documentation in connection with the PRC Withholding Taxes as promptly as reasonably practicable to ensure timely filing of such Tax Returns. Seller shall provide Purchaser (and its Representatives with a reasonable opportunity (but Purchaser shall not be obliged) to review and comment on the relevant Tax Returns and filings to be submitted to the competent PRC Taxing Authority in connection with the transfer of Purchased Interest and the calculation of the PRC Withholding Taxes thereon;

(B) to the extent legally permissible, each Party shall notify the other Party as promptly as possible (but no later than four (4) Business Days) after receiving any communication or inquiry from any Taxing Authority relating to the assessment of the PRC Withholding Taxes and not respond to such inquiry unless with prior written consent of the other Party not to be unreasonably withheld, conditioned or delayed;

(C) to the extent practicable, each Party (and its Representatives) shall be permitted to attend any substantive meetings with or other appearances before any Tax officials of the PRC Taxing Authority; provided, that should any Party (or its Representatives) fail to attend such meetings or appearances as duly notified hereunder, the other Party may elect to attend such meetings or appearances without the other Party (or its Representatives) to the extent permissible under applicable Law; and

(D) Purchaser shall, as promptly as practicable, but in no event later than the relevant timeline required by the competent PRC Taxing Authority, pay to the competent PRC Taxing Authority the PRC Withholding Tax as determined pursuant to this Section 5.10(f)(ii) in respect of the transfer of the Purchased Interest to Purchaser, and Purchaser shall provide Seller evidence of such payments, including the Tax payment certificate(s) within five (5) Business Days following the payment of the PRC Withholding Tax to the competent PRC Taxing Authority.

(E) Seller shall submit the Tax Returns and filings in connection with the PRC Withholding Taxes to the PRC Taxing Authority as soon as practical, but in no event later than the relevant timeline required by applicable Law. Seller shall provide Purchaser with a copy of all Tax Returns and other Tax filing documents submitted to the PRC Taxing Authority, and Seller shall provide Purchaser with a copy of such Tax Returns and Tax Payment Notice, affixed with the chop of the competent PRC Taxing Authority, as soon as practicable and in any event within three (3) Business Days after the relevant submission has been made.

(g) Stamp Duty. Unless otherwise required by applicable Law or the competent Taxing Authority in the PRC, each of Purchaser and Seller shall: (i) submit on its own behalf to the applicable PRC Taxing Authority the stamp duty attributable to it; and (ii) pay the amount of stamp duty attributable to such Party, in each of clause (i) and (ii), as promptly as practicable (and no later than the prescribed deadline set forth by the competent PRC Taxing Authority) following the Closing as required by the applicable Taxing Authority.

(h) Other Transfer Taxes. All transfer, documentary, excise, consumption, sales, use, value added, stamp, conveyance, registration, filing, recordation and other similar Taxes and fees (including any penalties and interest) incurred in connection with this Agreement or the transactions contemplated by this Agreement (other than stamp duty described in Section 5.10(g), "Transfer Taxes") shall be borne and paid by the Parties in accordance with the Law. The Parties shall file, or cause to be filed, all necessary Tax Returns and other documentation with respect to all such Transfer Taxes, if required by applicable Law.

(i) Post-Closing Actions. Purchaser, the Company and each of their Affiliates shall not (i) initiate discussions or examinations with a Taxing Authority or make any voluntary disclosures with respect to Taxes of the Company with respect to a Pre-Closing Tax Period, (ii) extend any statute of limitations with respect to the Company for a Pre-Closing Tax Period, (iii) file any Tax Return with respect to aPre-Closing Tax Period in any jurisdiction where the Company did not previously file such Tax Return, (iv) make any election with respect to the Company that has any retroactive effect to any Pre-Closing Tax Period, or (v) enter into any closing agreement with a Taxing Authority with respect to the Company for anyPre-Closing Tax Period, unless any of the above actions is mandatorily required by Law or ordered by the Taxing Authority.

(j) Overlap. To the extent that an obligation or responsibility pursuant to Article VIII may conflict with an obligation or responsibility pursuant to this Section 5.10, the provisions of Section 5.10 shall govern such obligation or responsibility.

Section 5.11 No-Shop

During the Interim Period, Seller shall not, and shall not permit the Company or any of the respective Representatives of the Seller or the Company to, directly or indirectly:

(a) solicit, initiate, encourage, or facilitate the making, submission or announcement of any inquiry, expression of interest, proposal or offer that constitutes, or would reasonably be expected to lead to, an Acquisition Proposal;

(b) enter into, participate in, maintain or continue any communications (except solely to provide written notice as to the existence of these provisions) or negotiations regarding, or deliver or make available to any Person any non-public information with respect to, or take any other direct action regarding, any inquiry, expression of interest, proposal or offer that constitutes, or would reasonably be expected to lead to, an Acquisition Proposal;

(c) agree to, accept, approve, endorse or recommend (or publicly propose or announce any intention to agree to, accept, approve, endorse or recommend) any Acquisition Proposal; or

(d) enter into any letter of intent or any other Contract contemplating or otherwise relating to any Acquisition Proposal.

Section 5.12 Non-Compete; Non-Solicitation

(a) For a period of five (5) years commencing from the Closing Date, unless otherwise agreed by Purchaser in writing, Seller will not, and shall procure that none of its Affiliates will, establish or invest in any business operations located in the PRC (whether in the form of buying equity in such company, entering into a joint venture, or other similar transaction) for the purpose of engaging in flash assembly and testing in the PRC of any product identical with or substantially similar to the products being assembled or tested at the Company as of the Closing. Nothing in the foregoing restriction shall limit Seller's or any of its Affiliates' ability to engage with third party suppliers or contract manufacturers to provide flash assembly and test business to support Seller's or any of its Affiliates' business requirements, nor shall it restrict Seller's or any of its Affiliates' ability to acquire, merge with, invest in, form a joint venture with, or otherwise consummate a business combination with, any non-PRC company where a majority business of such non-PRC company and/or its subsidiaries does not consist of flash testing and assembly in the PRC.

(b) Other than the Excluded Employees and such other Company Employees as agreed by the Parties in writing,

(i) Seller shall not, and shall procure that its Affiliates will not, (x) within three (3) years after the Closing Date, offer employment to any employee of the Company, or attempt to induce any employee to leave the employment of the Company, except pursuant to a general advertisement or public solicitation which is not directed specifically to any such employee, (y) offer employment to or hire any employee of the Company, within one (1) year after his/her voluntary resignation as an employee of the Company, unless otherwise agreed by the Parties in writing, or (z) solicit any customer, any supplier or any third party having cooperative relationship with the Company to do business with any entity directly competing with the Company. Nothing in the foregoing restriction shall prevent Seller or any of its Affiliates from hiring any employee whose employment has been terminated by the Company for any reason.

(ii) Purchaser shall procure that the Company and its Subsidiaries (if any) will not, (x) within three (3) years after the Closing Date, offer employment to any employee of Seller or any Affiliate thereof, or attempt to induce any employee to leave the employment of Seller or such Affiliate, except pursuant to a general advertisement or public solicitation which is not directed specifically to any such employee, or (y) offer employment to or hire any employee of the Seller or such Affiliate, within one (1) year after his/her voluntary resignation as an employee of Seller or such Affiliate, unless otherwise agreed by the Parties in writing. Nothing in the foregoing restriction shall prevent the Company and its Subsidiaries (if any) from hiring any employee whose employment has been terminated by Seller and its Affiliates for any reason.

Section 5.13 Working Capital Support

(a) As soon as reasonably practical following the execution of this Agreement, the Parties shall use commercially reasonable efforts to procure each Controller Supplier (as defined below) to enter into supply agreements directly with the Company (the "Transition of Controller Suppliers") by December 31, 2024 (the period from the date of this Agreement through such date, the "Controller Transition Period").

(b) The Company shall commence purchasing controllers directly from the Controller Suppliers with whom the Company has entered into supply agreements starting from the first (1st) Business Day immediately following the Closing (or such later date as may be mutually agreed upon in writing between the Parties) (the "Direct Purchase Date").

(c) If all of the Controller Suppliers have entered into supply agreements directly with the Company during the Controller Transition Period (a "Full Transition"), in recognition of the additional working capital required to support the Transition of Controller Suppliers, Purchaser shall be entitled to deduct from the Second Installment Payment payable to Seller an amount equal to 80% of US$41,815,000 (or such other amount as may be mutually agreed upon in writing between the Parties in good faith prior to the Second Installment Payment as the working capital required to support the Full Transition, based on the then existing and/or reasonably projected working capital of the Company at the time of such agreement, the "Controller Working Capital Amount"), and the Purchase Price shall be deemed to be reduced accordingly.

(d) If less than all of the Controller Suppliers have entered into supply agreements directly with the Company during the Controller Transition Period (a "Partial Transition"), then the Controller Working Capital Amount shall be reduced pro rata (the "Adjusted Controller Working Capital Amount") based on the (i) value of the controllers supplied by Controller Suppliers who have entered into supply agreements with the Company, as compared to (ii) the value of the controllers supplied by Controller Suppliers who have not entered into supply agreements with the Company (the "Controller Pro Rata Value"). In the event of a Partial Transition, the Parties will negotiate in good faith and agree on the Controller Pro Rata Value prior to the Second Installment Payment, and upon mutual agreement in respect thereof, Purchaser shall be entitled to deduct from the Second Installment Payment payable to Seller 80% of the Adjusted Controller Working Capital Amount, and the Purchase Price shall be deemed to be reduced accordingly.

(e) Starting on the Direct Purchase Date, in the case of a Full Transition, the Company shall purchase all controllers that have been (i) designated for the Company's use and (ii) comprise Seller's Affiliate's controller inventory (including controllers held by Controller Suppliers on behalf of Seller's Affiliate) (such controllers, the "Seller Controller Inventory"). In the event of Partial Transition, starting on the Direct Purchase Date, the Company shall be obligated to purchase only the controllers within Seller's Controller Inventory attributable to the Controller Suppliers who entered into supply agreements with the Company. If the Company has insufficient cash to purchase Seller's Controller Inventory, the Parties will contribute additional working capital in proportion to their respective equity interest in the Company, as is necessary to purchase Seller's Controller Inventory (or any remaining portion thereof).

(f) For purpose of this Section 5.13, "Controller Suppliers" means the existing suppliers of controllers (excluding any of Seller's Affiliates) who provide controllers to one or more of Sellers' Affiliates (including SanDisk Storage Malaysia Sdn. Bhd.) for subsequent consignment sale and use by the Company as of the date hereof.

## ARTICLE VI
## CONDITIONS PRECEDENT

Section 6.1 Mutual Closing Conditions

The respective obligation of each Party to consummate the transactions contemplated hereby is subject to the satisfaction or waiver, to the extent permitted by applicable Law, on or prior to the Closing Date of the following conditions:

(a) AMR Submission Conditions. All of the conditions set forth in Section 6.4 below shall remain satisfied as of the Closing Date or shall have been waived by both Parties pursuant to Section 6.4, as the case may be.

(b) AMR Approval. The Company shall have obtained the AMR Approval.

Section 6.2 Purchaser's Closing Conditions

The obligation of Purchaser to consummate the transactions contemplated hereby is further subject to the satisfaction (or waiver by Purchaser) on or prior to the Closing Date of the following conditions:

(a) Performance of the Obligations of Seller. Seller shall have performed or complied with in all material respects all obligations and covenants required to be performed or complied with by it pursuant to this Agreement and any Ancillary Agreements to which Seller is a party and then in effect, in each case, at or prior to the Closing Date.

(b) Seller Closing Deliverables. Seller shall have delivered, or caused to be delivered, to Purchaser each of the deliverables described in Section 2.9(b).

(c) Officers' Certificates. Purchaser shall have received a certificate signed on behalf of Seller by their authorized officers (or functional equivalent) certifying as to the matters set forth in Section 6.2(a) as of the Closing Date.

Section 6.3 Seller's Closing Conditions

The obligation of Seller to consummate the transactions contemplated hereby is further subject to the satisfaction (or waiver by Seller) on or prior to the Closing Date of the following conditions:

(a) Performance of the Obligations of Purchaser. Purchaser shall have performed or complied with in all material respects all obligations and covenants required to be performed or complied with by it pursuant to this Agreement and any Ancillary Agreements to which Purchaser is a party and then in effect, in each case, at or prior to the Closing Date.

(b) Officers' Certificates. Seller shall have received a certificate signed on behalf of Purchaser by an executive officer of Purchaser certifying as to the matters set forth in Section 6.3(a) as of the Closing Date.

Section 6.4 Mutual Conditions for AMR Submission

The application for AMR Approval shall not be submitted unless and until all of the following conditions have been satisfied or waived by both Parties as of the AMR Submission Date, to the extent permitted by applicable Law:

(a) Antitrust Approval. The waiting period applicable to, or clearance with respect to, the transactions contemplated by this Agreement under the PRC Anti-Monopoly Law shall have terminated, expired or been obtained.

(b) No Injunctions or Restraints. No applicable Order or Law shall be in effect that prohibits or prevents the consummation of the transactions contemplated hereby (collectively, "Restraints").

(c) Transaction Documents. The Ancillary Agreements shall have been duly executed and delivered by the relevant parties, with each Ancillary Agreement (other than the Amended and Restated Articles of Association and the Registration ETA) to become effective as of the Closing Date.

(d) Excluded Employee. The Parties have reached agreement in writing on the list of the Excluded Employees.

(e) Post-Closing Bonus Plan. The Post-Closing Bonus Plan in form and substance reasonably satisfactory to each of Purchaser and Seller shall have been duly approved by the Company, with such plan to become effective as of the Closing Date.

Section 6.5 Purchaser's Conditions for AMR Submission

The submission of the application for AMR Approval is further subject to the satisfaction (or waiver by Purchaser in writing) of the following conditions as of the AMR Submission Date:

(a) Representations and Warranties of Seller.

(i) The Seller Fundamental Representations and each of the representations and warranties of Seller set forth in Article III that are qualified by materiality (including "Company Material Adverse Effect", "Seller Material Adverse Effect" or similar materiality qualification) shall be true and correct in all respects as of the AMR Submission Date as though made on such date with reference to the facts and circumstances then existing (except those representations and warranties that address matters as of a specified date, which shall be true and correct in all respects as of that specified date), except where the failure of such representations and warranties to be so true and correct is as a result of actions expressly permitted by or approved by Purchaser pursuant to Section 5.1; and

(ii) Each of the representations and warranties of Seller set forth in Article III (other than the Seller Fundamental Representations and such representations and warranties as described in Section 6.5(a)(ii) above) shall be true and correct as of the AMR Submission Date as though made on such date with reference to the facts and circumstances then existing (except those representations and warranties that address matters as of a specified date, which shall be true and correct as of that specified date), except where the failure of such representations and warranties to be so true and correct (1) is as a result of actions expressly permitted by or approved by Purchaser pursuant to Section 5.1, or (2) where such failures to be so true and correct that, individually or in the aggregate, have not had a Seller Material Adverse Effect or a Company Material Adverse Effect, as applicable.

(b) Performance of the Obligations of Seller. Seller shall have performed or complied with in all material respects all obligations and covenants required to be performed or complied with by it pursuant to this Agreement at or prior to the AMR Submission Date.

(c) Material Adverse Effect. Since the date of the Original Agreement, there shall not have occurred and be continuing a Company Material Adverse Effect.

(d) Seller Deliverables. Seller shall have delivered, or caused to be delivered, to Purchaser each of the deliverables described in Section 2.9(a).

(e) Officers' Certificates. Purchaser shall have received a certificate signed on behalf of Seller by their authorized officers (or functional equivalent) certifying as to the matters set forth in Section 6.5(a), Section 6.5(b) and Section 6.5(c) as of the AMR Submission Date.

(f) Unpaid Registered Capital. Seller shall have caused subscribed but unpaid registered capital of the Company in the amount of US$43,000,000 to be paid up through the recapitalization of the retained earnings of the Company in the same amount, and the Company shall have obtained a capital verification report issued by a qualified accounting firm in the PRC confirming that Seller has paid the registered capital of the Company in full amount (i.e., US$272,000,000). For avoidance of doubt, Seller bears the sole obligation to (i) pay up such registered capital, (ii) file any applicable Tax returns associated with such recapitalization of such retained earnings, and (iii) pay any applicable taxes associated therewith, and such obligation shall not be transferred to or assumed by Purchaser in any case.

(g) Application Documents for SAFE Registration Voucher. Seller shall have delivered, or caused to be delivered to Purchaser all the documents and materials to be executed and provided by Seller and the Company as Purchaser may reasonably require for the purpose of obtaining the SAFE Registration Voucher, provided that the new business license of the Company (and its photocopies affixed with the company chop of the Company) will be provided to Purchaser within one (1) Business Day following the AMR Approval. For avoidance of doubt, the application forms to be delivered by Seller shall include all information and supporting materials reasonably required of Seller and/or the Company and shall be duly executed by the Company and Seller (if applicable), except for the signature by the legal representative of the Company to be nominated by Purchaser.

(h) Consents. All Consents that are listed on Section 3.3(a) of the Seller Disclosure Letter shall have been received at or prior to the AMR Submission Date.

Section 6.6 Seller's Conditions for AMR Submission

The submission of the application for AMR Approval is further subject to the satisfaction (or waiver by Seller) of the following conditions as of the AMR Submission Date:

(a) Representations and Warranties of Purchaser. The representations and warranties of Purchaser shall be true and correct in all material aspects as of the AMR Submission Date as though made on such date with reference to the facts and circumstances then existing (except those representations and warranties that address matters only as of a specified date, which shall be true and correct in all respects as of that specified date).

(b) Performance of the Obligations of Purchaser. Purchaser shall have performed or complied with in all material respects all obligations and covenants required to be performed or complied with by it pursuant to this Agreement at or prior to the AMR Submission Date.

(c) Purchaser Deliverables. Purchaser shall have delivered, or cause to be delivered, to Seller each of the deliverables described in Section 2.10(a).

(d) Officer's Certificate. Seller shall have received a certificate signed on behalf of Purchaser by an executive officer of Purchaser certifying as to the matters set forth in Section 6.6(a) and Section 6.6(b) as of the AMR Submission Date.

Section 6.7 Frustration of Conditions

Neither of Purchaser or Seller may rely, either as a basis for not consummating the transactions contemplated by this Agreement or terminating this Agreement, on the failure of any condition set forth in Section 6.1, Section 6.2, Section 6.3, Section 6.4, Section 6.5 or Section 6.6 as the case may be, to be satisfied if such failure was caused by such Party's breach of any provision of this Agreement or failure to use its reasonable best efforts to consummate the transactions contemplated by this Agreement, as required by Section 5.3.

Section 6.8 Waiver of Conditions

Purchaser may, at any time, and in its sole discretion, by written notice to Seller, waive, in whole or in part, any of the conditions set forth in Section 6.2 and Section 6.5 (each a "Condition to Closing"). For the avoidance of doubt, if Purchaser decides to waive any Condition to Closing and to proceed with the transactions contemplated by this Agreement, the waiver of such Condition to Closing shall constitute a full waiver of all rights and remedies with respect to any breach of any representation or warranty, covenant or other agreement in respect of which such waiver was granted.

## ARTICLE VII
## TERMINATION; EXPENSES

Section 7.1 Termination

This Agreement may be terminated and the transactions contemplated hereby may be terminated and abandoned at any time prior to the Closing:

(a) by the mutual written consent of Seller and Purchaser;

(b) by either Seller or Purchaser:

(i) if the Closing has not occurred on or before December 31, 2024 (the "Longstop Date"); provided, however, that any right of the Party seeking to terminate this Agreement pursuant to this Section 7.1(b)(i) shall not be available to such Party if the failure to consummate the Closing by the Longstop Date arises out of, or results from, any material breach by such Party of any representation, warranty, covenant or obligation contained herein;

(ii) if any Restraint shall be in effect and shall have become final and non-appealable; provided, however, that any right of the Party seeking to terminate this Agreement under this Section 7.1(b)(ii) shall not be available to such Party if: (A) such Restraint arises out of, or results from, any material breach by such Party of any representation, warranty, covenant or obligation contained herein; or (B) such Party is then in material breach of any representation, warranty, covenant, or obligation contained herein;

(c) by Purchaser prior to the Closing, by written notice to Seller from Purchaser in accordance with Section 9.5, if

(i) there shall have been a breach by Seller of any of its representations, warranties, covenants or obligations set forth in this Agreement, which breach would result in the failure to satisfy any condition set forth in Section 6.1, Section 6.2, Section 6.4 or Section 6.5 and, in any such case, such breach (A) shall by its nature be incapable of being cured; or (B) if capable of being cured, shall not have been cured by the earlier of: (1) twenty (20) calendar days after written notice thereof shall have been received by Seller; or (2) the Longstop Date; provided, however, that the right of Purchaser under this Section 7.1(c)(i) shall not be available if Purchaser is then in material breach of any representation, warranty, covenant, or obligation contained herein; or

(ii) Seller fails to consummate the Closing within five (5) Business Days after the later date of (A) satisfaction or waiver (to the extent waiver is not prohibited by applicable Law) of the conditions set forth in Section 6.1, Section 6.3, Section 6.4 or Section 6.6 (other than those conditions that by their nature are to be satisfied at the Closing) and (B) such other date agreed in accordance with Section 2.8(a); provided, however, that, in the case of conditions set forth in Section 6.3 or Section 6.6, such conditions are capable of being satisfied if the Closing were to occur in accordance with the terms of this Agreement; and

(d) by Seller prior to the Closing, by written notice to Purchaser from Seller in accordance with Section 9.5, if

(i) there shall have been a breach by Purchaser of any of its representations, warranties, covenants or obligations set forth in this Agreement, which breach would result in the failure to satisfy any condition set forth in Section 6.1, Section 6.3, Section 6.4 or Section 6.6, and, in any such case, such breach (A) shall by its nature be incapable of being cured; or (B) if capable of being cured, shall not have been cured by the earlier of: (1) twenty (20) calendar days after written notice thereof shall have been delivered to Purchaser; or (2) the Longstop Date; provided, however, that the right of Seller under this Section 7.1(d)(i) shall not be available if Seller is then in material breach of any representation, warranty, covenant or obligation contained herein; or

(ii) Purchaser fails to consummate the Closing within five (5) Business Days after the later date of (A) satisfaction or waiver (to the extent waiver is not prohibited by applicable Law) of the conditions set forth in Section 6.1, Section 6.2, Section 6.4 or Section 6.5 (other than those conditions that by their nature are to be satisfied at the Closing) and (B) such other date agreed in accordance with Section 2.8(a); provided, however, that, in the case of conditions set forth in Section 6.2 or Section 6.5, such conditions are capable of being satisfied if the Closing were to occur in accordance with the terms of this Agreement.

(e) Notwithstanding anything to the contrary contained herein, this Agreement may be terminated and the transactions contemplated hereby may be terminated and abandoned by Seller, by written notice to Purchaser from Seller in accordance with Section 9.5, if Seller has not received the Estimated Closing Payment, together with any interest thereon, within twenty (20) Business Days following the Closing either due to Purchaser's failure to pay the Estimated Closing Payment, together with any interest thereon in accordance with Section 2.2(c) or as a result of Seller's failure to enforce and receive the Estimated Closing Payment under the Letter of Guarantee.

(f) For the avoidance of doubt, the failure of the Parties (or the applicable parties thereto) to agree on the terms, conditions and provisions of any of the Ancillary Agreements shall not entitle any Party to terminate this Agreement or the transactions contemplated hereby before the Longstop Date.

Section 7.2 Effect of Termination; Procedure

Except as set forth in this Section 7.2, if, and in the event, this Agreement is terminated pursuant to Section 7.1,

(a) this Agreement shall become void and of no effect with no liability or further obligation on the part of any Party hereto arising under or out of this Agreement, except that: (i) the provisions of Section 5.2(b) (Access to Information; Confidentiality), this Section 7.2 (Effect of Termination; Procedure), Section 7.3 (Fees and Expenses), Section 7.4 (Termination Fee), and Article IX (Miscellaneous), shall each survive the termination hereof; and (ii) no such termination shall relieve any Party of any liability for losses, costs and damages incurred by the other Party on account of breach by any Party hereto; and

(b) all filings, applications and other submissions made by any Party to any Person, including any Governmental Authority, in connection with the transactions contemplated by this Agreement shall, to the extent practicable and not legally prohibited, be withdrawn from such Person by such Party and any transfer of the Purchased Interest prior to payment of the Estimated Closing Payment, together with any interest thereon, in full hereunder shall be unwound. Without limiting the generality of the foregoing, in such case, Seller shall be entitled to require that Purchaser transfer the Purchased Interest back to Seller or to any other Person designated by Seller, and Purchaser agrees to take or cause to be taken, all actions, and to do, or cause to be done, all things necessary, proper or advisable (in each case, subject to applicable Laws) to transfer the Purchased Interest back to Seller or its designee as promptly as practicable, including (i) the preparation and filing of all forms, registrations and notices required to be submitted to SAMR and any other competent Governmental Authority, (ii) the taking of all reasonable actions necessary to obtain (and with cooperation with Seller and the Company in obtaining) any Consent, clearance, expiration or termination of waiting periods or other confirmation of, any Governmental Authority required to be obtained or made by Purchaser, the Company, Seller or any of Seller's designees in connection with the transfer of the Purchased Interest. The cost (including Taxes) for such unwinding transfer shall be borne (w) equally by Purchaser and Seller, if this Agreement is terminated pursuant to Section 7.1(a); (x) equally by

Purchaser and Seller, if this Agreement is terminated pursuant to Section 7.1(b); provided, however, to the extent such termination arises out of, or results from, any material breach by any Party of any representation, warranty, covenant or obligation contained herein, such cost shall be borne entirely by such breaching Party, (y) by Seller if this Agreement is terminated pursuant to Section 7.1(c), or (z) by Purchaser if this Agreement is terminated pursuant to Section 7.1(d) or Section 7.1(e).

Section 7.3 Fees and Expenses

Other than as expressly provided in this Agreement, including as specifically set forth in Section 2.5(f), Section 5.10 and this Section 7.3, all fees, costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the Party incurring such costs or expenses, whether or not the transactions contemplated by this Agreement are consummated.

Section 7.4 Termination Fee

(a) Purchaser Termination Fee. Purchaser shall pay to Seller US$10,000,000 by wire transfer of immediately available funds in U.S. Dollar to Seller's Account (such amount, the "Purchaser Termination Fee", together with the Seller Termination Fee, the "Termination Fee") within five (5) Business Days after termination:

(i) if this Agreement is terminated by Seller pursuant to Section 7.1(d);

(ii) if this Agreement is terminated by Seller pursuant to Section 7.1(e);

(iii) if this Agreement is terminated by Seller or Purchaser pursuant to Section 7.1(b)(i) and Seller would have been entitled to terminate this Agreement pursuant to Section 7.1(d) but for (A) such termination pursuant to Section 7.1(b)(i) or (B) the fact that the expiration of the three(3)-Business Day period described in Section 2.8(a) occurs after the Longstop Date; or

(iv) if this Agreement is terminated by Seller or Purchaser pursuant to Section 7.1(b)(ii) to the extent such Restraint arises under the PRC Anti-Monopoly Law.

(b) Seller Termination Fee. Seller shall pay to Purchaser US$10,000,000 by wire transfer of immediately available funds in U.S. Dollar to a bank account located in PRC as designated by Purchaser (such amount, the "Seller Termination Fee") within three (3) Business Days after termination:

(i) if this Agreement is terminated by Purchaser pursuant to Section 7.1(c); or

(ii) if this Agreement is terminated by Seller or Purchaser pursuant to Section 7.1(b)(i) and Purchaser would have been entitled to terminate this Agreement pursuant to Section 7.1(c) but for (A) such termination pursuant to Section 7.1(b)(i) or (B) the fact that the expiration of the three (3)-Business Day period described in Section 2.8(a) occurs after the Longstop Date.

(c) If any Party fails to pay such Termination Fee when due, such Party shall also pay to the other Party all of such other Party's costs and expenses (including attorneys' fees) in connection with all actions to collect such Termination Fee.

(d) Purchaser and Seller acknowledge that, if the Termination Fee is required to be paid as a result of a termination of this Agreement, Seller's or Purchaser's, as the case may be, right to receive such Termination Fee shall be in addition to any other remedy to which it is entitled according to the Law, and Seller's or Purchaser's, as the case may be, collection of the Termination Fee pursuant to this Section 7.4 shall not restrict, impair or otherwise limit Seller or Purchaser, as the case may be, from pursuing any other remedy to which it is entitled at Law or in equity.

## ARTICLE VIII
## INDEMNIFICATION

Section 8.1 Survival

(a) Subject to the limitations and other provisions of this Agreement, the representations and warranties of Seller on the Company contained in this Agreement shall survive the Closing and remain in full force and effect until the date that is eighteen (18) months following the Closing Date; provided, however, that (i) the Seller Fundamental Representations, shall survive until the third (3rd) anniversary of the Closing Date, and (ii) the representations and warranties with respect to Tax matters as set forth in Section 5.10 hereof shall survive until the fifth (5th) anniversary of the Closing Date.

(b) Subject to the limitations and other provisions of this Agreement, the representations and warranties of Purchaser contained in this Agreement shall survive the Closing and remain in full force and effect until the until the third (3rd) anniversary of the Closing Date.

(c) The covenants and agreements of the Seller and the Purchaser that by their terms apply or are to be performed in whole or in part after the Closing Date shall survive the Closing for the period provided in such covenants and agreements, if any, or until fully performed.

(d) Subject to the limitations and other provisions of this Agreement, the matters contained in Section 8.8 shall survive the Closing until the fifth (5th) anniversary of the Closing Date; provided, that any indemnification obligation arising pursuant to Section 8.8 solely to the extent attributable to any failure of the Company to comply with applicable Laws relating to transfer pricing shall survive the Closing until the ten (10th) anniversary of the Closing Date.

(e) No claim for the recovery of any Losses may be asserted against Seller under this Article VIII unless a written notice is received by Indemnifying Person pursuant to Section 8.5 on or prior to the date on which the representation and warranty or covenant upon which such claim is based ceases to survive as set forth in this Section 8.1, in which case such representation and warranty or covenant shall survive as to such claim until such claim has been finally resolved.

Section 8.2 Indemnification by Seller

Subject to the other terms and conditions of this Article VIII, from and after the Closing, Seller shall indemnify Purchaser (and its Representatives) against, and shall hold Purchaser (and its Representatives) harmless from and against, any and all Losses incurred or sustained by, or imposed upon, Purchaser (and its Representatives) as a result of or in connection with any of the following:

(a) any breach of or inaccuracy in any representation and warranty made by Seller in this Agreement as of the date of the Original Agreement or as of the Closing Date (as though such representation and warranty was made as of the Closing Date rather than the date of the Original Agreement, except in the case of any individual representation and warranty that by its terms speaks only as of a specific date or dates); and

(b) any breach of any covenant or agreement to be performed by the Company (to the extent and only to the extent such covenant or agreement is to be performed at or before the Closing) or Seller (before, at or after the Closing).

(c) any failure or delay by Seller to make any payments (including Seller's payment obligations under Section 7.4 and Section 8.2 and refund of any adjustment to the Estimated Closing Payment under the provisions in Section 2.2(b)(ii) and under Section 2.4(a)(ii), and Section 2.4(b)(i)), whereby Seller shall pay Purchaser interest thereon at the rate of 1% above SOFR per annum for the relevant days, compounding annually, accruing daily from the date that such amount first becomes payable and continuing until such amount, together with the interest payable thereon, has been paid in full.

Section 8.3 Indemnification by Purchaser

Subject to the other terms and conditions of this Article VIII, from and after the Closing, Purchaser shall indemnify Seller against, and shall hold Seller harmless from and against, any and all Losses incurred or sustained by, or imposed upon, Seller as a result of or in connection with any of the following:

(a) any breach of or inaccuracy in any representation and warranty made by Purchaser in this Agreement as of the date of the Original Agreement or as of the Closing Date (as though such representation and warranty was made as of the Closing Date rather than the date of the Original Agreement, except in the case of any individual representation and warranty that by its terms speaks only as of a specific date or dates); and

(b) any breach of any covenant or agreement to be performed by Purchaser (before, at or after the Closing).

(c) any failure or delay by Purchaser to make any payments under this Section 8.3, whereby Purchaser shall pay Seller interest thereon at the rate of 1% above SOFR per annum for the relevant days, compounding annually, accruing daily from the date that such amount first becomes payable and continuing until such amount, together with the interest payable thereon, has been paid in full.

Section 8.4 Certain Limitations

The Party making a claim under this Article VIII, together with its Representatives, are referred to as the "Indemnified Person," and the Party against whom such claims are asserted under this Article VIII is referred to as the "Indemnifying Person." The indemnification provided for in Section 8.2, Section 8.3 and Section 8.8 shall be subject to the following limitations:

(a) The Indemnifying Person shall not be liable to the Indemnified Person for indemnification under Section 8.2 or Section 8.3 (but not Section 8.8), as the case may be, until the aggregate amount of all Losses indemnifiable to the Indemnified Person under Section 8.2 or Section 8.3 exceeds two percent (2%) of the Base Purchase Price (the "Deductible"), in which event the Indemnifying Person shall only be required to pay or be liable for Losses in excess of the Deductible. With respect to any claim as to which the Indemnified Person may be entitled to indemnification under Section 8.2 or Section 8.3 (but not Section 8.8) as the case may be, the Indemnifying Person shall not be liable for any individual or series of related Losses which do not exceed one tenth of a percent (0.1%) of the Base Purchase Price (which Losses shall not be counted toward the Deductible).

(b) The aggregate amount of all Losses for which an Indemnifying Person shall be liable pursuant to Section 8.2, Section 8.3 in respect of Fraud and/or a breach of the Seller Fundamental Representations and Section 8.8 shall not in any event exceed an amount that is equal to the portion of the Base Purchase Price. Except as otherwise provided in the preceding sentence, the aggregate amount of all Losses for which an Indemnifying Person shall be liable pursuant to Section 8.2(a) or Section 8.3(a) shall not exceed an amount that is equal to twelve and a half percent (12.5%) of the Base Purchase Price.

(c) Payments by an Indemnifying Person pursuant to Section 8.2 or Section 8.3 in respect of any Loss shall be limited to the amount of any liability or damage that remains after deducting therefrom any insurance proceeds and any indemnity, contribution or other similar payment received by the Indemnified Person (or the Company) in respect of any such claim. The Indemnified Person shall use its commercially reasonable efforts to recover under insurance policies (if any) or indemnity, contribution or other similar agreements for any Losses prior to seeking indemnification under this Agreement. If the Indemnified Person receives any additional compensation from third parties after recovery from the Indemnifying Person in respect of an indemnification claim made by the Indemnified Person hereunder, the Indemnified Party shall return the corresponding amount (deducting Taxes) to the Indemnifying Person.

(d) To the extent an Indemnified Person recognizes any net Indemnification Tax Benefits as a result of any Losses for the Taxable year in which the indemnity payment is made, such Indemnified Person shall pay the amount of such Indemnification Tax Benefits by (i) reducing the amount of Losses by the amount of Indemnification Tax Benefits actually recognized (if such benefits are actually recognized prior to the date on which the indemnity payment is made) or (ii) making a payment to Seller equal to the Indemnification Tax

Benefit within thirty (30) days after such benefit is actually recognized if such benefit is actually recognized after the indemnity payment is made. For this purpose, the Indemnified Person shall be deemed to recognize a Tax benefit ("Indemnification Tax Benefit") with respect to a Taxable year if, and to the extent that, the Indemnified Person's liability for Taxes for such Taxable year, calculated by excluding any Tax items attributed to the Losses, exceeds the Indemnified Person's actual liability for Taxes for such Taxable year, calculated by taking into account any Tax items attributed to the Losses.

(e) In no event shall any Indemnifying Person be liable to any Indemnified Person for any punitive, incidental, consequential, special, or indirect damages, including loss of future revenue or income, loss of business reputation or opportunity relating to the breach or alleged breach of this Agreement, or diminution of value or any damages based on any type of multiple.

(f) No Indemnified Person shall be entitled to recover from the Indemnifying Person under this Agreement more than once in respect of the same claim or the same Losses. Any liability of the Indemnifying Person under this Agreement shall be determined without duplication of recovery by reason of the state of facts giving rise to such liability constituting a breach of more than one representation, warranty, covenant or agreement.

(g) The Indemnified Person shall take, and cause its Affiliates to take, all reasonable steps to mitigate any Loss upon becoming aware of any event or circumstance that would be reasonably expected to, or does, give rise thereto, including incurring costs only to the minimum extent necessary to remedy the breach that gives rise to such Loss.

(h) Seller shall not be liable under this Article VIII for any Losses based upon or arising out of any inaccuracy in or breach of any of the representations or warranties of Seller contained in this Agreement if Purchaser had Knowledge of such inaccuracy or breach prior to the date hereof.

(i) No Indemnifying Person shall be liable for any Losses arising from: (A) any Taxes of the Company incurred on the Closing Date after the Closing that are outside the ordinary course of business of the Company or inconsistent with past practices; (B) any Taxes of Purchaser (including the Company) attributable to a Tax period other than a Pre-Closing Tax Period; or (C) the amount, value or condition of, or any limitations on, any Tax asset or attribute of the Company (e.g., net operating loss or net operating carryforward), to the extent such assets or attributes are relevant to the ability of Seller or any of its Affiliates (including the Company) to utilize such Tax assets or Tax attributes in any Tax period other than a Pre-Closing Tax Period.

Section 8.5 Indemnification Procedures

(a) Any claim by an Indemnified Person on account of any Losses which does not result from a Third-Party Claim (a "Direct Claim") shall be asserted (and may only be asserted) by the Indemnified Person by giving the Indemnifying Person prompt written notice thereof. Such notice by the Indemnified Person shall describe the Direct Claim in reasonable detail, shall include copies of all written evidence thereof and shall indicate the estimated amount, if reasonably practicable, of the Losses that have been or may be sustained by the Indemnified Person.

The Indemnifying Person shall have fifteen (15) Business Days after its receipt of such notice to respond in writing to such Direct Claim. During such fifteen (15) Business Day-period, the Indemnified Person shall allow the Indemnifying Person and its advisors to investigate the matter or circumstance alleged to give rise to the Direct Claim, and whether and to what extent any amount is payable in respect of the Direct Claim and the Indemnified Person shall reasonably assist the Indemnifying Person's investigation by giving such information and assistance (including access to their premises and personnel and the right to examine and copy any accounts, documents or records) as the Indemnifying Person, or any of its advisors, may reasonably request. If the Indemnifying Person does not so respond within such fifteen (15) Business Day-period, the Indemnifying Person shall be deemed to have rejected such Direct Claim, in which case the Indemnified Person may pursue such other remedies as may be available for the benefit of the Indemnified Person on the terms and subject to the provisions of this Agreement.

(b) If the Indemnified Person receives notice of the assertion or commencement of any action, suit, claim or other legal proceeding made or brought by any Person who is not a Party to this Agreement or an Affiliate of a Party to this Agreement or a Representative of the foregoing (a "Third-Party Claim") against such Indemnified Person with respect to which the Indemnifying Person is obligated to provide indemnification under this Agreement, the Indemnified Person shall give the Indemnifying Person prompt written notice thereof. The failure to give such prompt written notice shall not, in and of itself, however, relieve the Indemnifying Person of its indemnification obligations, except and only to the extent that the Indemnifying Person forfeits rights or defenses by reason of such failure. Such notice by the Indemnified Person shall describe the Third-Party Claim in reasonable detail, shall include copies of all material written evidence thereof and shall indicate the estimated amount, if reasonably practicable, of the Losses that have been or may be sustained by the Indemnified Person. The Indemnifying Person shall have the right to participate in, or by giving written notice to the Indemnified Person, to assume the defense of any Third-Party Claim (to the extent permitted by applicable Law) at the Indemnifying Person's expense and by the Indemnifying Person's own counsel, and the Indemnified Person shall cooperate in good faith in such defense. In the event that the Indemnifying Person assumes the defense of any Third-Party Claim, it shall promptly notify the Indemnified Person, and the Indemnifying Person shall have the right to take such action as it deems necessary to avoid, dispute, defend, appeal or make counterclaims pertaining to any such Third-Party Claim in the name and on behalf of the Indemnified Person. If the Indemnifying Person elects not to compromise or defend such Third-Party Claim or fails to promptly notify the Indemnified Person in writing of its election to defend as provided in this Agreement, the Indemnified Person may pay, compromise, defend such Third-Party Claim and seek indemnification for any and all Losses based upon, arising from or relating to such Third-Party Claim and for which the Indemnifying Person would otherwise be liable for under this Agreement. So long as one Party controls the defense of a Third-Party Claim, the other Party shall have the right, at its own cost and expense, to participate in the defense of the Third-Party Claim with counsel selected by such other Party. The Indemnifying Person and the Indemnified Person shall cooperate with each other in all reasonable respects in connection with the defense of any Third-Party Claim, including making available records relating to such Third-Party Claim and furnishing, without expense (other than reimbursement of actual out-of-pocket expenses) to the defending party, management employees of the non-defending party as may be reasonably necessary for the preparation of the defense of such Third-Party Claim.

(c) Notwithstanding any other provision of this Agreement, the Indemnifying Person shall not enter into settlement of any Third-Party Claim without the prior written consent of the Indemnified Person, which shall not be unreasonably withheld.

Section 8.6 Payments

Once a Loss is agreed to by the Indemnifying Person or finally adjudicated to be payable pursuant to this Article VIII, the Indemnifying Person shall satisfy its obligations within fifteen (15) Business Days of such final, non-appealable adjudication by wire transfer of immediately available funds.

Section 8.7 Tax Consequences

All payments (if any) made pursuant to any indemnification obligations under this Article VIII will be treated as an adjustment to the Purchase Price for Tax purposes and such agreed treatment will govern for purposes of this Agreement, unless otherwise required by applicable Law. Seller shall be responsible for any application or filing with the competent Taxing Authority for any Tax deduction or return due to such adjustment to the Purchase Price, and Purchaser shall provide reasonable assistance.

Section 8.8 Pre-Closing Tax Indemnity

Without limiting the generality of Section 8.2 and regardless of whether there is any breach of the representations, warranties, agreement or covenants of any Seller, and whether disclosed or not, Seller shall indemnify Purchaser (and its Representatives) against, and shall hold Purchaser (and its Representatives) harmless from and against, any and all Losses incurred or sustained by, or imposed upon, Purchaser (and its Representatives) for:

(a) any Taxes of the Company for any Pre-Closing Tax Period;

(b) any PRC Withholding Taxes owed with respect to the transactions contemplated by this Agreement to the extent such PRC Withholding Taxes are not withheld from amounts otherwise payable pursuant to this Agreement.

Notwithstanding the foregoing, Seller shall not be required to indemnify Purchaser (or its Representatives) for any Taxes taken into account in the calculation of the Actual Working Capital Amount.

Section 8.9 Exclusive Remedy

Subject to Section 9.14, the Parties acknowledge and agree that from and after Closing their sole and exclusive remedy with respect to any and all claims (other than claims arising from Fraud) for Losses for any breach of any representation, warranty, covenant, agreement or obligation set forth herein or otherwise relating to the subject matter of this Agreement, shall be pursuant to the indemnification provisions set forth in this Article VIII. In furtherance of the foregoing, except with respect to Section 9.14, each Party hereby waives, from and after Closing,

to the fullest extent permitted under Law, any and all rights, claims and causes of action for Losses for any breach of any representation, warranty, covenant, agreement or obligation set forth herein or otherwise relating to the subject matter of this Agreement it may have against the other Party and their Affiliates and each of their respective Representatives arising under or based upon any Law, except pursuant to the indemnification provisions set forth in this Article VIII. Nothing in this Section 8.8 shall limit any Person's right to seek and obtain any remedy in the nature of specific performance, injunctive relief or protective order to which any Person shall be entitled pursuant to Section 9.14 or to seek any remedy on account of Fraud by any Party hereto.

Section 8.10 Determination of Losses

Solely for purposes of determining the amount of any Losses arising out of, relating to or resulting from any failure of any representation or warranty to be true and correct (but not for purposes of whether or not any representation or warranty is true and correct), such representations and warranties shall be considered without giving effect to "materiality," "material," "Company Material Adverse Effect," "in all material respects" or similar qualification (but not including Knowledge of Seller).

## ARTICLE IX
## MISCELLANEOUS

Section 9.1 Release

Effective as of the Closing, Purchaser, for itself and the Company, and their respective Affiliates and their respective successors, assigns, executors, heirs, officers, directors, managers, partners and employees (each a "Purchaser Releasor"), hereby irrevocably, knowingly and voluntarily releases, discharges and forever waives and relinquishes all claims, demands, obligations, liabilities, defenses, affirmative defenses, setoffs, counterclaims, Actions and causes of action of whatever kind or nature, whether known or unknown, which any of Purchaser Releasors has, might have or might assert now or in the future, against Seller and any of its Affiliates and their respective successors, assigns, officers, directors, managers, partners and employees or any of their respective heirs or executors (in each case in their capacity as such) (each, a "Seller Releasee"), arising out of, based upon or resulting from any Contract, transaction, event, circumstance, action, failure to act or occurrence of any sort or type, whether known or unknown, and which occurred, existed or was taken or permitted at or prior to the Closing; provided, however, that nothing contained in this Section 9.1 shall release, waive, discharge, relinquish or otherwise affect the rights or obligations of any party to the extent arising out of: (a) this Agreement and the Ancillary Agreements; or (b) any Contracts or other claims, demands, obligations, liabilities, defenses, affirmative defenses, setoffs, counterclaims, Actions and causes of action as set forth in Section 9.1 of the Seller Disclosure Letter. Purchaser shall, and shall cause the Company to, refrain from, directly or indirectly, asserting any claim or demand, or commencing, instituting or causing to be commenced any legal proceeding, of any kind against a Seller Releasee based upon any matter released pursuant to this Section 9.1.

Section 9.2 Disclosure

(a) Seller Disclosure Letter. The Seller Disclosure Letter and the Exhibits attached hereto and thereto shall be construed with, and as an integral part of, this Agreement. Each capitalized term used in any Exhibit or Seller Disclosure Letter but not otherwise defined therein shall be defined as set forth in this Agreement. The Seller Disclosure Letter has been arranged in numbered and lettered sections and subsections corresponding to the applicable numbered and lettered sections and subsections contained in this Agreement. Each item disclosed in the Seller Disclosure Letter shall constitute an exception to, or as applicable, disclosure for the purposes of, the representations and warranties (or covenants, as applicable) to which it makes reference and shall also be deemed to be constructively disclosed or set forth in any other section in the Seller Disclosure Letter relating to other sections of this Agreement to the extent a cross-reference is expressly made to such other section in the Seller Disclosure Letter or to the extent that the relevance of such item as an exception to, or as applicable, disclosure for the purposes of, another section of this Agreement is reasonably apparent from the face of such disclosure that such disclosure also qualifies or applies to, or is disclosed for the purposes of, such other section of this Agreement. The fact that any item of information is disclosed in the Seller Disclosure Letter shall not be construed to mean that such information is required to be disclosed by this Agreement. Such information and the dollar thresholds set forth herein shall not be used as a basis for interpreting the terms "material" or "Company Material Adverse Effect," "Seller Material Adverse Effect," "Purchaser Material Adverse Effect" or other similar terms in this Agreement. The inclusion of any item on the Seller Disclosure Letter shall not constitute an admission by the Company, Seller or Purchaser, as applicable, that such item is or is not material. No disclosure in the Seller Disclosure Letter relating to any possible breach or violation of any Contract, Law or Order shall be construed as an admission or indication that any such breach or violation exists or has actually occurred. The Seller Disclosure Letter and the information contained in the Seller Disclosure Letter are intended only to qualify or provide disclosure for the purposes of the applicable representations, warranties and covenants contained in this Agreement and shall not be deemed to expand in any way the scope or effect of any of such representations, warranties or covenants.

(b) General Disclosure. By way of general disclosure, the following matters are disclosed or deemed disclosed to Purchaser and shall be deemed to qualify in their entirety the representations and warranties given by Seller hereunder: (i) all circumstances, facts and matters that are described or provided for in the Original Agreement, this Agreement and the Ancillary Agreements; (ii) all documents and information contained in the VDR and made available to Purchaser or its Representatives no later than two (2) Business Days immediately prior to the date of the Original Agreement in connection with the purchase and sale of the Purchased Interest and the transactions contemplated hereby; and (iii) all circumstances, facts and matters that would be revealed by an online search of the files of the Company at the websites maintained by the PRC Governmental Authorities at the date of the Original Agreement.

Section 9.3 No Other Representations or Warranties

Except as expressly set forth herein, no Party makes any representation or warranty, express or implied, at law or in equity, with respect to itself, the Company or the assets, liabilities or operations of the foregoing, including with respect to merchantability or fitness for any particular purpose, and any such other representations or warranties are hereby expressly disclaimed and, in any event, any such other representations or warranties may not be relied upon by the other Party or any of its Affiliates and Representatives. No Person has been authorized by any Party to make any representation or warranty on its behalf and to the extent of any such purported representation and warranty it cannot be relied upon in any manner.

Section 9.4 Amendments; No Waivers

(a) Any provision of this Agreement may be amended or waived prior to the Closing Date, if, and only if, such amendment or waiver is in writing and signed, in the case of an amendment, by Seller and Purchaser, or in the case of a waiver, by the Party against whom the waiver is to be effective. Each Party hereby acknowledges and agrees that, notwithstanding the entrance into this Agreement by the Parties and the restatement of the Original Agreement hereby, the Seller Payment Guarantee and the Purchaser Corporate Guarantee, each executed and delivered as of the date of the Original Agreement, shall each remain in full force and effect pursuant to the terms and conditions of each thereof.

(b) No failure or delay by any Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided at Law or in equity.

Section 9.5 Notices

All notices, consents, requests, demands or other communications required or permitted hereunder shall be: (a) in writing and (b) sent by email or by overnight courier or delivered by hand to the addresses set forth below (or at such other address as such Party may designate by fifteen (15) days' advance written notice to the other Party to this Agreement given in accordance with this Section 9.5). Where a notice is sent by overnight courier service, service of the notice shall be deemed to have been effected by properly addressing, pre-paying and sending the notice by an overnight service through an internationally-recognized courier upon the earlier of (i) delivery and (ii) (or when delivery is refused) expiration of two (2) Business Days after the notice is sent as aforesaid. Where a notice is sent by electronic mail, service of the notice shall be deemed to be effected by properly addressing, and sending such notice through a transmitting organization, with a written confirmation of delivery, upon the day the same is sent as aforesaid, if such day is a Business Day and if sent during normal business hours of the recipient, otherwise the next Business Day. Notwithstanding the foregoing, to the extent a "with a copy to" address is designated, notice must also be given to such address in the manner above for such notice, request, consent or other communication hereunder to be effective.

(a) if to Purchaser, or, following the Closing, to the Company, to:

Room 111, No.200-1 Jichuang Road
Shanghai Pilot Free Trade Zone
The People's Republic of China
Attention: Legal Department
Facsimile: +86-21-38933500
Email: legal@jcetglobal.com

with a copy (which shall not constitute notice) to:

Room 111, No.200-1 Jichuang Road
Shanghai Pilot Free Trade Zone
The People's Republic of China
Attention: Qin Liu
Phone: +86-18019026930
Email: jane.liu@jcetglobal.com

and

JunHe LLP
26/F HKRI Centre One
HKRI Taikoo Hui, 288 Shimen Road (No.1)
Shanghai, 200041
The People's Republic of China
Attention: Daniel HE (何侃); Lily SUN(孙桢)
Email: hek@junhe.com; sunzhen@junhe.com

(b) if to Seller, or, prior to the Closing, to the Company, to:

c/o Western Digital Corporation
5601 Great Oaks Parkway
San Jose, CA 95119
United States of America
Attention: Bernard Shek, Vice President & Deputy General Counsel
Email: Bernard.Shek@wdc.com

and

O'Melveny & Myers LLP
610 Newport Center Drive
17th Floor
Newport Beach, CA 92660
United States of America

JC Plaza, 12th Floor
1225 Nanjing Road West
Shanghai, 200040
The People's Republic of China

Attention: Tony Wang; Walker J. Wallace
Phone: +1 949-823-6950; +86 21-2307-7000
Email: tonywang@omm.com; wwallace@omm.com

Section 9.6 Successors and Assigns

This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns; provided, however, that no Party may assign, delegate or otherwise transfer any of its rights or obligations pursuant to this Agreement without the prior written consent of the other Party. Any attempted assignment of this Agreement not in accordance with the terms of this Section 9.6 shall be void *ab initio.*

Section 9.7 Governing Law

This Agreement, and any and all claims arising directly or indirectly out of or otherwise concerning this Agreement (whether based in contract, tort or otherwise) shall be governed by, and construed and enforced in accordance with, the Laws of the PRC, except as set forth in Section 9.8(b).

Section 9.8 Dispute Resolution

(a) Any dispute, controversy, difference or claim (each, a "Dispute") arising out of or relating to this Agreement, including the existence, validity, interpretation, performance, breach or termination thereof or any dispute regarding non-contractual obligations arising out of or relating to it shall be referred to and finally resolved by arbitration administered by the Hong Kong International Arbitration Centre ("HKIAC") under the HKIAC Administered Arbitration Rules in force when the Notice of Arbitration is submitted in accordance with the HKIAC Administered Arbitration Rules.

(b) The Law of this arbitration clause shall be Hong Kong Law. The seat of arbitration shall be Hong Kong. The number of arbitrators shall be three. The arbitration proceedings shall be conducted in English.

(c) Each party to the arbitration shall cooperate with each other party to the arbitration in making full disclosure of and providing complete access to all information and documents requested by such other party in connection with such arbitral proceedings, subject only to any confidentiality obligations binding on such party.

(d) Seller (and together with WDT, if applicable) shall be entitled to (jointly) appoint one (1) arbitrator, Purchaser (and together with STATS ChipPAC) shall be entitled to (jointly) appoint one (1) arbitrator, while the third (3rd) arbitrator who shall be the presiding arbitrator, shall be jointly appointed the first two arbitrators and shall be qualified to practice Law in Hong Kong and the PRC. If the third (3rd) arbitrator has not been appointed within thirty (30) days after the Notice of Arbitration is given, the relevant appointment shall be made by the Secretary General of HKIAC.

(e) The award of the arbitral tribunal shall be final and binding upon the parties thereto, and the prevailing party may apply to a court of competent jurisdiction for enforcement of such award.

(f) The arbitral tribunal shall decide any Dispute submitted by the parties to the arbitration strictly in accordance with the substantive Laws of the PRC (without regard to principles of conflict of Laws thereunder) and shall not apply any other substantive Law.

(g) Any party to the Dispute shall be entitled to seek preliminary injunctive relief, if possible, from any court of competent jurisdiction pending the constitution of the arbitral tribunal.

(h) During the course of the arbitral tribunal's adjudication of the Dispute, this Agreement shall continue to be performed except with respect to the part in dispute and under adjudication.

(i) If any Action is commenced or threatened by any Party to enforce its rights under this Agreement against any other Person, the prevailing Party in such Action shall be reimbursed by the non-prevailing Party for all fees, costs and expenses, including reasonable attorneys' fees, arbitration and court costs, incurred by the prevailing Party in such Action. If a Party prevails in part, and loses in part, in such Action, the court, arbitrator or other adjudicator presiding over such Action will award a reimbursement of the fees, costs and expenses incurred by the prevailing Party on an equitable basis.

Section 9.9 Privilege; Counsel

O'Melveny & Myers LLP has been engaged by Seller to represent it in connection with the transactions contemplated hereby. Purchaser (on its behalf and on behalf of its Affiliates) hereby: (a) agrees that, in the event that a dispute arises after the Closing between Purchaser and/or any of its Affiliates, on the one hand, and Seller and/or any of its Affiliates, on the other hand, O'Melveny & Myers LLP may represent Seller or such Affiliate(s) in such dispute even though the interests of Seller or such Affiliate(s) may be directly adverse to Purchaser, the Company or any of their Affiliates and even though O'Melveny & Myers LLP may have represented the Company in a matter substantially related to such dispute, or may be handling ongoing matters for Purchaser or the Company; and (b) waives any conflict in connection therewith. Purchaser (on its behalf and on behalf of its Affiliates) further agrees that, notwithstanding anything in this Agreement to the contrary, as to all communications among O'Melveny & Myers LLP, Seller and/or the Company (including any of their respective directors, officers, managers, employees or agents) that relate in any way to this Agreement, the Ancillary Agreements or the transactions contemplated hereby or thereby or the negotiation of the same, the attorney-client privilege and the expectation of client confidence belongs to Seller and shall be controlled by Seller and shall not pass to or be claimed by Purchaser, the Company or any of their Affiliates after the Closing. Purchaser (on its behalf and on behalf of its Affiliates) further understands and agrees that the Parties have each undertaken reasonable efforts to prevent the disclosure of confidential or attorney-client privileged information. Notwithstanding those efforts, Purchaser (on its behalf and on behalf of its Affiliates) further understands and agrees that the consummation of the transactions contemplated by this Agreement may result in the inadvertent disclosure of information that may be confidential and/or subject to a claim of privilege. Purchaser (on its behalf and on behalf of its Affiliates) further understands and agrees that any disclosure of information that may be

confidential and/or subject to a claim of privilege shall not prejudice or otherwise constitute a waiver of any claim of privilege. Purchaser (on its behalf and on behalf of its Affiliates) agrees to use reasonable best efforts to return promptly any inadvertently disclosed information to the appropriate Person upon becoming aware of its existence. Notwithstanding the foregoing, in the event that a dispute arises after the Closing between Purchaser, the Company or any of their Affiliates and a third Person other than a Party to this Agreement, the Company may assert the attorney-client privilege to prevent disclosure of confidential communications by O'Melveny & Myers LLP to such third Person; provided, however, that the Company may not waive such privilege without the prior written consent of Seller. O'Melveny & Myers LLP shall be a third-party beneficiary for the purposes of this Section 9.9.

Section 9.10 Counterparts; Effectiveness

This Agreement may be executed in five (5) or more counterparts, each of which together shall be deemed an original, and all of which together shall constitute one and the same instrument.

Section 9.11 Entire Agreement

(a) This Agreement (including, without limitation, the Seller Disclosure Letter and the Exhibits, schedules, and annexes hereto and thereto) and the Ancillary Agreements constitute the entire agreement among the Parties with respect to the subject matter of this Agreement and supersede and cancel all prior agreements, negotiations, correspondence, undertakings, understandings and communications of the Parties, whether oral or written, with respect to the subject matter hereof and thereof, including without limitation, the Original Agreement, which shall be deemed amended, restated and superseded in its entirety by this Agreement, with effect from the execution and delivery of the Original Agreement.

(b) Following the execution of the Original Agreement and prior to the AMR Submission Date, Seller and Purchaser agree to execute the Equity Interest Transfer Agreement summarizing the material terms of this Agreement in the form agreed by the Parties (the "Registration ETA"), which will be submitted to the appropriate PRC Governmental Authority for the purpose of obtaining the AMR Approval and SAFE Registration Voucher and completing the required Tax reporting and filing. For the avoidance of doubt, should any provision of the Registration ETA conflict with the provisions under this Agreement, this Agreement shall prevail.

Section 9.12 Third-Party Beneficiaries

Except as expressly provided herein, this Agreement is for the sole benefit of the Parties and their successors and permitted assigns and nothing herein expressed or implied shall give or be construed to give any Person, other than the Parties and such successors and permitted assigns, any legal or equitable rights hereunder; provided, however, that the Parties hereto specifically acknowledge and agree that: (a) the provisions ofSection 9.1 are intended to be for the benefit of, and shall be enforceable by, each Seller Releasee; and (b) the provisions of Section 9.9 are intended to be for the benefit of, and shall be enforceable by, O'Melveny & Myers LLP.

Section 9.13 Severability

If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any Party. Upon such a determination, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the fullest extent possible and in a manner so as to as closely as possible provide the Parties with the intended benefits, net of the intended burdens, set forth in any such invalid, void or unenforceable provision.

Section 9.14 Specific Performance

(a) The Parties agree that irreparable damage, for which monetary damages (even if available) would not be an adequate remedy, shall occur in the event that the Parties do not perform the provisions of this Agreement (including failing to take such actions as are required of them hereunder to consummate the transactions contemplated hereby) in accordance with its specified terms or otherwise breach such provisions. Accordingly, subject to Section 9.14(b), the Parties acknowledge and agree that the Parties shall be entitled to an injunction, specific performance or other similar relief to prevent breaches or threatened breaches of this Agreement, or to enforce compliance with, the Parties' covenants and obligations under this Agreement, and to enforce specifically the terms and provisions hereof, in addition to any other remedy to which they are entitled at Law or in equity. Each of the Parties agrees that it shall not raise any objections to the availability of the remedy of specific performance to prevent or restrain breaches or threatened breaches of this Agreement, and to specifically enforce the terms and provisions of this Agreement, and shall not oppose the granting of an injunction, specific performance and/or other similar relief on any basis, including the basis that any other Party has an adequate remedy at Law or that any award of an injunction, specific performance and/or other similar relief is not an appropriate remedy for any reason at Law or in equity. Any Party seeking: (i) an injunction or injunctions to prevent or restrain breaches or threatened breaches of this Agreement; (ii) to enforce specifically the terms and provisions of this Agreement; and/or (iii) other similar relief, shall not be required to show proof of actual damages or to provide any bond or other security in connection with any such remedy.

(b) Notwithstanding anything in this Agreement to the contrary, however, the Parties hereby acknowledge and agree that Seller shall be entitled to specific performance to cause Purchaser to effect the Closing in accordance with Section 2.2(c) only if all conditions in Section 6.1 and Section 6.2 have been satisfied (other than any condition the failure of which to be satisfied is attributable, in whole or in substantial part, to a breach by Purchaser of its representations, warranties, covenants or agreements contained in this Agreement and other than conditions that, by their nature, are to be satisfied at the Closing and which were, at the time Seller is seeking specific performance, capable of being satisfied).

(c) The remedies available to either Party pursuant to this Section 9.14 shall be in addition to any other remedy to collect the Termination Fee pursuant to Section 7.4 or any other remedy to which it is entitled at Law or in equity, and the election to pursue an injunction or specific performance shall not restrict, impair or otherwise limit Seller from seeking to collect or collecting the Termination Fee pursuant to Section 7.4 or any other remedy to which it is entitled at Law or in equity.

Section 9.15 No Setoff

Each of the Parties hereto acknowledges and agrees (on its own behalf and on behalf of its Affiliates) that, except as provided under Section 2.4(d), it and its Affiliates shall have no right hereunder, under any Ancillary Agreement or pursuant to applicable Law to, and shall not, offset any amounts due and owing (or that becomes due and owing) pursuant to this Agreement or any Ancillary Agreement to any other party hereto or thereto or such other party's Affiliates against any amounts due and owing to such party or such party's Affiliates pursuant to this Agreement, the Ancillary Agreements or any other Contract.

Section 9.16 Construction

(a) The headings contained in this Agreement are solely for the purpose of reference, are not part of the agreement of the Parties and shall not in any way affect the meaning or interpretation of this Agreement. As used in this Agreement: (i) words in the singular shall be held to include the plural and vice versa and words of one gender shall be held to include the other genders as the context requires; (ii) the words "hereof," "herein," and "herewith" and words of similar import shall, unless the context otherwise states or requires, refer to this Agreement as a whole (including the Seller Disclosure Letter and the Exhibits, schedules and annexes hereto and thereto) and not to any particular provision of this Agreement, and all references to the preamble, recitals, Sections, Articles, Exhibits or Seller Disclosure Letter are to the preamble, recitals, Sections, Articles, Exhibits or Seller Disclosure Letter of, or to, this Agreement; (iii) the word "or" shall not be exclusive; (iv) the words "date hereof" shall mean the date of this Agreement, as set forth in the preamble hereto; (v) Purchaser and Seller shall be referred to herein individually as a "Party" and collectively as "Parties" (except where the context otherwise requires); (vi) any reference to any federal, state, local or non-U.S. statute or other Law shall be deemed also to refer to all rules and regulations promulgated thereunder; (vii) when calculating the number of days before which, within which or following which, any act is to be done or step is to be taken pursuant to this Agreement, the date from which such period is to be calculated shall be excluded from such count; provided, however, that, if the last calendar day of such period is a non-Business Day, the period in question shall end on the next succeeding Business Day; (viii) the measure of a period of one (1) month or year for the purposes of this Agreement shall be the date of the following month or year corresponding to the starting date; provided, however, that, if no corresponding date exists, then the end date of such period being measured shall be the next actual date of the following month or year (for example, one (1) month following February 18 is March 18 and one (1) month following March 31 is May 1); provided, further, that, if the last calendar day of such period is a non-Business Day, then the period in question shall end on the next succeeding Business Day; and (ix) for the purposes of this Agreement, references to the term "delivered by Seller,"

"delivered to Purchaser," "furnished to Purchaser," "made available to Purchaser" or similar expressions in Article III shall mean that Seller has: (A) posted such materials to the VDR, in a manner that enables viewing of such materials by Purchaser and its Representatives no later than two (2) Business Days immediately prior to the date of the Original Agreement or (B) set forth a copy of such materials in the Seller Disclosure Letter.

(b) The Parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any provisions of this Agreement.

Section 9.17 No Recourse

Purchaser acknowledges and agrees that no recourse under this Agreement or any documents or instruments delivered in connection with this Agreement (including, without limitation, the Ancillary Agreements) shall be had against any past, present or future director, officer, agent, employee, member, partner, shareholder, Affiliate or Representative of Seller or of any of its Affiliate or assignee thereof, as such, whether by the enforcement of any assessment or by any legal or equitable proceeding, or by virtue of any statute, regulation or other applicable Law, it being expressly agreed and acknowledged that no personal liability whatsoever shall attach to, be imposed on or otherwise be incurred by any past, present or future director, officer, agent, employee, member, partner, shareholder, Affiliate or Representative of Seller or of any of its Affiliate or assignee thereof, as such, for any obligation of Seller under this Agreement or any documents or instruments delivered in connection with this Agreement for any claim based on, in respect of or by reason of such obligations or their creation.

Section 9.18 Currency

Whenever conversion of values to or from any foreign currency for a particular date or period shall be required pursuant to this Agreement, such conversion shall be made using the closing mid-point rate for exchanges between those currencies quoted on the website of the People's Bank of China (e.g., for conversion between RMB and USD) for (a) the nearest Business Day for which that rate is so quoted on or prior to the Business Day of the conversion for all amounts (the "Exchange Rate").

When calculating whether or not a Loss exceeds the thresholds in Section 8.4, Losses shall be converted into U.S. Dollar by applying the Exchange Rate as of the date that the applicable indemnification claim is being made by a Party pursuant to Article VIII.

[Signature page follows]

IN WITNESS WHEREOF, each Party hereto has caused this Agreement to be duly executed by its authorized signatory as of the date first written above.

**SanDisk China Limited**

By: /s/ Brandi Steege
Name: Brandi Steege
Title: Director and Secretary

[Signature Page to Amended and Restated Equity Purchase Agreement]

IN WITNESS WHEREOF, each Party hereto has caused this Agreement to be duly executed by its authorized signatory as of the date first written above.

**JCET Management Co., Ltd. (长电科技管理有限公司)**

**(Company Chop)**

By: /s/ Li Zheng (郑力)
Name: Li Zheng (郑力)
Title: Legal Representative

[Signature Page to Amended and Restated Equity Purchase Agreement]

Without becoming a party to this Agreement, Western Digital Technologies, Inc. ("WDT") hereby assumes joint and several liability with Seller for any amounts payable by Seller to Purchaser hereunder (the "Seller Payment Guarantee"); provided, however, WDT shall be permitted to assign and transfer the Seller Payment Guarantee to the proposed successor in interest of the flash business in connection with the Flash Spin-off (the "Flash Spin-off Successor") so long as such assignee has credibility for performing such undertaking and has consolidated net assets of no less than One Billion U.S. Dollars (US$1,000,000,000). In connection with such assignment, the Flash Spin-off Successor shall execute and deliver a written undertaking to Purchaser expressly assuming the Seller Payment Guarantee and upon delivery thereof, WDT shall be fully relieved of the Seller Payment Guarantee and have no continuing obligations hereunder.

WDT warrants and undertakes to Purchaser as below:

WDT has the requisite corporate or other similar power, as applicable, and has the authority to execute and deliver this Agreement, and to provide the Seller Payment Guarantee. The execution and delivery of this undertaking and the consummation of the obligation contemplated herein has been duly and validly authorized by all requisite corporate, partnership or limited liability company or other similar action, as applicable on the part of WDT. This undertaking shall upon such execution and delivery by WDT to Purchaser, be the legal, valid and binding obligations of WDT, enforceable against WDT in accordance with it terms.

WDT acknowledges and accepts Section 9.7 (Governing Law) and Section 9.8 (Dispute Resolution), and such provisions are binding and enforceable against WDT as if it were a party thereto.

**Western Digital Technologies, Inc.**

By: /s/ Brandi Steege
Name: Brandi Steege
Title: Assistant Secretary

Without becoming a party to this Agreement, STATS ChipPAC Pte. Ltd. ("STATS ChipPAC") hereby assumes joint and several liability with Purchaser for the Purchaser Termination Fee payable by Purchaser to Seller hereunder (the "Purchaser Corporate Guarantee").

STATS ChipPAC warrants and undertakes to Seller as below:

STATS ChipPAC has the requisite corporate or other similar power, as applicable, and has the authority to execute and deliver this guarantee, and to provide the Purchaser Corporate Guarantee. The execution and delivery of this undertaking and the consummation of the obligation contemplated herein has been duly and validly authorized by all requisite corporate, partnership or limited liability company or other similar action, as applicable on the part of STATS ChipPAC. This undertaking shall upon such execution and delivery by STATS ChipPAC to Seller, be the legal, valid and binding obligation of STATS ChipPAC, enforceable against STATS ChipPAC in accordance with it terms.

STATS ChipPAC acknowledges and accepts Section 9.7 (Governing Law) and Section 9.8 (Dispute Resolution), and such provisions are binding and enforceable against STATS ChipPAC as if it were a party thereto.

**STATS ChipPAC Pte. Ltd.**

By: /s/ Li Zheng
Name: Li Zheng
Title: Director and Chief Executive Officer

**SANDISK CORPORATION**
**2025 Long-Term Incentive Plan**
**EFFECTIVE DATE: [•]**

## 1. GENERAL.

(a) **Purpose**. This Plan, through the granting of Awards, is intended to help the Company secure and retain the services of eligible award recipients, provide incentives for such persons to exert maximum efforts for the success of the Company and any Affiliate and provide a means by which the eligible award recipients may benefit from increases in the value of the Common Stock.

(b) **Eligible Award Recipients**. Employees, Directors and Consultants are eligible to receive Awards.

(c) **Available Awards**. This Plan provides for the grant of the following Awards: (i) Incentive Stock Options; (ii) Nonstatutory Stock Options; (iii) Stock Appreciation Rights; (iv) Substitute Awards; (v) Restricted Stock Awards; (vi) Restricted Stock Unit Awards; (vii) Performance Stock Awards; (viii) Cash Awards; and (ix) Other Stock-Based Awards.

## 2. ADMINISTRATION.

(a) **Administration**. This Plan shall be administered by and all Awards under this Plan shall be authorized by the Administrator. The "**Administrator**" means the Board or a Committee or Committees (or any subcommittee thereof) to which administration of this Plan has been delegated (within its delegated authority), as provided in Section 2(d).

(b) **Powers of Administrator**. The Administrator will have the power, subject to, and within the limitations of, the express provisions of this Plan:

(i) To determine: (A) who will be granted Awards; (B) when and how each Award will be granted; (C) what type of Award will be granted; (D) the provisions of each Award (which need not be identical), including when a person will be permitted to exercise or otherwise receive cash or Common Stock under the Award; (E) the number of shares of Common Stock subject to, or the cash value of, an Award; and (F) the Fair Market Value applicable to a Stock Award.

(ii) To construe and interpret this Plan and Awards granted under it, and to establish, amend and revoke rules and regulations for administration of this Plan and Awards. The Administrator, in the exercise of these powers, may correct any defect, omission or inconsistency in this Plan or in any Award Document or in the written terms of a Cash Award, in a manner and to the extent it will deem necessary or expedient to make this Plan or Award fully effective.

(iii) To settle all controversies regarding this Plan and Awards granted under it.

(iv) To accelerate, in whole or in part, or to extend, in whole or in part, the time during which an Award may be exercised or vest, or at which cash or shares of Common Stock may be issued.

(v) To amend or terminate this Plan at any time, subject toSections 10 and 11 of this Plan.

(vi) To submit any amendment to this Plan for stockholder approval, including, but not limited to, amendments to this Plan intended to satisfy the requirements of (A) Section 422 of the Code regarding "incentive stock options" or (B) Rule 16b-3 of the Exchange Act or any successor rule, if applicable.

(vii) To approve forms of Award Documents for use under this Plan and to amend the terms of any one or more outstanding Awards, subject to Section 10 of this Plan.

(viii) To generally exercise such powers and to perform such acts as the Administrator deems necessary or expedient to promote the best interests of the Company and that are not in conflict with the provisions of this Plan and/or Award Documents.

(ix) To adopt such procedures and sub-plans as are necessary or appropriate (A) to permit or facilitate participation in this Plan by persons eligible to receive Awards under this Plan who are not citizens of, subject to taxation by, or employed outside, the United States or (B) to allow Awards to qualify for special tax treatment in a jurisdiction other than the United States. Administrator approval will not be necessary for immaterial modifications to this Plan or any Award Document that are required for compliance with the laws of the relevant jurisdiction.

(c) **Minimum Vesting Requirements.** Notwithstanding any other provision of this Plan, Awards granted under this Plan may not become exercisable, vest or settle, in whole or in part, prior to the one-year anniversary of the date of grant, except (1) the Administrator may provide that Awards become exercisable, vest or settle in connection with a Change in Control, retirement, death or Disability or such other circumstances determined to be appropriate by the Administrator, (2) with respect to an Award that is granted in connection with a merger or other acquisition as a substitute or replacement award for awards held by grantees of the acquired business, and (3) annual Awards to Non-Employee Directors made in connection with the annual meeting of stockholders may vest on the Company's next annual meeting of stockholders (provided that such annual meetings are at least 50 weeks apart). Notwithstanding the foregoing, up to 5% of the aggregate number of Shares authorized for issuance under this Plan (as described in Section 3(a)(1) hereof) may be issued without regard to the restrictions of the foregoing sentence.

(d) **Delegation to Committee**.

(i) General. The Board may delegate some or all of the administration of this Plan to a Committee or Committees. If administration of this Plan is delegated to a Committee, the Committee will have, in connection with the administration of this Plan, the powers theretofore possessed by the Board that have been delegated to the Committee, including the power to delegate to a subcommittee of the Committee any of the administrative powers the Committee is authorized to exercise. Any delegation of administrative powers will be reflected in the charter of the Committee to which the delegation is made, or resolutions, not inconsistent with the provisions of this Plan, adopted from time to time by the Board or Committee (as applicable). The Committee may, at any time, abolish the subcommittee and/or revest in the Committee any powers delegated to any subcommittee. Unless otherwise provided by the Board, delegation of authority by the Board to a Committee, or to an Officer or employee pursuant to Section 2(e), does not limit the authority of the Board, which may continue to exercise any authority so delegated and may concurrently administer this Plan with the Committee and may, at any time, revest in the Board some or all of the powers previously delegated.

(ii) Rule 16b-3 Compliance. If required for compliance with Rule 16b-3 of the Exchange Act, the Committee may consist solely of two or more Non-Employee Directors.

(e) **Delegation to an Officer**. The Administrator may delegate to one or more Officers the authority to do one or both of the following, to the maximum extent permitted by applicable law: (i) designate Employees who are not Officers to be recipients of Stock Awards and the terms of such Stock Awards; and (ii) determine the number of shares of Common Stock to be subject to such Stock Awards granted to such Employees; provided, however, that the Board or Committee resolutions regarding such delegation will specify the total number of shares of Common Stock that may be subject to the Stock Awards granted by such Officer and that such Officer may not grant a Stock Award to himself or herself. Any such Stock Awards will be granted on a form that is substantially the same as the form of Stock Award Document approved by the Committee or the Board for use in connection with such Stock Awards, unless otherwise provided for in the resolutions approving the delegation authority.

(f) **Effect of Administrator's Decision**. All determinations, interpretations and constructions made by the Administrator in good faith will not be subject to review by any person and will be final, binding and conclusive on all persons. No director, officer or agent of the Company or any of its Subsidiaries shall be liable for any such action or determination taken or made or omitted in good faith.

## 3. SHARES SUBJECT TO THIS PLAN.

(a) **Share Reserve**.

(i) Subject to Section 9(a) relating to Capitalization Adjustments, the aggregate maximum number of shares of Common Stock that may be issued pursuant to Stock Awards from and after the Effective Date will not exceed [•] shares of Common Stock (the "**Share Reserve**").

(ii) For clarity, the Share Reserve is a limitation on the number of shares of Common Stock that may be issued under this Plan. As a single share may be subject to grant more than once (e.g., if a share subject to a Stock Award is forfeited, it may be made subject to grant again as provided in Section 3(b) below), the Share Reserve is not a limit on the number of Stock Awards that can be granted. For the avoidance of doubt, the grant of a Cash Award, and its subsequent settlement, or Other Stock-Based Award settled in cash shall in no event reduce the number of shares of Common Stock available for issuance under this Plan.

(iii) Shares may be issued under the terms of this Plan in connection with a merger or acquisition as permitted by Nasdaq Listing Rule 5635(c), NYSE Listed Company Manual Section 303A.08, AMEX Company Guide Section 711 or other applicable rule, and such issuance will not reduce the number of shares available for issuance under this Plan.

(iv) Substitute Awards shall not reduce the shares of Common Stock authorized for issuance under this Plan or authorized for grant to a Participant in any calendar year. Additionally, in the event that a company acquired by the Company or any Subsidiary, or with which the Company or any Subsidiary combines, has shares available under a pre-existing plan approved by stockholders and not adopted in contemplation of such acquisition or combination, the shares available for grant pursuant to the terms of such pre-existing plan (as adjusted, to the extent appropriate, using the exchange ratio or other adjustment or valuation ratio or formula used in such acquisition or combination to determine the consideration payable to the holders of common stock of the entities party to such acquisition or combination) may be used for Awards under this Plan and shall not reduce the shares of Common Stock authorized for issuance under this Plan; *provided* that Awards using such available shares shall not be made after the date awards or grants could have been made under the terms of the pre-existing plan, absent the acquisition or combination, and shall only be made to individuals who were employees of such acquired or combined company before such acquisition or combination.

(v) Subject to Section 9(a) relating to Capitalization Adjustments, the total compensation paid to any oneNon-Employee Director during any Grant Year shall not exceed $900,000, including the aggregate Fair Market Value on the date of grant of Shares subject to Awards granted under this Plan and any cash compensation paid or payable. The limitation described in this Section shall be determined without regard to amounts paid to a Non-Employee Director during or for any period in which such individual was an employee or consultant, and any severance and other payments paid to a Non-Employee Director for such director's prior or current service to the Company or any Subsidiary other than serving as a director shall not be taken into account in applying the limit provided above. For the avoidance of doubt, any compensation that is deferred shall be counted toward this limit for the year in which it was first earned, and not when paid or settled. For this purpose, "**Grant Year**" means the annual period commencing on the date of the Company's annual meeting of stockholders and concluding on the day immediately preceding the next annual meeting of stockholders, or such other annual period as the Committee may determine in its discretion.

(b) **Reversion of Shares to the Share Reserve**. The Share Reserve shall be subject to the following adjustments:

(i) If a Stock Award (or Substituted WDC Award) or any portion of a Stock Award (or Substituted WDC Award) (A) expires, is cancelled or forfeited or otherwise terminates without all of the shares covered by the Stock Award having been issued or (B) is settled in cash or a form other than shares of Common Stock, such expiration, cancellation, forfeiture, termination or settlement shall result in the shares of Common Stock subject to such Stock Award being added back to the shares of Common Stock available for Awards under this Plan.

(ii) Shares that are exchanged by a Participant or withheld by the Company as full or partial payment in connection with any Award under this Plan, and shares exchanged by a Participant or withheld by the Company or one of its Subsidiaries to satisfy the tax withholding obligations related to any Award under this Plan, shall be treated as follows: (A) to the extent that the exchange or withholding occurred with respect to an Option or SAR under this Plan, such shares shall not be available for subsequent awards under this Plan and (B) to the extent that the exchange or withholding occurs with respect to an Award under this Plan other than an Option or SAR, such shares shall be added back to the shares of Common Stock available for Awards under this Plan.

(iii) In the event that shares of Common Stock are delivered in respect of dividend equivalents granted under this Plan, only the actual number of shares delivered with respect to the award shall reduce (or otherwise offset) the number of shares of Common Stock that are available for issuance under this Plan.

(iv) To the extent that shares of Common Stock are delivered pursuant to the exercise of an Option or SAR under this Plan, the entire number of shares subject to the award shall be counted against the Share Reserve. Shares repurchased on the open market with the proceeds received by the Company upon the exercise of an Option or SAR under this Plan shall not be added to the shares of Common Stock available for Awards under this Plan.

(c) **Incentive Stock Option Limit**. Subject to Section 9(a) relating to Capitalization Adjustments, the aggregate maximum number of shares of Common Stock that may be issued on the exercise of Incentive Stock Options will be [ ] shares of Common Stock.

(d) **Source of Shares**. The stock issuable under this Plan will be shares of authorized but unissued or reacquired Common Stock, including shares repurchased by the Company on the open market or otherwise or shares classified as treasury shares.

(e) **No Fractional Shares**. Unless otherwise expressly provided by the Administrator, no fractional shares shall be delivered under this Plan. The Administrator may pay cash in lieu of any fractional shares in settlements of Awards under this Plan.

**4. ELIGIBILITY.**

(a) **Eligibility for Specific Stock Awards**. Incentive Stock Options may be granted only to employees of the Company or a "parent corporation" or "subsidiary corporation" thereof (as such terms are defined in Sections 424(e) and 424(f) of the Code). Stock Awards other than Incentive Stock Options may be granted to Employees, Directors and Consultants.

(b) **Ten Percent Stockholders**. A Ten Percent Stockholder will not be granted an Incentive Stock Option unless the exercise price of such Option is at least 110% of the Fair Market Value on the date of grant and the Option is not exercisable after the expiration of five years from the date of grant.

**5. PROVISIONS RELATING TO OPTIONS AND STOCK APPRECIATION RIGHTS.**

Each Option or SAR will be in such form and will contain such terms and conditions as the Administrator deems appropriate. All Options will be separately designated Incentive Stock Options or Nonstatutory Stock Options at the time of grant, and, if certificates are issued, a separate certificate or certificates will be issued for shares of Common Stock purchased on exercise of each type of Option. If an Option is not specifically designated as an Incentive Stock Option, or if an Option is designated as an Incentive Stock Option but some portion or all of the Option fails to qualify as an Incentive Stock Option under the applicable rules, then the Option (or portion thereof) will be a Nonstatutory Stock Option. The provisions of separate Options or SARs need not be identical; provided, however, that each Award Document will conform to (through incorporation of provisions hereof by reference in the applicable Award Document or otherwise) the substance of each of the following provisions:

(a) **Term**. Subject to Section 4(b) regarding Ten Percent Stockholders, no Option or SAR will be exercisable after the expiration of ten (10) years from the date of its grant or such shorter period specified in the Award Document.

(b) **Exercise Price**. Subject to Section 4(b) regarding Ten Percent Stockholders, the exercise or strike price of each Option or SAR will be not less than 100% of the Fair Market Value of the Common Stock subject to the Option or SAR on the date the Award is granted. Notwithstanding the foregoing, an Option or SAR may be granted with an exercise or strike price lower than 100% of the Fair Market Value of the Common Stock subject to the Award if such Award is a Substitute Award and in a manner consistent with the provisions of Section 409A of the Code and, if applicable, Section 424(a) of the Code. Each SAR will be denominated in shares of Common Stock equivalents.

(c) **Purchase Price for Options**. The purchase price of Common Stock acquired pursuant to the exercise of an Option may be paid, to the extent permitted by applicable law and as determined by the Administrator in its sole discretion, by any combination of the methods of payment set forth below. The Administrator will have the authority to grant Options that do not permit all of the following methods of payment (or otherwise restrict the ability to use certain methods) and to grant Options that require the consent of the Company to use a particular method of payment. The purchase price shall be denominated in U.S. dollars. The permitted methods of payment are as follows:

(i) a reduction in compensation otherwise payable to the Participant or for services rendered by the Participant;

(ii) by cash, check, bank draft or money order payable to the Company;

(iii) pursuant to a program developed under Regulation T as promulgated by the United States Federal Reserve Board or a successor regulation, or a similar rule in a foreign jurisdiction of domicile of a Participant, that, prior to or contemporaneously with the issuance of the stock subject to the Option, results in either the receipt of cash (or check) by the Company or the receipt of irrevocable instructions to pay the aggregate exercise price to the Company from the proceeds of sale of such stock;

(iv) pursuant to a "cashless exercise" with a third party who provides financing for the purposes of (or who otherwise facilitates) the purchase or exercise of awards, including through same-day sales;

(v) by delivery to the Company (either by actual delivery or attestation) of shares of Common Stock;

(vi) by a "net exercise" arrangement pursuant to which the Company will reduce the number of shares of Common Stock issuable upon exercise by the largest whole number of shares with a Fair Market Value that does not exceed the aggregate exercise price; provided, however, that the Company will accept cash or other payment from the Participant to the extent of any remaining balance of the aggregate exercise price not satisfied by such reduction in the number of whole shares to be issued. Shares of Common Stock will no longer be subject to an Option and will not be exercisable thereafter to the extent that (A) shares issuable upon exercise are used to pay the exercise price pursuant to the "net exercise," (B) shares are delivered to the Participant as a result of such exercise, and (C) shares are withheld to satisfy tax withholding obligations; or

(vii) in any other form of legal consideration that may be acceptable to the Administrator and specified in the applicable Award Document.

(d) **Exercise and Payment of a SAR**. To exercise any outstanding SAR, the Participant must provide written notice of exercise to the Company in compliance with the provisions of the Stock Appreciation Right Award Document evidencing such SAR. The appreciation distribution payable on the exercise of a SAR will be not greater than an amount equal to the excess of (A) the aggregate Fair Market Value (on the date of the exercise of the SAR) of a number of shares of Common Stock equal to the number of Common Stock equivalents in which the Participant is vested under such SAR (with respect to which the Participant is exercising the SAR on such date), over (B) the aggregate strike price of the number of Common Stock equivalents with respect to which the Participant is exercising the SAR on such date. The appreciation distribution may be paid in Common Stock, in cash, in any combination of the two or in any other form of consideration, as determined by the Administrator and contained in the Award Document evidencing such SAR.

(e) **Transferability of Options and SARs**. The Administrator may, in its sole discretion, impose such limitations on the transferability of Options and SARs as the Administrator determines. In the absence of such a determination by the Administrator to the contrary, the following restrictions on the transferability of Options and SARs will apply:

(i) Restrictions on Transfer. An Option or SAR will not be transferable except by will or by the laws of descent and distribution (or pursuant to subsections (ii) and (iii) below), and will be exercisable during the lifetime of the Participant only by the Participant. The Administrator may permit transfer of the Option or SAR in a manner that is not prohibited by applicable tax and securities laws (including, but not limited to, a transfer to the Company to the extent consistent with applicable tax and securities laws). Except as explicitly provided herein, neither an Option nor a SAR may be transferred for consideration.

(ii) Domestic Relations Orders. Subject to the approval of the Administrator or a duly authorized Officer, an Option or SAR may be transferred pursuant to the terms of a qualified domestic relations order, official marital settlement agreement or other divorce or separation instrument as permitted by U.S. Treasury Regulation 1.421-1(b)(2) or other applicable law. If an Option is an Incentive Stock Option, such Option may be deemed to be a Nonstatutory Stock Option as a result of such transfer.

(iii) Beneficiary Designation. Subject to the approval of the Administrator or a duly authorized Officer, a Participant may, by delivering written notice to the Company or designated broker, in a form approved by the Company (or the designated broker), designate a third party who, on the death of the Participant, will thereafter be entitled to exercise the Option or SAR and receive the Common Stock or other consideration resulting from such exercise. In the absence of such a designation, the executor or administrator of the Participant's estate will be entitled to exercise the Option or SAR and receive the Common Stock or other consideration resulting from such exercise. However, the Company may prohibit designation of a beneficiary at any time, including due to any conclusion by the Company that such designation would be inconsistent with the provisions of applicable laws.

(f) **Vesting Generally**. The total number of shares of Common Stock subject to an Option or SAR may vest and therefore become exercisable in periodic installments that may or may not be equal. The Option or SAR may be subject to such other terms and conditions on the time or times when it may or may not be exercised (which may be based on the satisfaction of performance goals or other criteria) as the Administrator may deem appropriate. The vesting provisions of individual Options or SARs may vary. The provisions of this Section 5(f) are subject to any Option or SAR provisions governing the minimum number of shares of Common Stock as to which an Option or SAR may be exercised.

(g) **Termination of Continuous Service**. Except as otherwise provided in the applicable Award Document or other agreement between the Participant and the Company, if a Participant's Continuous Service terminates (other than for Cause and other than upon the Participant's death or Disability), the Participant may exercise his or her Option or SAR (to the extent that the Participant was entitled to exercise such Award as of the date of termination of Continuous Service) within the period of time ending on the earlier of (i) the date three months following the termination of the Participant's Continuous Service and (ii) the expiration of the term of the Option or SAR as set forth in the applicable Award Document. If, after termination of Continuous Service, the Participant does not exercise his or her Option or SAR within the applicable time frame, the Option or SAR will terminate.

(h) **Extension of Termination Date**. Except as otherwise provided in the applicable Award Document or other agreement between the Participant and the Company, if the exercise of an Option or SAR following the termination of the Participant's Continuous Service (other than for Cause and other than upon the Participant's death or Disability) would be prohibited at any time solely because the issuance of shares of Common Stock would violate the registration requirements under the Securities Act, then the Option or SAR will terminate on the earlier of (i) the expiration of a total period of three (3) months (that need not be consecutive) after the termination of the Participant's Continuous Service during which the exercise of the Option or SAR would not be in violation of such registration requirements, and (ii) the expiration of the term of the Option or SAR as set forth in the applicable Award Document. In addition, unless otherwise provided in a Participant's applicable Award Document or other agreement between the Participant and the Company, if the sale of any Common Stock received upon exercise of an Option or SAR following the termination of the Participant's Continuous Service (other than for Cause) would violate the Company's insider trading policy, and the Company does not waive the potential violation of the policy or otherwise permit the sale, or allow the Participant to surrender shares of Common Stock to the Company in satisfaction of any exercise price and/or any withholding obligations under Section 8(g), then the Option or SAR will terminate on the earlier of (i) the expiration of a period of months (that need not be consecutive) equal to the applicable post-termination exercise period after the termination of the Participant's Continuous Service during which the sale of the Common Stock received upon exercise of the Option or SAR would not be in violation of the Company's insider trading policy, or (ii) the expiration of the term of the Option or SAR as set forth in the applicable Award Document.

(i) **Disability of Participant**. Except as otherwise provided in the applicable Award Document or other agreement between the Participant and the Company, if a Participant's Continuous Service terminates as a result of the Participant's Disability, the Participant may exercise his or her Option or SAR (to the extent that the Participant was entitled to exercise such Option or SAR as of the date of termination of Continuous Service), but only within such period of time ending on the earlier of (i) the date twelve (12) months following such termination of Continuous Service, and (ii) the expiration of the term of the Option or SAR as set forth in the applicable Award Document. If, after termination of Continuous Service, the Participant does not exercise his or her Option or SAR within the applicable time frame, the Option or SAR (as applicable) will terminate.

(j) **Death of Participant**. Except as otherwise provided in the applicable Award Document, or other agreement between the Participant and the Company, if (i) a Participant's Continuous Service terminates as a result of the Participant's death, or (ii) the Participant dies within the period (if any) specified in this Plan or the applicable Award Document, or other agreement between the Participant and the Company, for exercisability after the termination of the Participant's Continuous Service (for a reason other than death), then the Option or SAR may be exercised (to the extent the Participant was entitled to exercise such Option or SAR as of the date of death) by the Participant's estate, by a person who acquired the right to exercise the Option or SAR by bequest or inheritance or by a person designated to exercise the Option or SAR upon the Participant's death, but only within the period ending on the earlier of (i) the date thirty-six (36) months following the date of death, and (ii) the expiration of the term of such Option or SAR as set forth in the applicable Award Document. If, after the Participant's death, the Option or SAR is not exercised within the applicable time frame, the Option or SAR will terminate.

(k) **Termination for Cause**. Except as explicitly provided otherwise in a Participant's Award Document or other individual written agreement between the Company or any Subsidiary and the Participant, if a Participant's Continuous Service is terminated for Cause, the Option or SAR will terminate upon the date on which the event giving rise to the termination for Cause first occurred, and the Participant will be prohibited from exercising his or her Option or SAR from and after the date on which the event giving rise to the termination for Cause first occurred (or, if required by law, the date of termination of Continuous Service). If a Participant's Continuous Service is suspended pending an investigation of the existence of Cause, all of the Participant's rights under the Option or SAR will also be suspended during the investigation period.

(l) **No Repricing or Cash Buyout**. Neither an Option nor SAR may be modified to reduce the exercise price thereof nor may a new Option, SAR or other Award at a lower price be substituted or exchanged for a surrendered Option or SAR nor may an outstanding Option or SAR with an exercise price per share that equals or exceeds the Fair Market Value of one share of Common Stock be exchanged or substituted for cash (including a Cash Award) (other than adjustments or substitutions in accordance with Section 9(a) relating to Capitalization Adjustments), unless such action is approved by the stockholders of the Company.

**6. PROVISIONS OF STOCK AWARDS OTHER THAN OPTIONS AND SARS.**

(a) **Restricted Stock Awards**. Each Restricted Stock Award Document will be in such form and will contain such terms and conditions as the Administrator deems appropriate. To the extent consistent with the Company's bylaws, at the Administrator's election, shares of Common Stock may be (x) held in book entry form subject to the Company's instructions until any restrictions relating to the Restricted Stock Award lapse, or (y) evidenced by a certificate, which certificate will be held in such form and manner as determined by the Administrator. The terms and conditions of Restricted Stock Award Documents may change from time to time, and the terms and conditions of separate Restricted Stock Award Documents need not be identical. Each Restricted Stock Award Document will conform to (through incorporation of the provisions hereof by reference in the agreement or otherwise) the substance of each of the following provisions:

(i) Consideration. A Restricted Stock Award may be awarded in consideration for (A) cash, check, bank draft or money order payable to the Company, (B) past services to the Company or a Subsidiary, or (C) any other form of legal consideration (including future services) that may be acceptable to the Administrator, in its sole discretion, and permissible under applicable law.

(ii) Vesting. Shares of Common Stock awarded under the Restricted Stock Award Document may be subject to forfeiture to the Company in accordance with a vesting schedule and subject to such conditions as may be determined by the Administrator.

(iii) Termination of Participant's Continuous Service. If a Participant's Continuous Service terminates, the Company may receive through a forfeiture condition or a repurchase right, any or all of the shares of Common Stock held by the Participant that have not vested as of the date of termination of Continuous Service under the terms of the Restricted Stock Award Document.

(iv) Transferability. Common Stock issued pursuant to an Award, and rights to acquire shares of Common Stock under the Restricted Stock Award Document, will be transferable by the Participant only upon such terms and conditions as are set forth in the Restricted Stock Award Document, as the Administrator determines in its sole discretion, so long as such Common Stock remains subject to the terms of the Restricted Stock Award Document. Notwithstanding the foregoing or anything in this Plan or the Restricted Stock Award Document to the contrary, no Restricted Stock Award may be transferred to any financial institution without prior stockholder approval.

(v) Dividends. Any dividends paid on Restricted Stock will be subject to the same vesting and forfeiture restrictions as apply to the shares subject to the Restricted Stock Award to which they relate.

(b) **Restricted Stock Unit Awards**. Each Restricted Stock Unit Award Document will be in such form and will contain such terms and conditions as the Administrator deems appropriate. The terms and conditions of Restricted Stock Unit Award Documents may change from time to time, and the terms and conditions of separate Restricted Stock Unit Award Documents need not be identical. Each Restricted Stock Unit Award Document will conform to (through incorporation of the provisions hereof by reference in the Agreement or otherwise) the substance of each of the following provisions:

(i) Consideration. At the time of grant of a Restricted Stock Unit Award, the Administrator will determine the consideration, if any, to be paid by the Participant upon delivery of each share of Common Stock subject to the Restricted Stock Unit Award. The consideration to be paid (if any) by the Participant for each share of Common Stock subject to a Restricted Stock Unit Award may be paid in any form of legal consideration that may be acceptable to the Administrator, in its sole discretion, and permissible under applicable law.

(ii) Vesting. At the time of the grant of a Restricted Stock Unit Award, the Administrator may impose such restrictions on or conditions to the vesting of the Restricted Stock Unit Award as it, in its sole discretion, deems appropriate.

(iii) Payment. A Restricted Stock Unit Award may be settled by the delivery of shares of Common Stock, their cash equivalent, any combination thereof or in any other form of consideration, as determined by the Administrator and contained in the Restricted Stock Unit Award Document.

(iv) Additional Restrictions. At the time of the grant of a Restricted Stock Unit Award, the Administrator, as it deems appropriate, may impose such restrictions or conditions that delay the delivery of the shares of Common Stock (or their cash equivalent) subject to a Restricted Stock Unit Award to a time after the vesting of such Restricted Stock Unit Award.

(v) Dividend Equivalents. Dividend equivalents may be credited in respect of shares of Common Stock covered by a Restricted Stock Unit Award, as determined by the Administrator and contained in the Restricted Stock Unit Award Document. At the sole discretion of the Administrator, such dividend equivalents may be converted into additional shares of Common Stock covered by the Restricted Stock Unit Award in such manner as determined by the Administrator. Any dividend equivalents and/or additional shares covered by the Restricted Stock Unit Award credited by reason of such dividend equivalents will be subject to all of the same terms and conditions of the underlying Restricted Stock Unit Award Document to which they relate (including the same vesting and forfeiture restrictions).

(vi) Termination of Participant's Continuous Service. Except as otherwise provided in the applicable Restricted Stock Unit Award Document, or other agreement between the Participant and the Company, such portion of the Restricted Stock Unit Award that has not vested will be forfeited upon the Participant's termination of Continuous Service.

(c) **Performance Stock Awards**.

(i) Performance Stock Awards. A Performance Stock Award is a Stock Award (including, but not limited to, in the form of Restricted Stock and Restricted Stock Units) that is payable (including that may be granted, vest or exercised) contingent upon the attainment during a Performance Period of the achievement of certain performance goals. A Performance Stock Award may, but need not, require the completion of a specified period of Continuous Service. The length of any Performance Period, the performance goals to be achieved during the Performance Period, and the measure of whether and to what degree such performance goals have been attained will be conclusively determined by the Committee, the Administrator, or an authorized Officer, in its sole discretion. In addition, to the extent permitted by applicable law and the applicable Award Document, the Administrator may determine that cash may be used in payment of Performance Stock Awards.

(ii) Dividends; Dividend Equivalents. Any dividends paid on a Performance Stock Award in the form of Restricted Stock will be subject to the same vesting and forfeiture restrictions as apply to the shares subject to the Performance Stock Award to which they relate. Dividend equivalents may be credited in respect of shares of Common Stock covered by a Performance Stock Award in the form of Restricted Stock Units, as determined by the Administrator and contained in the Performance Stock Award Document. At the sole discretion of the Administrator, such dividend equivalents may be converted into additional shares of Common Stock covered by such Performance Stock Award in such manner as determined by the Administrator. Any dividend equivalents and/or additional shares covered by such Performance Stock Award credited by reason of such dividend equivalents will be subject to all of the same terms and conditions of the underlying Performance Stock Award Document to which they relate (including the same vesting and forfeiture restrictions).

(iii) Administrator Discretion. The Administrator or an authorized Officer, as the case may be, retains the discretion to define the manner of calculating the performance criteria it selects to use for a Performance Period.

(d) **Cash Awards.** A Cash Award is an award of cash that is granted under this Plan. A Cash Award that may become payable contingent upon the attainment during a Performance Period of the achievement of certain performance goals is a Performance Cash Award. A Cash Award (including a Performance Cash Award) may require the completion of a specified period of Continuous Service. At the time of grant of a Performance Cash Award, the length of any Performance Period, the performance goals to be achieved during the Performance Period, and the measure of whether and to what degree such performance goals have been attained will be conclusively determined by the Committee, the Administrator, or an authorized Officer, in its sole discretion. The Administrator may specify the form of payment of Cash Awards, which may be cash or other property, or may provide for a Participant to have the option for his or her Cash Award, or such portion thereof as the Administrator may specify, to be paid in whole or in part in cash or other property. The Administrator or an authorized Officer, as the case may be, retains the discretion to define the manner of calculating the performance criteria it selects to use for a Performance Period.

(e) **Other Stock-Based Awards.** Other Stock-Based Awards will consist of other types of equity-based or equity-related awards not otherwise described by the terms of this Plan in such amounts and subject to such terms and conditions, as the Administrator or an authorized Officer shall determine. Such Awards may involve the transfer of actual shares of Common Stock, or payment in cash or otherwise of amounts based on the value of Common Stock. Other Stock-Based Awards may include, but not be limited to, dividend equivalent rights granted as a separate award or in connection with another award under this Plan; provided, however, that dividend equivalent rights may not be granted in connection with Options or SARs granted under this Plan. In addition, any dividends and/or dividend equivalents as to the portion of an Award that is subject to unsatisfied vesting requirements will be subject to termination and forfeiture to the same extent as the corresponding portion of the Award to which they relate in the event the applicable vesting requirements are not satisfied.

**7. COVENANTS OF THE COMPANY.**

(a) **Securities Law Compliance**. The Company will seek to obtain from each regulatory commission or agency having jurisdiction over this Plan such authority as may be required to grant Stock Awards and to issue and sell shares of Common Stock upon exercise of the Stock Awards; provided, however, that this undertaking will not require the Company to register under the Securities Act this Plan, any Stock Award or any Common Stock issued or issuable pursuant to any such Stock Award. If, after reasonable efforts and at a reasonable cost, the Company is unable to obtain from any such regulatory commission or agency the authority that counsel for the Company deems necessary for the lawful issuance and sale of Common Stock under this Plan, the Company will be relieved from any liability for failure to issue and sell Common Stock upon exercise of such Stock Awards unless and until such authority is obtained. A Participant will not be eligible for the grant of an Award or the subsequent issuance of cash or Common Stock pursuant to the Award if such grant or issuance would be in violation of any applicable securities law.

(b) **No Obligation to Notify or Minimize Taxes**. The Company will have no duty or obligation to any Participant to advise such holder as to the time or manner of exercising such Stock Award. Furthermore, the Company will have no duty or obligation to warn or otherwise advise such holder of a pending termination or expiration of an Award or a possible period in which the Award may not be exercised. The Company has no duty or obligation to, and does not undertake to, provide tax advice or to minimize the tax consequences of an Award to the holder of such Award.

**8. MISCELLANEOUS.**

(a) **Use of Proceeds from Sales of Common Stock**. Proceeds from the sale of shares of Common Stock pursuant to Stock Awards will constitute general funds of the Company.

(b) **Corporate Action Constituting Grant of Awards**. Corporate action constituting a grant by the Company of an Award to any Participant will be deemed completed as of the latest date that all necessary corporate action has occurred and all material terms of the Award (including, in the case of stock options, the exercise price thereof) are fixed, unless otherwise determined by the Administrator, regardless of when the documentation evidencing the Award is communicated to, or actually received or accepted by, the Participant. In the event that the corporate records (e.g., Board or Committee consents, resolutions or minutes) documenting the corporate action constituting the grant contain terms (e.g., exercise price, vesting schedule or number of shares) that are inconsistent with those in the Award Document as a result of a clerical error in the papering of the Award Document, the corporate records will control and the Participant will have no legally binding right to the incorrect term in the Award Document.

(c) **Stockholder Rights**. No Participant will be deemed to be the holder of, or to have any of the rights of a holder with respect to, any shares of Common Stock subject to a Stock Award unless and until (i) such Participant has satisfied all requirements for exercise of, or the issuance of shares of Common Stock under, the Stock Award pursuant to its terms, and (ii) the issuance of the Common Stock subject to such Stock Award has been entered into the books and records of the Company.

(d) **No Employment or Other Service Rights or Rights to Awards** Nothing in this Plan, any Award Document or any other instrument executed thereunder or in connection with any Award granted pursuant thereto will confer upon any Participant any right to continue to serve the Company or an Affiliate in the capacity in effect at the time the Award was granted or any other capacity or will interfere in any way with the right of the Company or Affiliate to change a Participant's compensation or other benefits, or will affect the right of the Company or an Affiliate to terminate (i) the employment of an Employee with or without notice and with or without cause, including, but not limited to, Cause, (ii) the service of a Consultant pursuant to the terms of such Consultant's agreement with the Company or an Affiliate, or (iii) the service of a Director pursuant to the organizational documents of the Company or an Affiliate (including articles of incorporation and bylaws), and any applicable provisions of the corporate law of the state in which the Company or the Affiliate is incorporated, as the case may be. In addition, no person shall have any claim or rights to be granted an Award (or additional Awards, as the case may be) under this Plan, subject to any express contractual rights (set forth in a document other than this Plan) to the contrary.

(e) **Incentive Stock Option Limitations**. To the extent that the aggregate Fair Market Value (determined at the time of grant) of Common Stock with respect to which Incentive Stock Options are exercisable for the first time by any optionholder during any calendar year (under all plans of the Company and any Affiliates) exceeds USD$100,000 (or such other limit established in the Code) or otherwise does not comply with the rules governing Incentive Stock Options, the Options or portions thereof that exceed such limit (according to the order in which they were granted) or otherwise do not comply with such rules will be treated as Nonstatutory Stock Options, notwithstanding any contrary provision of the applicable Option Agreement(s).

(f) **Withholding Obligations**. Unless prohibited by the terms of an Award Document, the Company may, in its sole discretion, satisfy any national, state, local or other tax withholding obligation relating to an Award by any of the following means or by a combination of such means: (i) causing the Participant to tender a cash payment; (ii) withholding shares of Common Stock from the shares of Common Stock issued or otherwise issuable to the Participant in connection with the Award (only up to the amount permitted that will not cause an adverse accounting consequence or cost); (iii) withholding cash from an Award settled in cash; (iv) withholding payment from any amounts otherwise payable to the Participant, including proceeds from the sale of shares of Common Stock issued pursuant to a Stock Award; or (v) by such other method as may be set forth in the Award Document.

(g) **Electronic Delivery**. Any reference herein to a "written" agreement or document will include any agreement or document delivered electronically, filed publicly at www.sec.gov (or any successor website thereto), or posted on the Company's intranet (or other shared electronic medium controlled by the Company to which the Participant has access).

(h) **Deferrals**. To the extent permitted by applicable law, the Administrator, in its sole discretion, may determine that the delivery of Common Stock or the payment of cash, upon the exercise, vesting or settlement of all or a portion of any Award may be deferred and may establish programs and procedures for deferral elections to be made by Participants. Deferrals by Participants will be made in accordance with Section 409A of the Code (to the extent applicable to a Participant). Consistent with Section 409A of the Code, the Administrator may provide for distributions while a Participant is still an employee or otherwise providing services to the Company. The Administrator is authorized to make deferrals of Awards and determine when, and in what annual percentages, Participants may receive payments, including lump sum payments, following the Participant's termination of Continuous Service, and implement such other terms and conditions consistent with the provisions of this Plan and in accordance with applicable law.

(i) **Compliance with Section 409A**. Unless otherwise expressly provided for in an Award Document, or other agreement between the Participant and the Company, this Plan and Award Documents will be interpreted to the greatest extent possible in a manner that makes this Plan and the Awards granted hereunder exempt from Section 409A of the Code, to the extent that Section 409A of the Code is applicable to an Award, and, to the extent not so exempt, in compliance with Section 409A of the Code. If the Administrator determines that any Award granted hereunder is subject to Section 409A of the Code, the Award Document evidencing such Award will incorporate the terms and conditions necessary to avoid the consequences specified in Section 409A(a)(1) of the Code, and to the extent an Award Document is silent on terms necessary for compliance, such terms are hereby incorporated by reference into the Award Document. Notwithstanding anything to the contrary in this Plan (and unless the Award Document specifically provides otherwise), if the shares of Common Stock are publicly traded, and if a Participant holding an Award that constitutes "deferred compensation" under Section 409A of the Code is a "specified employee" for purposes of Section 409A of the Code and the Participant is otherwise subject to Section 409A of the Code, no distribution or payment of any amount that is due because of a "separation from service" (as defined in Section 409A of the Code without regard to alternative definitions thereunder) will be issued or paid before the date that is six months following the date of such Participant's "separation from service" or, if earlier, the date of the Participant's death, unless such distribution or payment can be made in a manner that complies with Section 409A of the Code, and any amounts so deferred will be paid in a lump sum on the day after such six month period elapses, with the balance paid thereafter on the original schedule.

(j) **Clawback/Recovery**. All Awards granted under this Plan will be subject to recoupment in accordance with the Company's compensation recovery (clawback) policy or policies then in effect, including, without limitation, the Sandisk Corporation Compensation Recovery (Clawback) Policy. No recovery of compensation under any such policy will be an event giving rise to a right to resign for "good reason" or "constructive termination" (or similar term) under any agreement with the Company or a Subsidiary.

(k) **Plan Not Funded.** Awards payable under this Plan shall be payable in shares or from the general assets of the Company, and no special or separate reserve, fund or deposit shall be made to assure payment of such Awards. No Participant, beneficiary or other person shall have any right, title or interest in any fund or in any specific asset (including shares of Common Stock, except as expressly otherwise provided) of the Company or one of its Subsidiaries by reason of any Award hereunder. Neither the provisions of this Plan (or of any related documents), nor the creation or adoption of this Plan, nor any action taken pursuant to the provisions of this Plan shall create, or be construed to create, a trust of any kind or a fiduciary relationship between the Company or one of its Subsidiaries and any Participant, beneficiary or other person. To the extent that a Participant, beneficiary or other person acquires a right to receive payment pursuant to any Award hereunder, such right shall be no greater than the right of any unsecured general creditor of the Company.

**9. ADJUSTMENTS UPON CHANGES IN COMMON STOCK; OTHER CORPORATE EVENTS.**

(a) **Capitalization Adjustments**. In the event of a Capitalization Adjustment, the Administrator will appropriately and proportionately adjust: (i) the class(es) and maximum number of securities subject to this Plan pursuant to Section 3(a); (ii) the class(es) and maximum number of securities that may be issued pursuant to the exercise of Incentive Stock Options pursuant to Section 3(c); and (iii) the class(es) and number of securities or other property and value (including price per share of stock) subject to outstanding Stock Awards. The Administrator will make such adjustments, and its determination will be final, binding and conclusive.

(b) **Dissolution or Liquidation**. Except as otherwise provided in the Stock Award Document, or other agreement between the Participant and the Company, in the event of a dissolution or liquidation of the Company, all outstanding Stock Awards (other than Stock Awards consisting of vested and outstanding shares of Common Stock not subject to a forfeiture condition or the Company's right of repurchase) will terminate immediately prior to the completion of such dissolution or liquidation, and the shares of Common Stock subject to the Company's repurchase rights or subject to a forfeiture condition may be repurchased or reacquired by the Company notwithstanding the fact that the holder of such Stock Award is providing Continuous Service; provided, however, that the Administrator may, in its sole discretion, cause some or all Stock Awards to become fully vested, exercisable and/or no longer subject to repurchase or forfeiture (to the extent such Stock Awards have not previously expired or terminated) before the dissolution or liquidation is completed but contingent on its completion.

(c) **Change in Control**. The following provisions will apply to Awards in the event of a Change in Control unless otherwise provided in the instrument evidencing the Award or any other written agreement between the Company or any Subsidiary and the Participant or unless otherwise expressly provided by the Administrator at the time of grant of an Award. In the event of a Change in Control, then, notwithstanding any other provision of this Plan, the Administrator will take one or more of the following actions with respect to each outstanding Award, contingent upon the closing or completion of the Change in Control:

(i) arrange for the surviving corporation or acquiring corporation (or the surviving or acquiring corporation's parent company) to assume or continue the Award or to substitute a similar award for the Award (including, but not limited to, an award to acquire the same consideration per share paid to the stockholders of the Company pursuant to the Change in Control);

(ii) arrange for the assignment of any reacquisition or repurchase rights held by the Company in respect of Common Stock issued pursuant to the Award to the surviving corporation or acquiring corporation (or the surviving or acquiring corporation's parent company);

(iii) accelerate the vesting, in whole or in part, of the Award (and, if applicable, the time at which the Award may be exercised) to a date prior to the effective time of such Change in Control as the Administrator will determine (or, if the Administrator will not determine such a date, to the date that is five days prior to the effective date of the Change in Control), with such Award terminating if not exercised (if applicable) at or prior to the effective time of the Change in Control, and with such exercise reversed if the Change in Control does not become effective;

(iv) arrange for the lapse, in whole or in part, of any reacquisition or repurchase rights held by the Company with respect to the Award;

(v) cancel or arrange for the cancellation of the Award, to the extent not vested or not exercised prior to the effective time of the Change in Control, in exchange for such cash consideration, if any, as the Administrator, in its reasonable determination, may consider appropriate as an approximation of the value of the canceled Award, taking into account the value of the Common Stock subject to the canceled Award, the possibility that the Award might not otherwise vest in full, and such other factors as the Administrator deems relevant; and

(vi) cancel or arrange for the cancellation of the Award, to the extent not vested or not exercised prior to the effective time of the Change in Control, in exchange for a payment, in such form as may be determined by the Administrator equal to the excess, if any, of (A) the value in the Change in Control of the property the Participant would have received upon the exercise of the Award immediately prior to the effective time of the Change in Control, over (B) any exercise price payable by such holder in connection with such exercise.

The Administrator need not take the same action or actions with respect to all Awards or portions thereof or with respect to all Participants. The Administrator may take different actions with respect to the vested and unvested portions of an Award.

In the absence of any affirmative determination by the Administrator at the time of a Change in Control, each outstanding Award will be assumed or an equivalent Award will be substituted by such successor corporation or a parent or subsidiary of such successor corporation (the "**Successor Corporation**"), unless the Successor Corporation does not agree to assume the Award or to substitute an equivalent Award, in which case the vesting of such Award will accelerate in its entirety (along with, if applicable, the time at which the Award may be exercised) to a date prior to the effective time of such Change in Control as the Administrator will determine (or, if the Administrator will not determine such a date, to the date that is five days prior to the effective date of the Change in Control), with such Award terminating if not exercised (if applicable) at or prior to the effective time of the Change in Control, and with such exercise reversed if the Change in Control does not become effective; provided, that the holder of a Stock Option or SAR shall be given reasonable advance notice of the impending termination and a reasonable opportunity to exercise his or her outstanding vested Stock Options and SARs (after giving effect to any accelerated vesting required in the circumstances) in accordance with their terms before the termination of such Awards (except that in no case shall more than ten days' notice of the impending termination be required and any acceleration of vesting and any exercise of any portion of an award that is so accelerated may be made contingent upon the actual occurrence of the event).

(d) **Acceleration of Awards upon a Change in Control**. An Award may be subject to additional acceleration of vesting and exercisability upon or after a Change in Control as may be provided in the Award Document for such Award or as may be provided in any other written agreement between the Company or any Subsidiary and the Participant, but in the absence of such provision, no such acceleration will occur.

**10. AMENDMENT OF THIS PLAN AND OUTSTANDING AWARDS.**

(a) **Amendment to Plan.** The Administrator may amend this Plan in any respect the Administrator deems necessary or advisable, subject to the limitations of applicable law. If required by applicable law or listing requirements, and except as provided in Section 9(a) relating to Capitalization Adjustments, the Company will seek stockholder approval of any amendment of this Plan that (a) materially increases the number of shares of Common Stock available for issuance under this Plan, (b) materially expands the class of individuals eligible to receive Awards under this Plan, (c) materially increases the benefits accruing to Participants under this Plan, (d) materially reduces the price at which shares of Common Stock may be issued or purchased under this Plan, (e) materially extends the term of this Plan, or (f) materially expands the types of Awards available for issuance under this Plan.

(b) **Amendment to Outstanding Awards.** The Administrator may also amend the terms of any one or more outstanding Awards, including, but not limited to, amendments to provide terms more favorable to the Participant than previously provided in the Award Documents for such Awards, subject to any specified limits in this Plan that are not subject to Administrator discretion. A Participant's rights under any Award will not be impaired by any such amendment unless the Company requests the consent of the affected Participant, and the Participant consents in writing. However, a Participant's rights will not be deemed to have been impaired by any such amendment if the Administrator, in its sole discretion, determines that the amendment, taken as a whole, does not materially impair the Participant's rights. Subject to the limitations of applicable law, the Administrator may amend the terms of any one or more Awards without the affected Participant's consent (a) to maintain the qualified status of the Award as an Incentive Stock Option under Section 422 of the Code, (b) to change the terms of an Incentive Stock Option, if such change results in impairment of the Award solely because it impairs the qualified status of the Award as an Incentive Stock Option under Section 422 of the Code, (c) to clarify the manner of exemption from, or to bring the Award into compliance with, Section 409A of the Code, or (d) to comply with other applicable laws or listing requirements.

**11. EFFECTIVE DATE OF PLAN; TIMING OF FIRST GRANT OR EXERCISE; TERM; TERMINATION.**

(a) **Effective Date; Timing of First Grant or Exercise.** This Plan is effective as of [•] (the "**Effective Date**") and no Award may be granted under this Plan with respect to the Reserved Shares prior to the Effective Date. In addition, no Stock Award may be exercised (or, in the case of a Restricted Stock Award, Restricted Stock Unit Award, or Performance Stock Award, may be granted) and no Cash Award may be settled unless and until this Plan has been approved by the stockholders of the Company, which approval will be within twelve (12) months before or after the Adoption Date.

(b) **Term; Termination.** This Plan shall remain available for the grant of Awards until the 10h anniversary of the Effective Date. Notwithstanding the foregoing, this Plan may be terminated at such earlier time as the Administrator may determine. No Awards may be granted under this Plan after it is terminated. Termination of this Plan will not affect the rights and obligations of the Participants and the Company arising under Awards theretofore granted.

**12. CHOICE OF LAW.**

The laws of the State of Delaware will govern all questions concerning the construction, validity and interpretation of this Plan, without regard to that state's conflict of laws rules.

**13. DEFINITIONS.**

As used in this Plan, the following definitions will apply to the capitalized terms indicated below:

(a) "**Adoption Date**" means the date this Plan is originally adopted by the Board.

(b) "**Affiliate**" means, at the time of determination, any "parent" or "subsidiary" of the Company, as such terms are defined in Rule 405 of the Securities Act. The Administrator will have the authority to determine the time or times at which "parent" or "subsidiary" status is determined within the foregoing definition.

(c) "**Award**" means a Stock Award or a Cash Award.

(d) "**Award Document**" means a written agreement between the Company and a Participant, or a written notice issued by the Company to a Participant, evidencing the terms and conditions of an Award.

(e) "**Beneficially Own**" or "**Beneficial Owner**" (as the context may require) means a "beneficial owner" as defined in Rule13d-3 of the Exchange Act, except that a person shall also be deemed the beneficial owner of all securities which such person may have a right to acquire, whether or not such right is presently exercisable.

(f) "**Board**" means the Board of Directors of the Company.

(g) "**Business Combination**" means the consummation of any merger, consolidation, reorganization or other extraordinary transaction (or series of related transactions) involving the Company, a sale or other disposition of all or substantially all of the assets of the Company, or the acquisition of assets or stock of another entity by the Company or any of its subsidiaries.

(h) "**Capitalization Adjustment**" means any change that is made in, or other events that occur with respect to, the Common Stock subject to this Plan or subject to any Stock Award after the Adoption Date without the receipt of consideration by the Company through merger, consolidation, reorganization, recapitalization, reincorporation, stock dividend, dividend in property other than cash, large nonrecurring cash dividend, stock split, reverse stock split, liquidating dividend, combination of shares, exchange of shares, change in corporate structure or other similar equity restructuring transaction, as that term is used in Financial Accounting Standards Board Accounting Standards Codification Topic 718 (or any successor thereto). Notwithstanding the foregoing, the conversion of any convertible securities of the Company will not be treated as a Capitalization Adjustment.

(i) "**Cash Award**" means an award of cash granted pursuant to the terms and conditions of Section 6(d).

(j) "**Cause**" means the occurrence or existence of any of the following with respect to a Participant: (i) the Participant's conviction by, or entry of a plea of guilty or nolo contendere in, a court of competent and final jurisdiction for any crime involving moral turpitude or any felony punishable by imprisonment in the jurisdiction involved; (ii) the Participant's willful engaging in dishonest or fraudulent actions or omissions; (iii) the Participant's failure or refusal to perform his or her duties as reasonably required by the Company or any Subsidiary; (iv) negligence, insubordination, violation by the Participant of any duty (of loyalty or otherwise) owed to the Company or any Subsidiary, or any other material misconduct on the part of the Participant; (v) conduct by the Participant which, upon reasonable investigation, is determined by the Company to violate the Company's or any Subsidiary's anti-harassment, discrimination or retaliation policies; (vi) conduct endangering, or likely to endanger, the health or safety of another employee; (vii) falsifying or misrepresenting information on the records of the Company or any Subsidiary; (viii) the Participant's physical destruction or theft of substantial property or assets of the Company or any Subsidiary; or (ix) breach of any policy of, or agreement with, the Company or any Subsidiary applicable to the Participant or to which the Participant is otherwise bound.

(k) "**Change in Control**" means the occurrence, in a single transaction or in a series of related transactions, of any one or more of the following events:

(i) any Person, alone or together with its affiliates and associates, including any group of persons which is deemed a "person" under Section 13(d)(3) of the Exchange Act (other than the Employer or any employee benefit plan (or related trust) of the Employer, or any underwriter in connection with a firm commitment public offering of the Company's capital stock), becomes the Beneficial Owner of: (i) thirty-three and one-third percent or more of the then Outstanding Company Common Stock; or (ii) securities representing thirty-three and one-third percent or more of the Outstanding Company Voting Securities (in each case above, other than an acquisition in the context of a merger, consolidation, reorganization, asset sale or other extraordinary transaction covered by, and which does not constitute a Change in Control under, clause (iii) below);

(ii) a change, during any period of two consecutive years, of a majority of the Board as constituted as of the beginning of such period, unless the election, or nomination for election by the Company's stockholders, of each director who was not a director at the beginning of such period was approved by vote of at least two-thirds of the Incumbent Directors then in office;

(iii) a Business Combination, unless, following such Business Combination, (i) all or substantially all of the individuals and entities that were the Beneficial Owners of the Outstanding Company Common Stock and the Outstanding Company Voting Securities immediately prior to such Business Combination Beneficially Own, directly or indirectly, more than 50% of the then-outstanding shares of common stock and the combined voting power of the then-outstanding voting securities entitled to vote generally in the election of directors, as the case may be, of the entity resulting from such Business Combination (including, without limitation, a Parent), (ii) no Person (excluding any entity resulting from such Business Combination or a Parent or any employee benefit plan (or related trust) of the Company or such entity resulting from such Business Combination or Parent, and excluding any underwriter in connection with a firm commitment public offering of the Company's capital stock) Beneficially Owns, directly or indirectly, more than thirty-three and one-third percent of, respectively, the then-outstanding shares of common stock of the entity resulting from such Business Combination or the combined voting power of the then-outstanding voting securities of such entity, and (iii) at least a majority of the members of the board of directors of the entity resulting from such Business Combination or a Parent were Incumbent Directors at the time of execution of the initial agreement or of the action of the Board providing for such Business Combination; or

(iv) the stockholders of the Company approve a plan of complete liquidation or dissolution of the Company (other than in the context of a merger, consolidation, reorganization, asset sale or other extraordinary transaction covered by, and which does not constitute a Change in Control under, clause (iii) above).

Notwithstanding the foregoing definition or any other provision of this Plan, (A) the term Change in Control will not include a sale of assets, merger or other transaction effected exclusively for the purpose of changing the domicile of the Company, and (B) the definition of Change in Control (or any analogous term) in an individual written agreement between the Company or any Subsidiary and the Participant will supersede the foregoing definition with respect to Awards subject to such agreement; provided, however, that if no definition of Change in Control or any analogous term is set forth in such an individual written agreement, the foregoing definition will apply.

If required for compliance with Section 409A of the Code, in no event will a Change in Control be deemed to have occurred if such transaction is not also a "change in the ownership or effective control of" the Company or "a change in the ownership of a substantial portion of the assets of" the Company as determined under U.S. Treasury Regulation Section 1.409A-3(i)(5) (without regard to any alternative definition thereunder). The Administrator may, in its sole discretion and without a Participant's consent, amend the definition of "Change in Control" to conform to the definition of "Change in Control" under Section 409A of the Code, and the regulations thereunder.

(l) "**Code**" means the U.S. Internal Revenue Code of 1986, as amended, including any applicable regulations and guidance thereunder.

(m) "**Committee**" means a committee of one or more Directors to whom authority has been delegated by the Board in accordance withSection 2(d).

(n) "**Compensation Committee**" means the Compensation and Talent Committee of the Board.

(o) "**Common Stock**" means the common stock, $.01 par value per share, of the Company.

(p) "**Company**" Sandisk Corporation, a Delaware corporation.

(q) "**Consultant**" means any person, including an advisor, who is (i) engaged by the Company or a Subsidiary to render consulting or advisory services and is compensated for such services, or (ii) serving as a member of the board of directors of a Subsidiary and is compensated for such services. However, service solely as a Director, or payment of a fee for such service, will not cause a Director to be considered a "Consultant" for purposes of this Plan. Notwithstanding the foregoing, a person is treated as a Consultant under this Plan only if a Form Registration Statement on Form S-8 or a successor form under the Securities Act is available to register either the offer or the sale of the Company's securities to such person.

(r) "**Continuous Service**" means that the Participant's service with the Company or a Subsidiary, whether as an Employee, Director or Consultant, is not interrupted or terminated. Unless the express policy of the Company or any Subsidiary, or the Administrator, otherwise provides, or except as otherwise required by applicable law, a Participant will not be deemed to have terminated Continuous Service in the case of (i) sick leave, (ii) military leave, (iii) transfer from one Affiliate to another Affiliate, or (iv) any other leave of absence authorized by the Company (or Subsidiary) or the Administrator, provided that such leave is for a period of not more than three months (unless the Administrator otherwise provides or reemployment or continued service is guaranteed by contract or law upon the expiration of such leave). In the case of any Participant of the Company or one of its Subsidiaries on an approved leave of absence, continued vesting of an Award while on leave from the service of the Company or one of its Subsidiaries may be suspended until the Participant returns to service, unless the Administrator otherwise provides or applicable law otherwise requires. For purposes of this Plan and any Award, if an entity ceases to be a Subsidiary, a termination of Continuous Service shall be deemed to have occurred with respect to each Participant in respect of such Subsidiary who does not continue as an Employee, Director or Consultant in respect of the Company or another Subsidiary that continues as such after giving effect to the transaction or other event giving rise to the change in status. In addition, if required for exemption from or compliance with Section 409A of the Code, the determination of whether there has been a termination of Continuous Service will be made, and such term will be construed, in a manner that is consistent with the definition of "separation from service" as defined under U.S. Treasury Regulation Section 1.409A-1(h) (without regard to any alternative definition thereunder).

(s) "**Director**" means a member of the Board.

(t) "**Disability**" means, with respect to a Participant, the inability of such Participant to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than twelve (12) months as provided in Sections 22(e)(3) and 409A(a)(2)(C)(i) of the Code, and will be determined by the Administrator on the basis of such medical evidence as the Administrator deems warranted under the circumstances.

(u) "**Employee**" means any person providing services as an employee of the Company or a Subsidiary. However, service solely as a Director, or payment of a fee for such services, will not cause a Director to be considered an "Employee" for purposes of this Plan.

(v) "**Entity**" means a corporation, partnership, limited liability company or other entity.

(w) "**Exchange Act**" means the U.S. Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

(x) "**Fair Market Value**" means, as of any date, the value of the Common Stock determined as follows:

(i) If the Common Stock is listed on any established stock exchange or traded on any established market, the Fair Market Value of a share of Common Stock as of any date of determination will be, unless otherwise determined by the Administrator, the closing sales price for such stock as quoted on such exchange or market (or the exchange or market with the greatest volume of trading in the Common Stock) on the date of determination, as reported in a source the Administrator deems reliable.

(ii) Unless otherwise provided by the Administrator, if there is no closing sales price for the Common Stock on the date of determination, then the Fair Market Value will be the closing selling price on the last preceding date for which such quotation exists.

(iii) In the absence of such markets for the Common Stock, the Fair Market Value will be determined by the Administrator in good faith and in a manner that complies with Sections 409A and 422 of the Code.

(y) "**Incentive Stock Option**" means an option granted pursuant to Section 5 of this Plan that is intended to be, and that qualifies as, an "incentive stock option" within the meaning of Section 422 of the Code.

(z) "**Incumbent Directors**" means the directors holding office as of the Effective Date and any person becoming a director subsequent to such date whose election, or nomination for election by the Company's stockholders, is approved by a vote of at least a majority of the Incumbent Directors then in office.

(aa) "**Non-Employee Director**" means a Director who either (i) is not a current employee or officer of the Company or a Subsidiary, does not receive compensation, either directly or indirectly, from the Company or a Subsidiary for services rendered as a consultant or in any capacity other than as a Director (except for an amount as to which disclosure would not be required under Item 404(a) of Regulation S-K promulgated pursuant to the Securities Act ("**Regulation S-K**")), does not possess an interest in any other transaction for which disclosure would be required under Item 404(a) of Regulation S-K, and is not engaged in a business relationship for which disclosure would be required pursuant to Item 404(b) of Regulation S-K; or (ii) is otherwise considered a "non-employee director" for purposes of Rule 16b-3 of the Exchange Act.

(bb) "**Nonstatutory Stock Option**" means any option granted pursuant to Section 5 of this Plan that does not qualify as an Incentive Stock Option.

(cc) "**Officer**" means a person who is an officer of the Company within the meaning of Section 16 of the Exchange Act.

(dd) "**Option**" means an Incentive Stock Option or a Nonstatutory Stock Option to purchase shares of Common Stock granted pursuant to this Plan.

(ee) "**Option Agreement**" means an Award Document evidencing the terms and conditions of an Option grant. Each Option Agreement will be subject to the terms and conditions of this Plan.

(ff) "**Other Stock-Based Awards**" means an award granted pursuant to the terms and conditions of Section 6(e).

(gg) **"Outstanding Company Common Stock"** means the outstanding shares of the Company's common stock.

(hh) "**Outstanding Company Voting Securities**" means the combined voting power of the Company's then outstanding voting securities.

(ii) "**Own**," "**Owned**," "**Owner**," "**Ownership**" means a person or Entity will be deemed to "Own," to have "Owned," to be the "Owner" of, or to have acquired "Ownership" of securities if such person or Entity, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has or shares voting power, which includes the power to vote or to direct the voting, with respect to such securities.

(jj) "**Parent**" means an entity that, as a result of a Business Combination, owns the Company or all or substantially all of the Company's assets directly or through one or more subsidiaries.

(kk) "**Participant**" means a person to whom an Award is granted pursuant to this Plan or, if applicable, such other person who holds an outstanding Stock Award.

(ll) "**Performance Cash Award**" means an award of cash granted pursuant to the terms and conditions of Section 6(d).

(mm) "**Performance Period**" means the period of time selected by the Administrator over which the attainment of one or more performance goals will be measured for the purpose of determining a Participant's right to and the payment of a Stock Award or a Performance Cash Award. Performance Periods may be of varying and overlapping duration, at the sole discretion of the Administrator.

(nn) "**Performance Stock Award**" means a Stock Award granted under the terms and conditions of Section 6(c)(i).

(oo) "**Person**" means a person as defined in Sections 13(d) and 14(d) of the Exchange Act.

(pp) "**Plan**" means this 2025 Long-Term Incentive Plan of Sandisk Corporation, as amended and restated from time to time.

(qq) "**Restricted Stock Award**" means an award of shares of Common Stock which is granted pursuant to the terms and conditions of Section 6(a).

(rr) "**Restricted Stock Award Document**" means an Award Document evidencing the terms and conditions of a Restricted Stock Award grant. Each Restricted Stock Award Document will be subject to the terms and conditions of this Plan.

(ss) "**Restricted Stock Unit Award**" means a right to receive shares of Common Stock which is granted pursuant to the terms and conditions of Section 6(b).

(tt) "**Restricted Stock Unit Award Document**" means an Award Document evidencing the terms and conditions of a Restricted Stock Unit Award grant. Each Restricted Stock Unit Award Document will be subject to the terms and conditions of this Plan.

(uu) "**Securities Act**" means the U.S. Securities Act of 1933, as amended.

(vv) "**Stock Appreciation Right**" or "**SAR**" means a right to receive the appreciation on Common Stock that is granted pursuant to the terms and conditions of Section 5.

(ww) "**Stock Appreciation Right Award Document**" means an Award Document evidencing the terms and conditions of a Stock Appreciation Right grant. Each Stock Appreciation Right Award Document will be subject to the terms and conditions of this Plan.

(xx) "**Stock Award**" means any right to receive Common Stock granted under this Plan, including an Incentive Stock Option, a Nonstatutory Stock Option, a Restricted Stock Award, a Restricted Stock Unit Award, a Stock Appreciation Right, or a Performance Stock Award.

(yy) "**Stock Award Document**" means an Award Document evidencing the terms and conditions of a Stock Award grant. Each Stock Award Document will be subject to the terms and conditions of this Plan.

(zz) "**Subsidiary**" means, with respect to the Company, (i) any corporation of which more than 50% of the outstanding capital stock having ordinary voting power to elect a majority of the board of directors of such corporation (irrespective of whether, at the time, stock of any other class or classes of such corporation will have or might have voting power by reason of the happening of any contingency) is at the time, directly or indirectly, Owned by the Company, and (ii) any partnership, limited liability company or other entity in which the Company has a direct or indirect interest (whether in the form of voting or participation in profits or capital contribution) of more than 50%.

(aaa) "**Substitute Awards**" means (i) Awards granted or Common Stock issued by the Company in assumption of, or in substitution or exchange for, awards previously granted, or the right or obligation to make future awards, by a company acquired by the Company or any Subsidiary or with which the Company or any Subsidiary combines and (ii) the former Western Digital Corporation ("**WDC**") awards assumed by the Company in connection with the separation of the Company from WDC and pursuant to the Employee Matters Agreement between WDC and the Company, dated [•] (the "**Substituted WDC Awards**").

(bbb) "**Ten Percent Stockholder**" means a person who Owns (or is deemed to Own pursuant to Section 424(d) of the Code) stock possessing more than 10% of the total combined voting power of all classes of stock of the Company or any Affiliate.

END OF DOCUMENT

**Exhibit 10.27**

**SANDISK CORPORATION**
**2025 Long-Term Incentive Plan**

**GRANT NOTICE FOR**
**RESTRICTED STOCK UNIT AWARD – VICE PRESIDENT AND ABOVE**

FOR GOOD AND VALUABLE CONSIDERATION, Sandisk Corporation (the "***Company***") hereby grants to the Participant named below the number of Restricted Stock Units (the "***RSUs***") listed below (this "***Award***") under the Sandisk Corporation 2025 Long-Term Incentive Plan (as amended from time to time, the "***Plan***"). Each RSU represents the right to receive one share of Common Stock, subject to the terms and conditions in this Grant Notice, the Plan and the Standard Terms and Conditions (the "***Standard Terms and Conditions***") of such Plan, attached as Exhibit A hereto. Capitalized terms not otherwise defined here shall have the meaning set forth in the Plan.

Name of Participant:

Employee ID

Grant Date:

Grant Number

Number of RSUs:

Vesting Schedule: The RSUs shall vest in accordance with the following schedule: [•]

Vesting shall be subject to Participant's Continuous Service from the Grant Date through each applicable vesting date, unless provided otherwise under Section 2 of the Standard Terms and Conditions.

**IN CONNECTION WITH THIS GRANT, AND IN addition TO THIS GRANT NOTICE, PARTICIPANT HAS RECEIVED A COPY OF THE PLAN AND THE STANDARD TERMS AND CONDITIONS. PARTICIPANT MAY REJECT THIS AWARD BY NOTIFYING THE COMPANY NO LATER THAN THE FIFTH BUSINESS DAY FOLLOWING RECEIPT OF THIS AWARD DOCUMENT. FAILURE TO REJECT THIS AWARD WITHIN SUCH 5-DAY PERIOD SHALL BE DEEMED ACCEPTANCE OF THIS AWARD AND THE TERMS AND CONDITIONS OF THIS AWARD DOCUMENT.**

**EXHIBIT A**

**SANDISK CORPORATION**
**2025 Long-Term Incentive Plan**

**STANDARD TERMS AND CONDITIONS FOR RESTRICTED STOCK UNITS**

These Standard Terms and Conditions apply to this Award of Restricted Stock Units granted under the Sandisk Corporation 2025 Long-Term Incentive Plan (the "***Plan***"). The Restricted Stock Units are also subject to the terms of the Plan and the attached Grant Notice, which are incorporated here by this reference. Capitalized terms not otherwise defined here shall have the meaning set forth in the Plan.

**1. TERMS OF RESTRICTED STOCK UNITS**

Sandisk Corporation (the "***Company***") has granted to the Participant named in the attached Grant Notice an award of Restricted Stock Units (this "***Award***" or the "***RSUs***") described in the Grant Notice, with each Restricted Stock Unit representing the right to receive one share of Common Stock. For purposes of these Standard Terms and Conditions and the Grant Notice, any reference to the Company shall include a reference to any Subsidiary.

**2. VESTING AND SETTLEMENT OF RESTRICTED STOCK UNITS**

(a) The Award shall be unvested as of the Grant Date and be forfeitable unless and until otherwise vested pursuant to the terms of the Grant Notice and these Standard Terms and Conditions. After the Grant Date, subject to termination or acceleration as provided in these Standard Terms and Conditions and the Plan, this Award shall become vested as described in the Grant Notice. RSUs that have vested and are no longer subject to forfeiture are referred to as "***Vested RSUs***." RSUs that are not vested and remain subject to forfeiture are referred to as "***Unvested RSUs***." No portion of this Award, nor the shares of Common Stock subject to this Award, may be deferred under the Sandisk Corporation Deferred Compensation Plan (or any applicable successor plan) or any other deferred compensation arrangement of the Company.

(b) Following the vesting of the RSUs on a vesting date, the Company shall deliver to the Participant on the Settlement Date a number of shares of Common Stock equal to the number of RSUs that vested on such vesting date. The Company may, in its sole discretion, settle any RSUs accrued as dividend equivalents by a cash payment equal to the Fair Market Value of a share of Common Stock on the date of payment (as opposed to payment in the form of shares of Common Stock). "***Settlement Date***" means as soon as practicable following the vesting of the RSUs on the applicable vesting date but in no event later than 60 days after the applicable vesting date.

(c) *Termination without Cause under the Executive Severance Plan* For a Participant who is subject to the terms of the Sandisk Corporation Executive Severance Plan, as applicable (or any applicable successor plan) (the "***Executive Severance Plan***") at the time of termination of Continuous Service, then upon Participant's termination of employment by the Company without Cause (as defined in the Executive Severance Plan) under circumstances that would entitle the Participant to severance benefits under the Executive Severance Plan, subject to compliance with the terms of the Executive Severance Plan any then Unvested RSUs and any credited dividend equivalents held by the Participant shall vest in accordance with the following formula:

(i) (x) a fraction with a numerator equal to the total number of calendar days from the Grant Date of this Award through and including the Participant's termination of Continuous Service and a denominator equal to the total number of calendar days from the Grant Date of this Award through and including the last scheduled vesting date applicable to this Award ***multiplied by*** (y) the total number of shares of Common Stock originally subject to this Award (subject to adjustment as provided in the Plan but before taking into account any crediting of dividend equivalents); ***minus***

(ii) (z) the number of shares of Common Stock that have already vested on or prior to the Participant's termination of Continuous Service (before taking any accelerated vesting contemplated by this subsection into account and before taking into account any crediting (if applicable) of dividend equivalent rights).

Any Unvested RSUs that do not vest as described above shall be forfeited as of the date of the Participant's termination of Continuous Service.

(d) *Termination without Cause or for Good Reason under the Change in Control Severance Plan.* For a Participant who is subject to the terms of the Sandisk Corporation Change in Control Severance Plan, as applicable (or any applicable successor plan) (the "***CIC Severance Plan***") at the time of termination of Continuous Service, then upon Participant's termination of employment by the Company without Cause or due to a resignation by Participant for Good Reason (both as defined in the CIC Severance Plan) under circumstances that would entitle the Participant to severance benefits under the CIC Severance Plan, subject to compliance with the terms of the CIC Severance Plan, any then Unvested RSUs held by the Participant and any credited dividend equivalents will vest in full.

(e) *Resignation*. Upon Participant's termination of Continuous Service by the Company due to a resignation by Participant for any reason, other than a resignation for Good Reason under circumstances that would entitle the Participant to severance benefits under the CIC Severance Plan, subject to compliance with the terms of the CIC Severance Plan, the Unvested RSUs held by the Participant shall be forfeited as of the date of the Participant's termination of Continuous Service.

(f) *Termination due to Death.* Upon Participant's termination of Continuous Service due to death, 50% of the Participant's then Unvested RSUs (including any credited dividend equivalents held by the Participant) shall vest. Any Unvested RSUs that do not vest as described shall be forfeited as of the date of the Participant's termination due to death.

(g) *Termination for Cause.* Upon Participant's termination of Continuous Service by the Company for Cause, the entire Award (both Vested RSUs that have yet to be settled and Unvested RSUs) held by the Participant shall be forfeited as of the date of the Participant's termination of Continuous Service.

(h) *Non-U.S. Eligible Employees Participating in the Executive Severance Plan and Change in Control Severance Plan.* For avoidance of doubt, if Participant is not a U.S. Eligible Employee (as defined in the applicable severance plan), the Participant will only be eligible for the vesting treatment on a termination without Cause as described in Section 2(c) or termination without Cause or resignation for Good Reason as described in Section 2(d) in accordance with the terms of the applicable severance plan, which provides that the administrator of such severance plan will compare any Local Severance Benefits (as defined in the applicable severance plan) with the Plan Severance Benefits (as defined in the applicable severance plan) and if the value of the Local Severance Benefits equals or exceeds the value of the Plan Severance Benefits, the Participant will not be eligible to receive the vesting treatment on a termination without Cause as described in Section 2(c) or termination without Cause or resignation for Good Reason as described in Section 2(d).

**3. RIGHTS AS STOCKHOLDER; DIVIDEND EQUIVALENTS**

(a) Participant shall not be, nor have any of the rights or privileges of, a stockholder of the Company in respect of any RSUs unless and until shares of Common Stock settled for such RSUs shall have been issued by the Company to Participant.

(b) Notwithstanding Section 3(a), from and after the Grant Date and until the earlier of (i) the Participant's receipt of Common Stock upon settlement of the RSUs and (ii) the time when the Participant's right to receive Common Stock upon settlement of the RSUs is forfeited, the Participant shall be entitled to receive as a dividend equivalent a number of additional RSUs on the date(s) that the Company pays a cash dividend (if any) to Common Stock holders generally. Such dividend equivalent shall be determined by dividing (i) the product of (A) the dollar amount of the cash dividend paid per share of Common Stock on such date and (B) the total number of RSUs (including dividend equivalents accrued thereon) previously credited to the Participant as of such date, by (ii) the Fair Market Value per share of Common Stock on such date. Such dividend equivalents (if any) shall be subject to the same terms and conditions and shall be settled or forfeited in the same manner and at the same time as the RSUs to which the dividend equivalents were credited. Dividend equivalents shall be settled in whole shares of Common Stock with any dividend equivalents accrued in the form of fractional RSUs settled in cash. However, for the avoidance of doubt, the Company may, in its sole discretion, settle any RSUs credited as dividend equivalents by a cash payment equal to the Fair Market Value of a share of Common Stock on the date of payment (as opposed to payment in the form of shares of Common Stock). For the avoidance of doubt, in no event will any dividend equivalents credited to RSUs be delivered to the Participant unless and until such RSUs vest and settle.

**4. RESTRICTIONS ON RESALES OF SHARES**

The Company may impose such restrictions as it determines appropriate as to the timing and manner of any resales by the Participant or other subsequent transfers by the Participant of any shares of Common Stock issued pursuant to Vested RSUs, including (a) restrictions under an insider trading policy, (b) restrictions designed to delay and/or coordinate the timing and manner of sales by Participant and other holders and (c) restrictions as to the use of a specified brokerage firm for such resales or other transfers.

**5. INCOME TAXES**

The Participant may satisfy tax withholding obligations relating to the RSUs by any combination of the following: (i) a cash payment; (ii) a Company deduction from any amounts payable to Participant; (iii) Company withholding of shares from the Common Stock issuable to the Participant in connection with the RSUs (only up to the amount permitted that will not cause an adverse accounting consequence); or (iv) Company withholding a payment from the proceeds from the sale of shares of Common Stock issued pursuant to the RSUs. In addition, the Administrator may, in its sole discretion but only to the extent consistent with Section 409A of the Code, reduce the number of RSUs remaining subject to this Award, with each such RSU to have a value for such purpose equal to the then Fair Market Value of a share of Common Stock, to satisfy such withholding obligation at the applicable withholding rates.

**6. NON -TRANSFERABILITY OF AWARD**

The Participant agrees that, except as otherwise provided in the Plan or as permitted by the Administrator, this Award may not be sold, assigned, transferred, pledged or otherwise directly or indirectly encumbered or disposed of other than by will or the laws of descent and distribution or pursuant to the terms of a qualified domestic relations order, official marital settlement agreement or other divorce or separation instrument.

**7. OTHER AGREEMENTS SUPERSEDED**

The Grant Notice, these Standard Terms and Conditions and the Plan constitute the entire understanding between the Participant and the Company regarding this Award. Any prior agreements, commitments or negotiations concerning this Award are superseded.

**8. NO ADDITIONAL RIGHTS**

The Participant's receipt of the RSUs does not confer upon the Participant any right to continue to serve the Company or an Affiliate in any capacity and will not affect the right of the Company or an Affiliate to terminate the service of the Participant.

**9. GENERAL**

(a) In the event that any provision of these Standard Terms and Conditions (including, for the avoidance of doubt, the Plan, which is incorporated here by this reference) is declared to be unenforceable by an arbitrator selected in accordance with Section 11 below or a court of competent jurisdiction, such provision shall be reformed, if possible, to the extent necessary to render it enforceable, or otherwise deleted, and the remainder of these Standard Terms and Conditions shall not be affected except to the extent necessary to reform or delete such unenforceable provision. Furthermore, except as otherwise provided by Section 11, it is the parties' intent that any order striking any portion of this Award Document and/or the Plan should modify the stricken terms as narrowly as possible to give as much effect as possible to the intentions of the parties hereunder.

(b) The headings preceding the text of the sections in these Standard Terms and Conditions are inserted solely for convenience of reference, and shall not constitute a part of these Standard Terms and Conditions, nor shall they affect its meaning, construction or effect. References to any agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof and not prohibited by the Plan or these Standard Terms and Conditions.

(c) These Standard Terms and Conditions shall inure to the benefit of and be binding upon the parties and their respective permitted heirs, beneficiaries, successors and assigns.

(d) These Standard Terms and Conditions shall be interpreted in accordance with and governed by the laws of the State of Delaware, without regard to principles of conflicts of law.

(e) In the event of any conflict between the Grant Notice, these Standard Terms and Conditions and the Plan, the Grant Notice and these Standard Terms and Conditions shall control. In the event of any conflict between the Grant Notice and these Standard Terms and Conditions, the Grant Notice shall control.

(f) The RSUs and any shares of Common Stock acquired under the Plan, and the income and value of the same, are not part of the Participant's normal or expected compensation for any purposes including, but not limited to, calculating any severance, resignation, termination, redundancy, dismissal, end-of-service payments, bonuses, holiday pay, long-service awards, leave-related pay, pension or retirement benefits or payments or welfare benefits or similar payments and in no event should be considered as compensation for, or relating in any way to, past services for the Company or the Participant's employer or any Subsidiary.

(g) All questions under the Plan or under these Standard Terms and Conditions shall be decided by the Administrator in its total and absolute discretion.

(h) This Award will be subject to recoupment in accordance with the Company's compensation recovery (clawback) policy or policies then in effect. No recovery of compensation under any such policy will be an event giving rise to a right to resign for "good reason" or "constructive termination" (or similar term) under any agreement with the Company or a Subsidiary.

**10. ELECTRONIC DELIVERY**

By accepting the Grant Notice, the Participant hereby consents to the delivery of information (including, without limitation, information required to be delivered to the Participant pursuant to applicable securities laws) regarding the Company and the Subsidiaries, the Plan, and the RSUs via Company web site or other electronic delivery.

**11. ARBITRATION**

Any controversy arising out of or relating to the Grant Notice, these Standard Terms and Conditions, and/or the Plan ("***Covered Claims***"), shall be resolved in accordance with the terms and conditions of the Sandisk Dispute Resolution Agreement (the "***DRA***").

If, however, Participant has opted out of the DRA, any Covered Claims shall be submitted to arbitration pursuant to this Section 11. Unless otherwise agreed to between the Participant and Company, such arbitration shall be held no more than 45 miles from the Company's headquarters. The arbitration will be held before a sole arbitrator selected from Judicial Arbitration and Mediation Services, Inc., or its successor ("***JAMS***"),or if JAMS is no longer able to supply the arbitrator, such arbitrator shall be selected from the American Arbitration Association, and shall be conducted in accordance with the provisions of the Federal Arbitration Act; provided, however, that provisional injunctive relief may, but need not, be sought by either party in a court of law to maintain the status quo while arbitration proceedings are pending, and any provisional injunctive relief granted by such court shall remain effective until the matter is finally determined by the arbitrator. Any such action for provisional injunctive relief shall be subject to the exclusive jurisdiction of the Delaware Chancery Court and each party consents to jurisdiction with respect to any such action in Delaware Chancery Court. To the fullest extent permitted by applicable law, Participant and the Company agree to bring any Covered Claims on an individual basis only, and not on a class, collective, joint, or representative basis. If, however, the preceding sentence be determined invalid or unenforceable by a court of competent jurisdiction and not by an arbitrator with respect to any particular Covered Claim, then that Covered Claim will not proceed in arbitration but rather will be resolved in a court of competent jurisdiction for that Covered Claim only. All other Covered Claims must be resolved in arbitration on an individual basis. Any award or relief granted by the arbitrator shall be final and binding on the Company and the Participant and may be enforced by any court of competent jurisdiction.

The Company shall be responsible for payment of the forum costs of any arbitration hereunder, including the arbitrator's fee. Each party shall bear its own attorney's fees and costs (other than forum costs associated with the arbitration) incurred by it or him or her in connection with the resolution of the dispute. If, however, any party prevails on a statutory claim, which affords the prevailing party attorneys' fees and costs, then the arbitrator may award reasonable fees and costs to the prevailing party. The parties agree that they are hereby waiving any rights to trial by jury in relation to any matter arising out of or in any way connected with any Covered Claim(s).

**12. NON-U.S. EMPLOYEES**

The Award shall be subject to any additional terms and conditions fornon-U.S. employees set forth in Appendix A ("***Appendix A***") and any terms and conditions for the Participant's country set forth in Appendix B ("***Appendix B***"). Moreover, if the Participant relocates to one of the countries included in Appendix B, the terms and conditions for such country will apply to the Participant to the extent the Company determines that the application of such terms and conditions is necessary or advisable for legal or administrative reasons. Appendix A and Appendix B constitute part of the Agreement.

**APPENDIX A**

**ADDITIONAL TERMS AND CONDITIONS OF RESTRICTED STOCK UNIT AWARD DOCUMENT FOR NON-U.S. EMPLOYEES**

**1. Terms of Plan Participation for Non-U.S. Participants**

The Participant understands that this Appendix A contains additional terms and conditions that, together with the Plan and the Award Document, govern the Participant's participation in the Plan if the Participant is working or resident in a country other than the United States. The Participant further understands that the Participant's participation in the Plan also will be subject to any terms and conditions for the Participant's country set forth in Appendix B. *Capitalized terms used but not defined in this Appendix A shall have the same meanings assigned to them in the Plan and/or Award Document.*

**2. Withholding Taxes**

The following provision supplements Section 5 of the Standard Terms and Conditions:

The Participant acknowledges that, regardless of any action taken by the Company or, if different, the Participant's employer ("***Employer***"), the ultimate liability for all income tax, social insurance, payroll tax, fringe benefits tax, payment on account or other tax-related items related to the Participant's participation in the Plan and this Award and legally applicable to the Participant ("***Tax-Related Items***") is and remains the Participant's responsibility and may exceed the amount, if any, actually withheld by the Company or the Employer. The Participant further acknowledges that the Company and/or the Employer (a) make no representations or undertakings regarding the treatment of any Tax-Related Items in connection with any aspect of the RSUs; and (b) are not obligated to structure the terms of the grant or any aspect of the RSUs to reduce or eliminate the Participant's liability for Tax-Related Items or achieve any particular tax result. If the Participant is or becomes subject toTax-Related Items in more than one jurisdiction, the Participant acknowledges that the Company and/or the Employer (or former employer, as applicable) may be required to withhold or account for Tax-Related Items in more than one jurisdiction.

The Participant agrees, in connection with any relevant taxable or tax withholding event, as applicable, to make adequate arrangements satisfactory to the Company and/or the Employer to satisfy all Tax-Related Items. In this regard, the Participant authorizes the Company and/or the Employer to satisfy the obligations with regard to all Tax-Related Items by one or a combination of the methods set forth in Section 8(f) of the Plan and Section 5 of the Standard Terms and Conditions. In addition, the Participant authorizes withholding from proceeds of the sale of shares of Common Stock acquired upon settlement of the RSUs either through a voluntary sale or through a mandatory sale arranged by the Company (on the Participant's behalf pursuant to this authorization without further consent). If the Participant is subject to Section 16 of the Exchange Act, then withholding for Tax-Related Items shall be satisfied in accordance with Section 8(f) of the Plan, Section 5 of the Standard Terms and Conditions, and the withholding methodology approved by the Administrator for officers subject to Section 16 of the Exchange Act.

Depending on the withholding method, the Company and/or the Employer may withhold or account forTax-Related Items by considering applicable minimum withholding amounts or other applicable withholding rates, including maximum applicable rates. In the event of over-withholding, the Participant may receive a refund of any over-withheld amount in cash and will have no entitlement to the equivalent in Common Stock from the Company or the Employer; otherwise, the Participant may be able to seek a refund from the local tax authorities. In the event of under-withholding, the Participant may be required to pay any additional Tax-Related Items directly to the applicable tax authority or to the Company and/or the Employer. If theTax-Related Items are satisfied by withholding in shares of Common Stock, for tax purposes, the Participant is deemed to have been issued the full number of shares subject to the vested RSUs, notwithstanding that a number of the Shares are held back solely for the purpose of paying the Tax-Related Items.

The Participant further agrees to pay to the Company or the Employer, any amount ofTax-Related Items that the Company or the Employer may be required to withhold or account for as a result of the Participant's participation in the Plan that cannot be satisfied by the means previously described. The Company may refuse to issue or deliver the shares of Common Stock or the proceeds from the sale of shares if the Participant fails to comply with the Participant's obligations in connection with the Tax-Related Items.

**3. Nature of Grant**

By accepting the RSUs and any shares of Common Stock, the Participant agrees that:

(a) the Plan is established voluntarily by the Company, it is discretionary in nature, and may be amended, suspended or terminated by the Company at any time, to the extent permitted by the Plan;

(b) the grant of the RSUs is exceptional, voluntary and occasional and does not create any contractual or other right to receive future grants of RSUs, or benefits in lieu of RSUs, even if RSUs have been granted in the past;

(c) all decisions with respect to future RSUs or other grants, if any, will be at the sole discretion of the Company;

(d) the Participant is voluntarily participating in the Plan;

(e) the RSUs and any shares of Common Stock acquired under the Plan, and the income and value of the same, are not intended to replace any pension rights or compensation;

(f) the RSUs and any shares of Common Stock acquired under the Plan, and the income and value of the same, are not part of the Participant's normal or expected compensation for any purposes including, but not limited to, calculating any severance, resignation, termination, redundancy, dismissal, end-of-service payments, bonuses, holiday pay, long-service awards, leave-related pay, pension or retirement benefits or payments or welfare benefits or similar payments and in no event should be considered as compensation for, or relating in any way to, past services for the Company or the Employer or any Subsidiary;

(g) the future value of the shares of Common Stock underlying the RSUs is unknown, indeterminable, and cannot be predicted with certainty;

(h) unless otherwise agreed with the Company, the RSUs and the shares of Common Stock acquired under the Plan, and the income and value of same, are not granted as consideration for, or in connection with, the service the Participant may provide as a director of any Subsidiary;

(i) no claim or entitlement to compensation or damages shall arise from forfeiture of the RSUs resulting from the termination of the Participant's employment (for any reason whatsoever, whether or not later found to be invalid or in breach of employment laws in the jurisdiction where the Participant is employed or providing services, or the terms of the Participant's employment or service agreement, if any) or from the application of any clawback or recoupment policy adopted by the Company or imposed by applicable law;

(j) unless otherwise provided in the Plan or by the Company in its discretion, the RSUs and the benefits evidenced by the Award Document do not create any entitlement to have the RSUs or any such benefits transferred to, or assumed by, another company nor to be exchanged, cashed out or substituted for, in connection with any corporate transaction affecting the shares; and

(k) neither the Company, the Employer nor any Subsidiary shall be liable for any foreign exchange rate fluctuation between the Participant's local currency and the U.S. dollar that may affect the value of the RSUs or of any amounts due to the Participant pursuant to the vesting of the RSUs or the subsequent sale of any shares of Common Stock acquired upon vesting.

**4. Data Privacy**

***By accepting the RSUs via the Company's acceptance procedure, the Participant is declaring that he or she agrees with the data processing practices described herein and consents to the collection, processing and use of Personal Data (as defined below) by the Company and the transfer of Personal Data to the recipients mentioned herein, including recipients located in countries which do not adduce an adequate level of protection from a European (or other non-U.S.) data protection law perspective, for the purposes described herein.***

**(a)** ***Declaration of Consent. The Participant understands that he or she needs to review the following information about the processing of the Participant's personal data by or on behalf of the Company, the Employer and/or any Subsidiary as described in this Award Document and any other RSU grant materials (the "Personal Data") and declare his or her consent. As regards the processing of the Participant's Personal Data in connection with the Plan and this Award Document, the Participant understands that the Company is the controller of the Participant's Personal Data.***

**(b)** ***Data Processing and Legal Basis.*** ***The Company collects, uses and otherwise processes Personal Data about the Participant for the purposes of allocating shares of Common Stock and implementing, administering and managing the Plan. The Participant understands that this Personal Data may include, without limitation, the Participant's name, home address and telephone number, email address, date of birth, social insurance number, passport number or other identification number (e.g., resident registration number), salary, nationality, job title, any shares of stock or directorships held in the Company or its Subsidiaries, details of all RSUs or any other entitlement to shares of stock or equivalent benefits awarded, canceled, exercised, vested, unvested or outstanding in the Participant's favor. The legal basis for the processing of the Participant's Personal Data will be the Participant's consent.***

**(c)** ***Stock Plan Administration Service Providers.*** ***The Participant understands that the Company transfers the Participant's Personal Data, or parts thereof, to E*TRADE Financial Corporation Services, Inc. (and its affiliated companies), an independent service provider based in the United States or IBI Capital for Israeli employees, each of which assists the Company with the implementation, administration and management of the Plan. In the future, the Company may select a different service provider and share the Participant's Personal Data with such different service provider that serves the Company in a similar manner. The Participant understands and acknowledges that the Company's service provider will open an account for the Participant to receive and trade shares of Common Stock acquired under the Plan and that the Participant will be asked to agree on separate terms and data processing practices with the service provider, which is a condition of the Participant's ability to participate in the Plan.***

**(d)** ***International Data Transfers.*** ***The Participant understands that the Company and, as of the date hereof, any third parties assisting in the implementation, administration and management of the Plan, such as the Company's service providers, are based in the United States. If the Participant is located outside the United States, the Participant understands and acknowledges that the Participant's country has enacted data privacy laws that are different from the laws of the United States. Transfers of personal data from the EEA or the United Kingdom to the United States can be made on the basis of Standard Contractual Clauses approved by the European Commission, United Kingdom or other appropriate safeguards permissible under the applicable law. If the Participant is located in the EU, EEA or the United Kingdom, the Company may receive, process and transfer the Participant's Personal Data onward to third-party service providers solely on the basis of appropriate data transfer agreements or other appropriate safeguards permissible under applicable law. If applicable, the Participant understands that the Participant can ask for a copy of the appropriate data processing agreements underlying the transfer of the Participant's Personal Data by contacting the Participant's local human resources representative. The Company's legal basis for the transfer of the Participant's Personal Data is the Participant's consent.***

**(e)** ***Data Retention.*** ***The Company will hold and use the Data only as long as is necessary to implement, administer and manage participation in the Plan or as required to comply with tax, exchange control, labor and securities laws, other applicable law, exercise or defense of legal rights, and archiving, back-up and deletion processes. This period may extend beyond the Participant's period of employment with the Employer.***

**(f)** ***Voluntariness and Consequences of Denial/Withdrawal of Consent*** ***Participation in the Plan is voluntary and the Participant is providing the consents herein on a purely voluntary basis. If the Participant does not consent, or later seeks to revoke their consent, the Participant's salary from or employment or other service with the Employer will not be affected; the only consequence of refusing or withdrawing consent is that the Company would not be able to grant RSUs or other equity awards to the Participant or administer or maintain such awards.***

**(g)** ***Data Subject Rights.*** ***The Participant understands that data subject rights regarding the processing of personal data vary depending on the applicable law and that, depending on where the Participant is based and subject to the conditions set out in the applicable law, the Participant may have, without limitation, the rights to (i) inquire whether and what kind of Personal Data the Company holds about the Participant and how it is processed, and to access or request copies of such Personal Data, (ii) request the correction or supplementation of Personal Data about the Participant that is inaccurate, incomplete or out-of-date in light of the purposes underlying the processing, (iii) obtain the erasure of Personal Data no longer necessary for the purposes underlying the processing, processed based on withdrawn consent, processed for legitimate interests that, in the context of the Participant's objection, does not prove to be compelling, or processed in non-compliance with applicable legal requirements, (iv) request the Company to restrict the processing of the Participant's Personal Data in certain situations where the Participant feels its processing is inappropriate, (v) object, in certain circumstances, to the processing of Personal Data for legitimate interests, and to (vi) request portability of the Participant's Personal Data that the Participant has actively or passively provided to the Company (which does not include data derived or inferred from the collected data), where the processing of such Personal Data is based on consent or the Participant's employment or service contract and is carried out by automated means. In case of concerns, the Participant understands that the Participant may also have the right to lodge a complaint with the competent local data protection authority. Further, to receive clarification of, or to exercise any of, the Participant's rights the Participant understands that the Participant should contact the Participant's local human resources representative.***

**(h)** ***Alternate Basis and Additional Consents.*** ***Finally, the Participant understands that the Company may rely on a different basis for the processing or transfer of Personal Data in the future and/or request that the Participant provide another data privacy consent. If applicable, the Participant agrees that upon request of the Company or the Employer, the Participant will provide an executed acknowledgement or data privacy consent form (or any other agreements or consents) that the Company and/or the Employer may deem necessary to obtain from the Participant for the purpose of administering the Participant's participation in the Plan in compliance with the data privacy laws in the Participant's country, either now or in the future. The Participant understands and agrees that he or she will not be able to participate in the Plan if he or she fails to provide any such consent or agreement requested by the Company and/or the Employer.***

**5. Electronic Delivery and Acceptance**

The Participant agrees that the Company may, in its sole discretion, decide to deliver by email or other electronic means any documents relating to the Plan or the RSUs. Further, the Participant agrees to receive such documents by electronic delivery and agrees to participate in the Plan through an on-line or electronic system established and maintained by the Company or by a third party designated by the Company.

**6. Insider Trading/Market Abuse Laws**

The Participant agrees to comply with the Company's policy on insider trading (to the extent that it is applicable to the Participant). Depending on the Participant's country or the designated broker's country or country where the Common Stock is listed, the Participant may be subject to insider trading restrictions and/or market abuse laws, which may affect the Participant's ability to accept, acquire, sell, attempt to sell or otherwise dispose of Common Stock, rights to Common Stock (*e.g.*, the RSUs) or rights linked to the value of Common Stock (*e.g.*, phantom awards, futures) during such times as the Participant is considered to have "inside information" regarding the Company (as defined by the laws or regulations in the Participant's country). Local insider trading laws and regulations may prohibit the cancellation or amendment of orders the Participant placed before possessing inside information. Furthermore, the Participant could be prohibited from (i) disclosing the inside information to any third party (other than on a "need to know" basis) and (ii) "tipping" third parties or causing them otherwise to buy or sell securities. Third parties include fellow employees. Any restrictions under these laws or regulations are separate from and in addition to any restrictions that may be imposed under any applicable Company insider trading policy. The Participant is responsible for ensuring compliance with any applicable restrictions and should consult his or her personal legal advisor on this matter.

**7. Exchange Control, Tax and/or Foreign Asset/Account Reporting**

The Participant acknowledges that there may be exchange control, tax, foreign asset and/or account reporting requirements which may affect the Participant's ability to acquire or hold shares of Common Stock acquired under the Plan or cash received from participating in the Plan (including from any dividend equivalents paid with respect to the RSUs or dividends paid on shares of Common Stock acquired under the Plan) in a brokerage/bank account or legal entity outside the Participant's country. The Participant may be required to report such accounts, assets, the balances therein, the value thereof and/or the transactions related thereto to the tax or other authorities in the Participant's country. The Participant also may be required to repatriate sale proceeds or other funds received as a result of the Participant's participation in the Plan to the Participant's country through a designated bank or broker within a certain time after receipt. In addition, the Participant agrees to take any and all actions, and consent to any and all actions taken by the Company or the Employer as may be required to allow the Company or the Employer to comply with local laws, rules and regulations in the Participant's country of residence (and country of employment, if different). The Participant acknowledges that it is the Participant's responsibility to be compliant with such regulations, and the Participant should consult his or her personal legal advisor for any details.

**8. Language**

The Participant acknowledges that he or she is sufficiently proficient in English, or has consulted with an advisor who is sufficiently proficient in English so as to allow the Participant to understand the terms and conditions of this Award Document. Furthermore, if the Award Document or any other document related to the Plan has been translated into a language other than English and the meaning of the translated version is different than the English version, the English version will control, unless otherwise required by applicable law.

**Exhibit 10.28**

**SANDISK CORPORATION**
**2025 LONG-TERM INCENTIVE PLAN**

**GRANT NOTICE FOR**
**PERFORMANCE STOCK UNIT AWARD**

FOR GOOD AND VALUABLE CONSIDERATION, Sandisk Corporation (the "***Company***"), hereby grants to the Participant named below the number of Performance Stock Units (the "***PSUs***") listed below (this "***Award***") under the Sandisk Corporation 2025 Long-Term Incentive Plan (as amended from time to time, the "***Plan***"). Each PSU represents the right to receive one share of Common Stock, subject to the terms and conditions in this Grant Notice, the Plan and the Standard Terms and Conditions (the "***Standard Terms and Conditions***") of such Plan, attached as Exhibit A hereto. Capitalized terms not otherwise defined here shall have the meaning set forth in the Plan.

| | |
|---|---|
| Name of Participant: | |
| Employee ID | |
| Grant Date: | |
| Grant Number | |
| Target Number of PSUs: | |
| Vesting Schedule: | The vesting date of the PSUs is [•] (the "***Vesting Date***"). Vesting shall be subject to Participant's Continuous Service from the Grant Date through the Vesting Date, unless provided otherwise under Section 2 of the Standard Terms and Conditions. |
| Performance Period and Measurement Periods: | [•] |

**IN CONNECTION WITH THIS GRANT, AND IN addition TO THIS GRANT NOTICE, PARTICIPANT HAS RECEIVED A COPY OF THE PLAN AND THE STANDARD TERMS AND CONDITIONS. PARTICIPANT MAY REJECT THIS AWARD BY NOTIFYING THE COMPANY NO LATER THAN THE FIFTH BUSINESS DAY FOLLOWING RECEIPT OF THIS AWARD DOCUMENT. FAILURE TO REJECT THIS AWARD WITHIN SUCH 5-DAY PERIOD SHALL BE DEEMED ACCEPTANCE OF THIS AWARD AND THE TERMS AND CONDITIONS OF THE AWARD DOCUMENT.**

**EXHIBIT A**

**Sandisk Corporation**
**2025 LONG-TERM INCENTIVE PLAN**

**STANDARD TERMS AND CONDITIONS FOR**
**PERFORMANCE STOCK UNITS**

These Standard Terms and Conditions apply to this Award of Performance Stock Units granted under the Sandisk Corporation 2025 Long-Term Incentive Plan (the "***Plan***"). The Performance Stock Units are also subject to the terms of the Plan and the attached Grant Notice, which are incorporated here by this reference. Capitalized terms not otherwise defined here shall have the meaning set forth in the Plan.

## 1. TERMS OF PERFORMANCE STOCK UNITS

Sandisk Corporation (the "***Company***") has granted to the Participant named in the attached Grant Notice an award of Performance Stock Units (this "***Award***" or the "***PSUs***") described in the Grant Notice, with each PSU representing the right to receive one share of Common Stock. For purposes of these Standard Terms and Conditions and the Grant Notice, any reference to the Company shall include a reference to any Subsidiary.

## 2. VESTING AND SETTLEMENT OF PERFORMANCE STOCK UNITS

(a) The Award shall be unvested as of the Grant Date and be forfeitable unless and until otherwise vested pursuant to the terms of the Grant Notice and these Standard Terms and Conditions. After the Grant Date, subject to termination or acceleration as provided in these Standard Terms and Conditions and the Plan, this Award shall become vested as described in the Grant Notice. PSUs that have vested and are no longer subject to forfeiture are referred to as "***Vested PSUs***." PSUs that are not vested and remain subject to forfeiture are referred to as "***Unvested PSUs***." No portion of this Award, nor the shares of Common Stock subject to this Award, may be deferred under the Sandisk Corporation Deferred Compensation Plan (or any applicable successor plan) or any other deferred compensation arrangement of the Company.

Following the end of each Annual Measurement Period, the Administrator shall determine the extent to which the applicable performance goals have been achieved with respect to such Measurement Period. Following the end of the Performance Period, the Administrator shall determine the number of PSUs eligible to vest based on the average achievement of performance goals for each Annual Measurement Period over the Performance Period. Any PSUs (including any related credited dividend equivalents) that do not become eligible to vest shall terminate as of the end of the Performance Period. The PSUs that become eligible to vest based on performance during the Performance Period shall vest on the Vesting Date set forth in the Grant Notice, subject to Continuous Service through such date, except as expressly provided in Section 2(b), 2(c) or 2(d) below. The Company shall deliver to the Participant on the Settlement Date a number of shares of Common Stock equal to the number of Vested PSUs. The Company may, in its sole discretion, settle any PSUs accrued as dividend equivalents by a cash payment equal to the Fair Market Value of a share of Common Stock on the date of payment (as opposed to payment in the form of shares of Common Stock). "***Settlement Date***" means: as soon as practicable following the vesting of the PSUs on the Vesting Date but in no event later than December 31 of the calendar year in which the Vesting Date occurs.

(b) *Termination without Cause under the Executive Severance Plan* For a Participant who is subject to the terms of the Sandisk Corporation Executive Severance Plan, as applicable (or any applicable successor plan) (the "***Executive Severance Plan***") at the time of termination of Continuous Service, then upon Participant's termination of employment by the Company without Cause (as defined in the Executive Severance Plan) under circumstances that would entitle the Participant to severance benefits under the Executive Severance Plan, subject to compliance with the terms of the Executive Severance Plan, then the PSUs will be payable in accordance with the Vesting Schedule set forth in the Grant Notice above, with no acceleration, and vest as follows:

(i) If the Performance Period has not ended as of the date of termination of Continuous Service, the PSUs (and any credited dividend equivalent rights) will remain outstanding and a pro-rated portion will vest, if at all, based on the actual achievement of the applicable performance goal(s) with respect to the Annual Measurement Periods over the Performance Period, including the Relative TSR Modifier, (with the number of shares vesting determined before taking the crediting of (if applicable) dividend equivalent rights into account) with such pro-rated portion equal to a fraction with a numerator equal to the total number of calendar days in the period beginning with the first day of the First Measurement Period through and including the Participant's termination of Continuous Service and a denominator equal to the total number of calendar days in the Performance Period.

(ii) If the Performance Period has ended as of the date of termination of Continuous Service, the PSUs (and any credited dividend equivalents) will remain outstanding and will vest, if at all, based on the actual achievement of the applicable performance goal(s) with respect to the Annual Measurement Periods over the Performance Period, including the Relative TSR Modifier.

Any Unvested PSUs that do not vest as described above shall be forfeited as of the date of the Participant's termination of Continuous Service.

(c) *Termination without Cause or for Good Reason under the Change in Control Severance Plan.* For a Participant who is subject to the terms of the Sandisk Corporation Change in Control Severance Plan, as applicable (or any applicable successor plan) (the "***CIC Severance Plan***") at the time of termination of Continuous Service, then upon Participant's termination of employment by the Company without Cause or due to a resignation by Participant for Good Reason (both as defined in the CIC Severance Plan) under circumstances that would entitle the Participant to severance benefits under the CIC Severance Plan, subject to compliance with the terms of the CIC Severance Plan, the PSUs (and any credited dividend equivalents) will be payable upon the Participant's termination of Continuous Service and vest as follows:

(i) If the Performance Period has not ended as of the date of termination of Continuous Service, the number of shares of Common Stock that will vest shall be equal to the greater of (x) the target number of PSUs or (y) the number of shares of Common Stock subject to the PSUs that would vest based on the treatment set forth in the definitive agreement providing for the Change in Control.

(ii) If the Performance Period has ended as of the date of termination of Continuous Service, the PSUs will remain outstanding and will vest, if at all, based on the actual achievement of the applicable performance goals over the Performance Period, including the Relative TSR Modifier.

(d) *Termination due to Death; Termination due to a Qualifying Retirement.* (1) Upon Participant's termination of Continuous Service due to death, or (2) upon Participant's termination of employment due to a Qualifying Retirement (as defined below), the PSUs will be payable in accordance with the Vesting Schedule set forth in the Grant Notice above, with no acceleration, and vest as follows:

(i) If the Performance Period has not ended as of the date of termination of Continuous Service, the PSUs (and any credited dividend equivalent rights) will remain outstanding and a pro-rated portion will vest, if at all, based on the actual achievement of the applicable performance goal(s) with respect to the Annual Measurement Periods over the Performance Period, including the Relative TSR Modifier, (with the number of shares vesting determined before taking the crediting of (if applicable) dividend equivalent rights into account) with such pro-rated portion equal to a fraction with a numerator equal to the total number of calendar days in the period beginning with the first day of the First Measurement Period through and including the Participant's termination of Continuous Service and a denominator equal to the total number of calendar days in the Performance Period.

(ii) If the Performance Period has ended as of the date of termination of Continuous Service, the PSUs (and any credited dividend equivalents) will remain outstanding and will vest, if at all, based on the actual achievement of the applicable performance goal(s) with respect to the Annual Measurement Periods over the Performance Period, including the Relative TSR Modifier.

"***Qualifying Retirement***" means the termination of the Participant's employment with the Company and its Subsidiaries due to his or her retirement from employment with the Company or one of its Subsidiaries after satisfying all of the following requirements at the time of such termination: (i) the Participant is at least 55 years of age, (ii) the Participant has five or more whole years of credited service with the Company and/or any of its Subsidiaries; and (iii) the Participant's age plus years of credited service with the Company and/or any of its Subsidiaries (including only whole years in the case of both age and credited service for purposes of this requirement) totals at least 70.

Any Unvested PSUs that do not vest as described above shall be forfeited as of the date of the Participant's termination of Continuous Service, provided that the Unvested PSUs shall remain eligible to vest in accordance with the Grant Notice and these Standard Terms and Conditions in the event the Participant terminates employment due to a Qualifying Retirement yet continues to provide services to the Company and its Subsidiaries in a capacity other than as an employee. Such continued vesting is subject to the Participant's Continuous Services through the Vesting Date.

(e) *Resignation*. Upon Participant's termination of Continuous Service by the Company due to a resignation by Participant for any reason, other than a Qualifying Retirement or a resignation for Good Reason under circumstances that would entitle the Participant to severance benefits under the CIC Severance Plan, subject to compliance with the terms of the CIC Severance Plan, the PSUs held by the Participant shall be forfeited as of the date of the Participant's termination of Continuous Service.

(f) Upon Participant's termination of Continuous Service by the Company for Cause, the entire Award held by the Participant shall be forfeited as of the date of the Participant's termination of Continuous Service.

(g) *Non-U.S. Eligible Employees Participating in the Executive Severance Plan and Change in Control Severance Plan*. For avoidance of doubt, if Participant is not a U.S. Eligible Employee (as defined in the applicable severance plan), the Participant will only be eligible for the vesting treatment on a termination without Cause as described in Section 2(b) or termination without Cause or resignation for Good Reason as described in Section 2(c) in accordance with the terms of the applicable severance plan, which provides that the administrator of such severance plan will compare any Local Severance Benefits (as defined in the applicable severance plan) with the Plan Severance Benefits (as defined in the applicable severance plan) and if the value of the Local Severance Benefits equals or exceeds the value of the Plan Severance Benefits, the Participant will not be eligible to receive the vesting treatment on a termination without Cause as described in Section 2(b) or termination without Cause or resignation for Good Reason as described in Section 2(c). For the avoidance of doubt, a Participant who is retirement-eligible and receives Local Severance Benefits shall also receive the vesting treatment described in Section 2(d) as though the Participant had experienced a Qualifying Retirement.

**3. RIGHTS AS STOCKHOLDER; DIVIDEND EQUIVALENTS**

(a) Participant shall not be, nor have any of the rights or privileges of, a stockholder of the Company in respect of any PSUs unless and until shares of Common Stock settled for such PSUs shall have been issued by the Company to Participant.

(b) Notwithstanding Section 3(a), from and after the Grant Date and until the earlier of (i) the Participant's receipt of Common Stock upon settlement of the PSUs and (ii) the time when the Participant's right to receive Common Stock upon settlement of the PSUs is forfeited, the Participant shall be entitled to receive as a dividend equivalent a number of additional PSUs on the date that the Company pays a cash dividend (if any) to Common Stock holders generally. Such dividend equivalent shall be determined by dividing (i) the product of (A) the dollar amount of the cash dividend paid per share of Common Stock on such date and (B) the total number of PSUs (including dividend equivalents accrued thereon) previously credited to the Participant as of such date, by (ii) the Fair Market Value per share of Common Stock on such date. Such dividend equivalents (if any) shall be subject to the same terms and conditions and shall be settled or forfeited in the same manner and at the same time as the PSUs to which the dividend equivalents were credited. Dividend equivalents shall be settled in whole shares of Common Stock with any dividend equivalents accrued in the form of fractional PSUs settled in cash. However, for the avoidance of doubt, the Company may, in its sole discretion, settle any PSUs accrued as dividend equivalents by a cash payment equal to the Fair Market Value of a share of Common Stock on the date of payment (as opposed to payment in the form of shares of Common Stock). For the avoidance of doubt, in no event will any dividend equivalents credited to PSUs be delivered to the Participant unless and until such PSUs vest and settle.

**4. RESTRICTIONS ON RESALES OF SHARES**

The Company may impose such restrictions as it determines appropriate as to the timing and manner of any resales by the Participant or other subsequent transfers by the Participant of any shares of Common Stock issued pursuant to Vested PSUs, including (a) restrictions under an insider trading policy, (b) restrictions designed to delay and/or coordinate the timing and manner of sales by Participant and other holders and (c) restrictions as to the use of a specified brokerage firm for such resales or other transfers.

**5. INCOME TAXES**

The Participant may satisfy tax withholding obligations relating to the PSUs by any combination of the following: (i) a cash payment; (ii) a Company deduction from any amounts payable to Participant; (iii) Company withholding of shares from the Common Stock issuable to the Participant in connection with the PSUs (only up to the amount permitted that will not cause an adverse accounting consequence); or (iv) Company withholding a payment from the proceeds from the sale of shares of Common Stock issued pursuant to the PSUs. In addition, the Administrator may, in its sole discretion but only to the extent consistent with Section 409A of the Code, reduce the number of PSUs remaining subject to this Award, with each such PSU to have a value for such purpose equal to the then Fair Market Value of a share of Common Stock, to satisfy such withholding obligation at the applicable withholding rates.

**6. NON -TRANSFERABILITY OF AWARD**

The Participant agrees that, except as otherwise provided in the Plan or as permitted by the Administrator, this Award may not be sold, assigned, transferred, pledged or otherwise directly or indirectly encumbered or disposed of other than by will or the laws of descent and distribution or pursuant to the terms of a qualified domestic relations order, official marital settlement agreement or other divorce or separation instrument.

**7. OTHER AGREEMENTS SUPERSEDED**

The Grant Notice, these Standard Terms and Conditions and the Plan constitute the entire understanding between the Participant and the Company regarding this Award. Any prior agreements, commitments or negotiations concerning this Award are superseded.

**8. NO ADDITIONAL RIGHTS**

The Participant's receipt of the PSUs does not confer upon the Participant any right to continue to serve the Company or an Affiliate in any capacity and will not affect the right of the Company or an Affiliate to terminate the service of the Participant.

**9. GENERAL**

(a) In the event that any provision of these Standard Terms and Conditions (including, for the avoidance of doubt, the Plan, which is incorporated here by this reference) is declared to be unenforceable by an arbitrator selected in accordance with Section 11 below or a court of competent jurisdiction, such provision shall be reformed, if possible, to the extent necessary to render it enforceable, or otherwise deleted, and the remainder of these Standard Terms and Conditions shall not be affected except to the extent necessary to reform or delete such unenforceable provision. Furthermore, except as otherwise provided by Section 11, it is the parties' intent that any order striking any portion of this Award Document and/or the Plan should modify the stricken terms as narrowly as possible to give as much effect as possible to the intentions of the parties hereunder.

(b) The headings preceding the text of the sections in these Standard Terms and Conditions are inserted solely for convenience of reference, and shall not constitute a part of these Standard Terms and Conditions, nor shall they affect its meaning, construction or effect. References to any agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof and not prohibited by the Plan or these Standard Terms and Conditions.

(c) These Standard Terms and Conditions shall inure to the benefit of and be binding upon the parties and their respective permitted heirs, beneficiaries, successors and assigns.

(d) These Standard Terms and Conditions shall be interpreted in accordance with and governed by the laws of the State of Delaware, without regard to principles of conflicts of law.

(e) In the event of any conflict between the Grant Notice, these Standard Terms and Conditions and the Plan, the Grant Notice and these Standard Terms and Conditions shall control. In the event of any conflict between the Grant Notice and these Standard Terms and Conditions, the Grant Notice shall control.

(f) The PSUs and any shares of Common Stock acquired under the Plan, and the income and value of the same, are not part of the Participant's normal or expected compensation for any purposes including, but not limited to, calculating any severance, resignation, termination, redundancy, dismissal, end-of-service payments, bonuses, holiday pay, long-service awards, leave-related pay, pension or retirement benefits or payments or welfare benefits or similar payments and in no event should be considered as compensation for, or relating in any way to, past services for the Company or the Participant's employer or any Subsidiary.

(g) All questions under the Plan or under these Standard Terms and Conditions shall be decided by the Administrator in its total and absolute discretion.

(h) This Award will be subject to recoupment in accordance with the Company's compensation recovery (clawback) policy or policies then in effect. No recovery of compensation under any such policy will be an event giving rise to a right to resign for "good reason" or "constructive termination" (or similar term) under any agreement with the Company or a Subsidiary.

**10. ELECTRONIC DELIVERY**

By accepting the Grant Notice, the Participant hereby consents to the delivery of information (including, without limitation, information required to be delivered to the Participant pursuant to applicable securities laws) regarding the Company and the Subsidiaries, the Plan, and the PSUs via Company web site or other electronic delivery.

**11. ARBITRATION**

Any controversy arising out of or relating to the Grant Notice, these Standard Terms and Conditions, and/or the Plan ("***Covered Claims***"), shall be resolved in accordance with the terms and conditions of the Sandisk Dispute Resolution Agreement (the "***DRA***"), except with respect to any specific performance provided for in Section 13(f) below.

If, however, Participant has opted out of the DRA, any Covered Claims shall be submitted to arbitration pursuant to this Section 11. Unless otherwise agreed to between the Participant and Company, such arbitration shall be held no more than 45 miles from the Company's headquarters. The arbitration will be held before a sole arbitrator selected from Judicial Arbitration and Mediation Services, Inc., or its successor ("***JAMS***"), or if JAMS is no longer able to supply the arbitrator, such arbitrator shall be selected from the American Arbitration Association, and shall be conducted in accordance with the provisions of the Federal Arbitration Act; provided, however, that provisional injunctive relief may, but need not, be sought by either party in a court of law to maintain the status quo while arbitration proceedings are pending, and any provisional injunctive relief granted by such court shall remain effective until the matter is finally determined by the arbitrator. Any such action for provisional injunctive relief shall be subject to the exclusive jurisdiction of the Delaware Chancery Court and each party consents to jurisdiction with respect to any such action in Delaware Chancery Court. To the fullest extent permitted by applicable law, Participant and the Company agree to bring any Covered Claims on an individual basis only, and not on a class, collective, joint, or representative basis. If, however, the preceding sentence be determined invalid or unenforceable by a court of competent jurisdiction and not by an arbitrator with respect to any particular Covered Claim, then that Covered Claim will not proceed in arbitration but rather will be resolved in a court of competent jurisdiction for that Covered Claim only. All other Covered Claims must be resolved in arbitration on an individual basis. Any award or relief granted by the arbitrator shall be final and binding on the Company and the Participant and may be enforced by any court of competent jurisdiction.

The Company shall be responsible for payment of the forum costs of any arbitration hereunder, including the arbitrator's fee. Each party shall bear its own attorney's fees and costs (other than forum costs associated with the arbitration) incurred by it or him or her in connection with the resolution of the dispute. If, however, any party prevails on a statutory claim, which affords the prevailing party attorneys' fees and costs, then the arbitrator may award reasonable fees and costs to the prevailing party. The parties agree that they are hereby waiving any rights to trial by jury in relation to any matter arising out of or in any way connected with any Covered Claim(s).

**12. NON-U.S. EMPLOYEES**

The Award shall be subject to any additional terms and conditions fornon-U.S. employees set forth in Appendix A ("***Appendix A***") and any terms and conditions for the Participant's country set forth in Appendix B ("***Appendix B***"). Moreover, if the Participant relocates to one of the countries included in Appendix B, the terms and conditions for such country will apply to the Participant to the extent the Company determines that the application of such terms and conditions is necessary or advisable for legal or administrative reasons. Appendix A and Appendix B constitute part of the Agreement.

**13. ADDITIONAL PARTICIPANT OBLIGATIONS**

(a) The Participant, in accepting this Award, (i) agrees to the terms of this Award as set forth in this Award Document generally, and (ii) specifically (and without limiting the generality of clause (i)) agrees to the provisions of this Section 13.

(b) The Participant agrees that during the Restricted Period (as defined below), the Participant will not directly or indirectly solicit, induce or encourage, or attempt to solicit, induce or encourage, any employee or independent contractor of the Company or any of its Subsidiaries to leave the employ or service, as applicable, of the Company or any such Subsidiary, or become employed or engaged by any third party, or in any way interfere with the relationship between the Company or any such Subsidiary, on the one hand, and any employee or independent contractor thereof, on the other hand. This Section 13(b) does not limit any general advertising or job posting not directed at any individual or group of employees of the Company or any of its Subsidiaries. For purposes of this Award Document, "Restricted Period" means the period of time the Participant is employed by or provides services to the Company or one of its Subsidiaries and the period of twenty-four (24) months after the date on which the Participant's Continuous Service terminates.

(c) The Participant agrees that if the Participant were to become employed by, or substantially involved in, the business of a competitor of the Company or any of its Subsidiaries, it would be very difficult for the Participant not to rely on or use the Company's and its Subsidiaries' trade secrets and confidential information. Thus, to avoid the inevitable disclosure of the Company's and its Subsidiaries' trade secrets and confidential information, and to protect such trade secrets and confidential information and the Company's and its Subsidiaries' relationships and goodwill with customers, during the Restricted Period, the Participant will not directly or indirectly through any other person engage in, enter the employ of, render any services to, have any ownership interest in, nor participate in the financing, operation, management or control of, any Competing Business. For purposes of this Agreement, the phrase "directly or indirectly through any other Person engage in" shall include, without limitation, any direct or indirect ownership or profit participation interest in such enterprise, whether as an owner, stockholder, member, partner, joint venturer or otherwise, and shall include any direct or indirect participation in such enterprise as an employee, consultant, director, officer, advisor, licensor of technology or otherwise. For purposes of this Agreement, "Competing Business" means a person anywhere in the continental United States and elsewhere in the world where the Company or any of its Subsidiaries engages in business, or reasonably anticipates engaging in business, (the "Restricted Area") that is engaged in design, development, manufacture, maintenance, offering, production or sales of hard disk drives or flash-based memory or other data storage devices or solutions. However, nothing in this Section 13(c) shall prohibit the Participant from being a passive owner of a *de minimis* amount of outstanding stock of any class of a corporation which is publicly traded, so long as such ownership is indirect through a mutual fund, similar passive common investment fund, or a broadly-diversified account managed by an unaffiliated third party.

(d) The Participant acknowledges that, in the course of the Participant's employment with the Company and/or its Subsidiaries and their predecessors, the Participant has become familiar, or will become familiar, with the Company's and its Subsidiaries' and their predecessors' trade secrets and with other confidential and proprietary information concerning the Company, its Subsidiaries and their respective predecessors and that the Participant's services have been and will be of special, unique and extraordinary value to the Company and its Subsidiaries. The Participant agrees that the covenants set forth in Sections 13(b) and (c) (together, the "Restrictive Covenants") are reasonable and necessary to protect the Company's and its Subsidiaries' trade secrets and other confidential and proprietary information, good will, stable workforce, and customer relations.

(e) Without limiting the generality of the Participant's agreement in Section 13(d), the Participant (i) represents that the Participant is familiar with and has carefully considered the Restrictive Covenants, (ii) represents that the Participant is fully aware of the Participant's obligations hereunder, (iii) agrees to the reasonableness of the length of time, scope and geographic coverage, as applicable, of the Restrictive Covenants, (iv) agrees that the Company and its Subsidiaries currently conduct business throughout the world, and (v) agrees that the Restrictive Covenants will continue in effect for the applicable periods set forth above in this Section 13 regardless of whether the Participant is then entitled to receive any form of compensation, severance pay or benefits from the Company or any of its Subsidiaries. The Participant understands that the Restrictive Covenants may limit the Participant's ability to earn a livelihood in a business similar to the business of the Company or any of its Subsidiaries, but the Participant nevertheless believes that the Participant has received and will receive sufficient consideration and other benefits as an employee of the Company or one of its Subsidiaries, and as otherwise provided hereunder, to clearly justify such restrictions which, in any event (given the Participant's education, skills and ability), the Participant does not believe would prevent the Participant from otherwise earning a living. The Participant agrees that the Restrictive Covenants do not confer a benefit upon the Company and its Subsidiaries that is disproportionate to the detriment of the Participant.

(f) The Participant agrees that a breach by the Participant of any of the covenants in this Section 13 would cause immediate and irreparable harm to the Company that would be difficult or impossible to measure, and that damages to the Company for any such injury would therefore be an inadequate remedy for any such breach. Therefore, the Participant agrees that in the event of any breach or threatened breach of any provision of this Section 13, the Company (or its applicable Subsidiary, as the case may be) shall be entitled, in addition to and without limitation upon all other remedies the Company (or any of its Subsidiaries) may have under this Award Document, at law or otherwise, to obtain specific performance, injunctive relief and/or other appropriate relief (without posting any bond or deposit) in order to enforce or prevent any violations of the provisions of this Section 13, or require the Participant to account for and pay over to the Company all compensation, profits, moneys, accruals, increments or other benefits derived from or received as a result of any transactions constituting a breach of this Section 13 if and when final judgment of a court of competent jurisdiction or arbitrator, as applicable, is so entered against the Participant. The Participant further agrees that the applicable period of time any Restrictive Covenant is in effect following the date of the Participant's termination of Continuous Service shall be extended by the same amount of time that the Participant is in breach of any Restrictive Covenant following the date on which the Participant's Continuous Service terminates. The Participant further agrees that in the event of any breach of any provision of this Section 13, in addition to and without limitation upon all other remedies the Company (or any of its Subsidiaries) may have under this Award Document, at law or otherwise, this Award (to the extent outstanding at the time of such breach) shall automatically terminate and be forfeited as of the time of such breach.

**EXHIBIT B**

**PERFORMANCE STOCK UNIT AWARD**
**Performance Measures and Goals**

[•]

**Exhibit 10.29**

**SANDISK CORPORATION**
**2025 LONG-TERM INCENTIVE PLAN**

**GRANT NOTICE FOR**
**RESTRICTED STOCK UNIT AWARD – VICE PRESIDENT AND ABOVE**

On [•] (the "WDC Grant Date"), Western Digital Corporation ("***WDC***") granted to the Participant named below the number of Restricted Stock Units (the "***RSUs***") listed below (this "***Award***") under the Western Digital Corporation 2021 Long-Term Incentive Plan. The Award has been assumed by Sandisk Corporation (the "***Company***") under the Sandisk Corporation 2025 Long-Term Incentive Plan (as amended from time to time, the "***Plan***"), pursuant to the Employee Matters Agreement dated [•], in connection with the spinoff of the Company from WDC. Each RSU represents the right to receive one share of Common Stock, subject to the terms and conditions in this Grant Notice, the Plan and the Standard Terms and Conditions (the "***Standard Terms and Conditions***") of such Plan, attached as Exhibit A hereto. Capitalized terms not otherwise defined here shall have the meaning set forth in the Plan.

| | |
|---|---|
| Name of Participant: | |
| Employee ID | |
| Grant Date: | |
| Grant Number | |
| Number of RSUs: | |
| Vesting Schedule: | The RSUs shall vest in accordance with the following schedule:<br><br>[•]<br><br>Vesting shall be subject to Participant's Continuous Service from the Grant Date through each applicable vesting date, unless provided otherwise under Section 2 of the Standard Terms and Conditions. |

**IN CONNECTION WITH THIS GRANT, AND IN ADDITION TO THIS GRANT NOTICE, PARTICIPANT HAS RECEIVED A COPY OF THE PLAN AND THE STANDARD TERMS AND CONDITIONS. PARTICIPANT MAY REJECT THIS AWARD BY NOTIFYING THE COMPANY NO LATER THAN THE FIFTH BUSINESS DAY FOLLOWING RECEIPT OF THIS AWARD DOCUMENT. FAILURE TO REJECT THIS AWARD WITHIN SUCH 5-DAY PERIOD SHALL BE DEEMED ACCEPTANCE OF THIS AWARD AND THE TERMS AND CONDITIONS OF THIS AWARD DOCUMENT.**

**EXHIBIT A**

**SANDISK CORPORATION**
**2025 LONG-TERM INCENTIVE PLAN**

**STANDARD TERMS AND CONDITIONS FOR**
**RESTRICTED STOCK UNITS**

These Standard Terms and Conditions apply to this Award of Restricted Stock Units granted under the Sandisk Corporation 2025 Long-Term Incentive Plan (the "***Plan***"). The Restricted Stock Units are also subject to the terms of the Plan and the attached Grant Notice, which are incorporated here by this reference. Capitalized terms not otherwise defined here shall have the meaning set forth in the Plan.

## 1. TERMS OF RESTRICTED STOCK UNITS

Sandisk Corporation (the "***Company***") has granted to the Participant named in the attached Grant Notice an award of Restricted Stock Units (this "***Award***" or the "***RSUs***") described in the Grant Notice, with each Restricted Stock Unit representing the right to receive one share of Common Stock. For purposes of these Standard Terms and Conditions and the Grant Notice, any reference to the Company shall include a reference to any Subsidiary.

## 2. VESTING AND SETTLEMENT OF RESTRICTED STOCK UNITS

(a) The Award shall be unvested as of the Grant Date and be forfeitable unless and until otherwise vested pursuant to the terms of the Grant Notice and these Standard Terms and Conditions. After the Grant Date, subject to termination or acceleration as provided in these Standard Terms and Conditions and the Plan, this Award shall become vested as described in the Grant Notice. RSUs that have vested and are no longer subject to forfeiture are referred to as "***Vested RSUs***." RSUs that are not vested and remain subject to forfeiture are referred to as "***Unvested RSUs***." No portion of this Award, nor the shares of Common Stock subject to this Award, may be deferred under the Sandisk Corporation Deferred Compensation Plan (or any applicable successor plan) or any other deferred compensation arrangement of the Company.

(b) Following the vesting of the RSUs on a vesting date, the Company shall deliver to the Participant on the Settlement Date a number of shares of Common Stock equal to the number of RSUs that vested on such vesting date. The Company may, in its sole discretion, settle any RSUs accrued as dividend equivalents by a cash payment equal to the Fair Market Value of a share of Common Stock on the date of payment (as opposed to payment in the form of shares of Common Stock). "***Settlement Date***" means as soon as practicable following the vesting of the RSUs on the applicable vesting date but in no event later than 60 days after the applicable vesting date.

(c) *Termination due to Death; Termination without Cause under the Executive Severance Plan* (1) Upon Participant's termination of Continuous Service due to death or (2) for a Participant who is subject to the terms of the Sandisk Corporation Executive Severance Plan, as applicable (or any applicable successor plan) (the "***Executive Severance Plan***") at the time of termination of Continuous Service, then upon Participant's termination of employment by the Company without Cause (as defined in the Executive Severance Plan) under circumstances that would entitle the Participant to severance benefits under the Executive Severance Plan, subject to compliance with the terms of the Executive Severance Plan any then Unvested RSUs and any credited dividend equivalents held by the Participant shall vest in accordance with the following formula:

(i) (x) a fraction with a numerator equal to the total number of calendar days from the WDC Grant Date of this Award through and including the Participant's termination of Continuous Service and a denominator equal to the total number of calendar days from the WDC Grant Date of this Award through and including the last scheduled vesting date applicable to this Award ***multiplied by*** (y) the total number of shares of Common Stock originally subject to this Award (subject to adjustment as provided in the Plan but before taking into account any crediting of dividend equivalents); ***minus***

(ii) the number of shares of Common Stock that have already vested on or prior to the Participant's termination of Continuous Service (before taking any accelerated vesting contemplated by this subsection into account and before taking into account any crediting (if applicable) of dividend equivalent rights).

Any Unvested RSUs that do not vest as described above shall be forfeited as of the date of the Participant's termination of Continuous Service.

(d) *Termination without Cause or for Good Reason under the Change in Control Severance Plan*. For a Participant who is subject to the terms of the Sandisk Corporation Change in Control Severance Plan, as applicable (or any applicable successor plan) (the "***CIC Severance Plan***") at the time of termination of Continuous Service, then upon Participant's termination of employment by the Company without Cause or due to a resignation by Participant for Good Reason (both as defined in the CIC Severance Plan) under circumstances that would entitle the Participant to severance benefits under the CIC Severance Plan, subject to compliance with the terms of the CIC Severance Plan, any then Unvested RSUs held by the Participant and any credited dividend equivalents will vest in full.

(e) *Resignation*. Upon Participant's termination of Continuous Service by the Company due to a resignation by Participant for any reason, other than a resignation for Good Reason under circumstances that would entitle the Participant to severance benefits under the CIC Severance Plan, subject to compliance with the terms of the CIC Severance Plan, the Unvested RSUs held by the Participant shall be forfeited as of the date of the Participant's termination of Continuous Service.

(f) Upon Participant's termination of Continuous Service by the Company for Cause, the entire Award (both Vested RSUs that have yet to be settled and Unvested RSUs) held by the Participant shall be forfeited as of the date of the Participant's termination of Continuous Service.

(g) *Non-U.S. Eligible Employees Participating in the Executive Severance Plan and Change in Control Severance Plan*. For avoidance of doubt, if Participant is not a U.S. Eligible Employee (as defined in the applicable severance plan), the Participant will only be eligible for the vesting treatment on a termination without Cause as described in Section 2(c) or termination without Cause or resignation for Good Reason as described in Section 2(d) in accordance with the terms of the applicable severance plan, which provides that the administrator of such severance plan will compare any Local Severance Benefits (as defined in the applicable severance plan) with the Plan Severance Benefits (as defined in the applicable severance plan) and if the value of the Local Severance Benefits equals or exceeds the value of the Plan Severance Benefits, the Participant will not be eligible to receive the vesting treatment on a termination without Cause as described in Section 2(c) or termination without Cause or resignation for Good Reason as described in Section 2(d).

**3. RIGHTS AS STOCKHOLDER; DIVIDEND EQUIVALENTS**

(a) Participant shall not be, nor have any of the rights or privileges of, a stockholder of the Company in respect of any RSUs unless and until shares of Common Stock settled for such RSUs shall have been issued by the Company to Participant.

(b) Notwithstanding Section 3(a), from and after the Grant Date and until the earlier of (i) the Participant's receipt of Common Stock upon settlement of the RSUs and (ii) the time when the Participant's right to receive Common Stock upon settlement of the RSUs is forfeited, the Participant shall be entitled to receive as a dividend equivalent a number of additional RSUs on the date(s) that the Company pays a cash dividend (if any) to Common Stock holders generally. Such dividend equivalent shall be determined by dividing (i) the product of (A) the dollar amount of the cash dividend paid per share of Common Stock on such date and (B) the total number of RSUs (including dividend equivalents accrued thereon) previously credited to the Participant as of such date, by (ii) the Fair Market Value per share of Common Stock on such date. Such dividend equivalents (if any) shall be subject to the same terms and conditions and shall be settled or forfeited in the same manner and at the same time as the RSUs to which the dividend equivalents were credited. Dividend equivalents shall be settled in whole shares of Common Stock with any dividend equivalents accrued in the form of fractional RSUs settled in cash. However, for the avoidance of doubt, the Company may, in its sole discretion, settle any RSUs credited as dividend equivalents by a cash payment equal to the Fair Market Value of a share of Common Stock on the date of payment (as opposed to payment in the form of shares of Common Stock). For the avoidance of doubt, in no event will any dividend equivalents credited to RSUs be delivered to the Participant unless and until such RSUs vest and settle.

**4. RESTRICTIONS ON RESALES OF SHARES**

The Company may impose such restrictions as it determines appropriate as to the timing and manner of any resales by the Participant or other subsequent transfers by the Participant of any shares of Common Stock issued pursuant to Vested RSUs, including (a) restrictions under an insider trading policy, (b) restrictions designed to delay and/or coordinate the timing and manner of sales by Participant and other holders and (c) restrictions as to the use of a specified brokerage firm for such resales or other transfers.

**5. INCOME TAXES**

The Participant may satisfy tax withholding obligations relating to the RSUs by any combination of the following: (i) a cash payment; (ii) a Company deduction from any amounts payable to Participant; (iii) Company withholding of shares from the Common Stock issuable to the Participant in connection with the RSUs (only up to the amount permitted that will not cause an adverse accounting consequence); or (iv) Company withholding a payment from the proceeds from the sale of shares of Common Stock issued pursuant to the RSUs. In addition, the Administrator may, in its sole discretion but only to the extent consistent with Section 409A of the Code, reduce the number of RSUs remaining subject to this Award, with each such RSU to have a value for such purpose equal to the then Fair Market Value of a share of Common Stock, to satisfy such withholding obligation at the applicable withholding rates.

**6. NON -TRANSFERABILITY OF AWARD**

The Participant agrees that, except as otherwise provided in the Plan or as permitted by the Administrator, this Award may not be sold, assigned, transferred, pledged or otherwise directly or indirectly encumbered or disposed of other than by will or the laws of descent and distribution or pursuant to the terms of a qualified domestic relations order, official marital settlement agreement or other divorce or separation instrument.

**7. OTHER AGREEMENTS SUPERSEDED**

The Grant Notice, these Standard Terms and Conditions and the Plan constitute the entire understanding between the Participant and the Company regarding this Award. Any prior agreements, commitments or negotiations concerning this Award are superseded.

**8. NO ADDITIONAL RIGHTS**

The Participant's receipt of the RSUs does not confer upon the Participant any right to continue to serve the Company or an Affiliate in any capacity and will not affect the right of the Company or an Affiliate to terminate the service of the Participant.

**9. GENERAL**

(a) In the event that any provision of these Standard Terms and Conditions (including, for the avoidance of doubt, the Plan, which is incorporated here by this reference) is declared to be unenforceable by an arbitrator selected in accordance with Section 11 below or a court of competent jurisdiction, such provision shall be reformed, if possible, to the extent necessary to render it enforceable, or otherwise deleted, and the remainder of these Standard Terms and Conditions shall not be affected except to the extent necessary to reform or delete such unenforceable provision. Furthermore, except as otherwise provided by Section 11, it is the parties' intent that any order striking any portion of this Award Document and/or the Plan should modify the stricken terms as narrowly as possible to give as much effect as possible to the intentions of the parties hereunder.

(b) The headings preceding the text of the sections in these Standard Terms and Conditions are inserted solely for convenience of reference, and shall not constitute a part of these Standard Terms and Conditions, nor shall they affect its meaning, construction or effect. References to any agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof and not prohibited by the Plan or these Standard Terms and Conditions.

(c) These Standard Terms and Conditions shall inure to the benefit of and be binding upon the parties and their respective permitted heirs, beneficiaries, successors and assigns.

(d) These Standard Terms and Conditions shall be interpreted in accordance with and governed by the laws of the State of Delaware, without regard to principles of conflicts of law.

(e) In the event of any conflict between the Grant Notice, these Standard Terms and Conditions and the Plan, the Grant Notice and these Standard Terms and Conditions shall control. In the event of any conflict between the Grant Notice and these Standard Terms and Conditions, the Grant Notice shall control.

(f) The RSUs and any shares of Common Stock acquired under the Plan, and the income and value of the same, are not part of the Participant's normal or expected compensation for any purposes including, but not limited to, calculating any severance, resignation, termination, redundancy, dismissal, end-of-service payments, bonuses, holiday pay, long-service awards, leave-related pay, pension or retirement benefits or payments or welfare benefits or similar payments and in no event should be considered as compensation for, or relating in any way to, past services for the Company or the Participant's employer or any Subsidiary.

(g) All questions under the Plan or under these Standard Terms and Conditions shall be decided by the Administrator in its total and absolute discretion.

(h) This Award will be subject to recoupment in accordance with the Company's compensation recovery (clawback) policy or policies then in effect. No recovery of compensation under any such policy will be an event giving rise to a right to resign for "good reason" or "constructive termination" (or similar term) under any agreement with the Company or a Subsidiary.

**10. ELECTRONIC DELIVERY**

By accepting the Grant Notice, the Participant hereby consents to the delivery of information (including, without limitation, information required to be delivered to the Participant pursuant to applicable securities laws) regarding the Company and the Subsidiaries, the Plan, and the RSUs via Company web site or other electronic delivery.

**11. ARBITRATION**

Any controversy arising out of or relating to the Grant Notice, these Standard Terms and Conditions, and/or the Plan ("***Covered Claims***"), shall be resolved in accordance with the terms and conditions of the Sandisk Dispute Resolution Agreement (the "***DRA***").

If, however, Participant has opted out of the DRA, any Covered Claims shall be submitted to arbitration pursuant to this Section 11. Unless otherwise agreed to between the Participant and Company, such arbitration shall be held no more than 45 miles from the Company's headquarters. The arbitration will be held before a sole arbitrator selected from Judicial Arbitration and Mediation Services, Inc., or its successor ("***JAMS***"), or if JAMS is no longer able to supply the arbitrator, such arbitrator shall be selected from the American Arbitration Association, and shall be conducted in accordance with the provisions of the Federal Arbitration Act; provided, however, that provisional injunctive relief may, but need not, be sought by either party in a court of law to maintain the status quo while arbitration proceedings are pending, and any provisional injunctive relief granted by such court shall remain effective until the matter is finally determined by the arbitrator. Any such action for provisional injunctive relief shall be subject to the exclusive jurisdiction of the Delaware Chancery Court and each party consents to jurisdiction with respect to any such action in Delaware Chancery Court. To the fullest extent permitted by applicable law, Participant and the Company agree to bring any Covered Claims on an individual basis only, and not on a class, collective, joint, or representative basis. If, however, the preceding sentence be determined invalid or unenforceable by a court of competent jurisdiction and not by an arbitrator with respect to any particular Covered Claim, then that Covered Claim will not proceed in arbitration but rather will be resolved in a court of competent jurisdiction for that Covered Claim only. All other Covered Claims must be resolved in arbitration on an individual basis. Any award or relief granted by the arbitrator shall be final and binding on the Company and the Participant and may be enforced by any court of competent jurisdiction.

The Company shall be responsible for payment of the forum costs of any arbitration hereunder, including the arbitrator's fee. Each party shall bear its own attorney's fees and costs (other than forum costs associated with the arbitration) incurred by it or him or her in connection with the resolution of the dispute. If, however, any party prevails on a statutory claim, which affords the prevailing party attorneys' fees and costs, then the arbitrator may award reasonable fees and costs to the prevailing party. The parties agree that they are hereby waiving any rights to trial by jury in relation to any matter arising out of or in any way connected with any Covered Claim(s).

**12. NON-U.S. EMPLOYEES**

The Award shall be subject to any additional terms and conditions fornon-U.S. employees set forth in Appendix A ("***Appendix A***") and any terms and conditions for the Participant's country set forth in Appendix B ("***Appendix B***"). Moreover, if the Participant relocates to one of the countries included in Appendix B, the terms and conditions for such country will apply to the Participant to the extent the Company determines that the application of such terms and conditions is necessary or advisable for legal or administrative reasons. Appendix A and Appendix B constitute part of the Agreement.

**APPENDIX A**

**ADDITIONAL TERMS AND CONDITIONS OF RESTRICTED STOCK UNIT AWARD DOCUMENT FOR NON-U.S. EMPLOYEES**

**1. Terms of Plan Participation for Non-U.S. Participants**

The Participant understands that this Appendix A contains additional terms and conditions that, together with the Plan and the Award Document, govern the Participant's participation in the Plan if the Participant is working or resident in a country other than the United States. The Participant further understands that the Participant's participation in the Plan also will be subject to any terms and conditions for the Participant's country set forth in Appendix B. *Capitalized terms used but not defined in this Appendix A shall have the same meanings assigned to them in the Plan and/or Award Document.*

**2. Withholding Taxes**

The following provision supplements Section 5 of the Standard Terms and Conditions:

The Participant acknowledges that, regardless of any action taken by the Company or, if different, the Participant's employer ("***Employer***"), the ultimate liability for all income tax, social insurance, payroll tax, fringe benefits tax, payment on account or other tax-related items related to the Participant's participation in the Plan and this Award and legally applicable to the Participant ("***Tax-Related Items***") is and remains the Participant's responsibility and may exceed the amount, if any, actually withheld by the Company or the Employer. The Participant further acknowledges that the Company and/or the Employer (a) make no representations or undertakings regarding the treatment of any Tax-Related Items in connection with any aspect of the RSUs; and (b) are not obligated to structure the terms of the grant or any aspect of the RSUs to reduce or eliminate the Participant's liability for Tax-Related Items or achieve any particular tax result. If the Participant is or becomes subject toTax-Related Items in more than one jurisdiction, the Participant acknowledges that the Company and/or the Employer (or former employer, as applicable) may be required to withhold or account for Tax-Related Items in more than one jurisdiction.

The Participant agrees, in connection with any relevant taxable or tax withholding event, as applicable, to make adequate arrangements satisfactory to the Company and/or the Employer to satisfy all Tax-Related Items. In this regard, the Participant authorizes the Company and/or the Employer to satisfy the obligations with regard to all Tax-Related Items by one or a combination of the methods set forth in Section 8(f) of the Plan and Section 5 of the Standard Terms and Conditions. In addition, the Participant authorizes withholding from proceeds of the sale of shares of Common Stock acquired upon settlement of the RSUs either through a voluntary sale or through a mandatory sale arranged by the Company (on the Participant's behalf pursuant to this authorization without further consent). If the Participant is subject to Section 16 of the Exchange Act, then withholding for Tax-Related Items shall be satisfied in accordance with Section 8(f) of the Plan, Section 5 of the Standard Terms and Conditions, and the withholding methodology approved by the Administrator for officers subject to Section 16 of the Exchange Act.

Depending on the withholding method, the Company and/or the Employer may withhold or account forTax-Related Items by considering applicable minimum withholding amounts or other applicable withholding rates, including maximum applicable rates. In the event of over-withholding, the Participant may receive a refund of any over-withheld amount in cash and will have no entitlement to the equivalent in Common Stock from the Company or the Employer; otherwise, the Participant may be able to seek a refund from the local tax authorities. In the event of under-withholding, the Participant may be required to pay any additional Tax-Related Items directly to the applicable tax authority or to the Company and/or the Employer. If theTax-Related Items are satisfied by withholding in shares of Common Stock, for tax purposes, the Participant is deemed to have been issued the full number of shares subject to the vested RSUs, notwithstanding that a number of the Shares are held back solely for the purpose of paying the Tax-Related Items.

The Participant further agrees to pay to the Company or the Employer, any amount ofTax-Related Items that the Company or the Employer may be required to withhold or account for as a result of the Participant's participation in the Plan that cannot be satisfied by the means previously described. The Company may refuse to issue or deliver the shares of Common Stock or the proceeds from the sale of shares if the Participant fails to comply with the Participant's obligations in connection with the Tax-Related Items.

**3. Nature of Grant**

By accepting the RSUs and any shares of Common Stock, the Participant agrees that:

(a) the Plan is established voluntarily by the Company, it is discretionary in nature, and may be amended, suspended or terminated by the Company at any time, to the extent permitted by the Plan;

(b) the grant of the RSUs is exceptional, voluntary and occasional and does not create any contractual or other right to receive future grants of RSUs, or benefits in lieu of RSUs, even if RSUs have been granted in the past;

(c) all decisions with respect to future RSUs or other grants, if any, will be at the sole discretion of the Company;

(d) the Participant is voluntarily participating in the Plan;

(e) the RSUs and any shares of Common Stock acquired under the Plan, and the income and value of the same, are not intended to replace any pension rights or compensation;

the RSUs and any shares of Common Stock acquired under the Plan, and the income and value of the same, are not part of the Participant's normal or expected compensation for any purposes including, but not limited to, calculating any severance, resignation, termination, redundancy, dismissal, end-of-service payments, bonuses, holiday pay, long-service awards, leave-related pay, pension or retirement benefits or payments or welfare benefits or similar payments and in no event should be considered as compensation for, or relating in any way to, past services for the Company or the Employer or any Subsidiary;

(f) the future value of the shares of Common Stock underlying the RSUs is unknown, indeterminable, and cannot be predicted with certainty;

(g) unless otherwise agreed with the Company, the RSUs and the shares of Common Stock acquired under the Plan, and the income and value of same, are not granted as consideration for, or in connection with, the service the Participant may provide as a director of any Subsidiary;

(h) no claim or entitlement to compensation or damages shall arise from forfeiture of the RSUs resulting from the termination of the Participant's employment (for any reason whatsoever, whether or not later found to be invalid or in breach of employment laws in the jurisdiction where the Participant is employed or providing services, or the terms of the Participant's employment or service agreement, if any) or from the application of any clawback or recoupment policy adopted by the Company or imposed by applicable law;

(i) unless otherwise provided in the Plan or by the Company in its discretion, the RSUs and the benefits evidenced by the Award Document do not create any entitlement to have the RSUs or any such benefits transferred to, or assumed by, another company nor to be exchanged, cashed out or substituted for, in connection with any corporate transaction affecting the shares; and

(j) neither the Company, the Employer nor any Subsidiary shall be liable for any foreign exchange rate fluctuation between the Participant's local currency and the U.S. dollar that may affect the value of the RSUs or of any amounts due to the Participant pursuant to the vesting of the RSUs or the subsequent sale of any shares of Common Stock acquired upon vesting.

**4. Data Privacy**

***By accepting the RSUs via the Company's acceptance procedure, the Participant is declaring that he or she agrees with the data processing practices described herein and consents to the collection, processing and use of Personal Data (as defined below) by the Company and the transfer of Personal Data to the recipients mentioned herein, including recipients located in countries which do not adduce an adequate level of protection from a European (or other non-U.S.) data protection law perspective, for the purposes described herein.***

*(a) Declaration of Consent. The Participant understands that he or she needs to review the following information about the processing of the Participant's personal data by or on behalf of the Company, the Employer and/or any Subsidiary as described in this Award Document and any other RSU grant materials (the "Personal Data") and declare his or her consent. As regards the processing of the Participant's Personal Data in connection with the Plan and this Award Document, the Participant understands that the Company is the controller of the Participant's Personal Data.*

*(b) Data Processing and Legal Basis The Company collects, uses and otherwise processes Personal Data about the Participant for the purposes of allocating shares of Common Stock and implementing, administering and managing the Plan. The Participant understands that this Personal Data may include, without limitation, the Participant's name, home address and telephone number, email address, date of birth, social insurance number, passport number or other identification number (e.g., resident registration number), salary, nationality, job title, any shares of stock or directorships held in the Company or its Subsidiaries, details of all RSUs or any other entitlement to shares of stock or equivalent benefits awarded, canceled, exercised, vested, unvested or outstanding in the Participant's favor. The legal basis for the processing of the Participant's Personal Data will be the Participant's consent.*

*(c) Stock Plan Administration Service Providers. The Participant understands that the Company transfers the Participant's Personal Data, or parts thereof, to E*TRADE Financial Corporation Services, Inc. (and its affiliated companies), an independent service provider based in the United States or IBI Capital for Israeli employees, each of which assists the Company with the implementation, administration and management of the Plan. In the future, the Company may select a different service provider and share the Participant's Personal Data with such different service provider that serves the Company in a similar manner. The Participant understands and acknowledges that the Company's service provider will open an account for the Participant to receive and trade shares of Common Stock acquired under the Plan and that the Participant will be asked to agree on separate terms and data processing practices with the service provider, which is a condition of the Participant's ability to participate in the Plan.*

*(d) International Data Transfers. The Participant understands that the Company and, as of the date hereof, any third parties assisting in the implementation, administration and management of the Plan, such as the Company's service providers, are based in the United States. If the Participant is located outside the United States, the Participant understands and acknowledges that the Participant's country has enacted data privacy laws that are different from the laws of the United States. Transfers of personal data from the EEA or the United Kingdom to the United States can be made on the basis of Standard Contractual Clauses approved by the European Commission, United Kingdom or other appropriate safeguards permissible under the applicable law. If the Participant is located in the EU, EEA or the United Kingdom, the Company may receive, process and transfer the Participant's Personal Data onward to third-party service providers solely on the basis of appropriate data transfer agreements or other appropriate safeguards permissible under applicable law. If applicable, the Participant understands that the Participant can ask for a copy of the appropriate data processing agreements underlying the transfer of the Participant's Personal Data by contacting the Participant's local human resources representative. The Company's legal basis for the transfer of the Participant's Personal Data is the Participant's consent.*

*(e) Data Retention. The Company will hold and use the Data only as long as is necessary to implement, administer and manage participation in the Plan or as required to comply with tax, exchange control, labor and securities laws, other applicable law, exercise or defense of legal rights, and archiving, back-up and deletion processes. This period may extend beyond the Participant's period of employment with the Employer.*

*(f) Voluntariness and Consequences of Denial/Withdrawal of Consent Participation in the Plan is voluntary and the Participant is providing the consents herein on a purely voluntary basis. If the Participant does not consent, or later seeks to revoke their consent, the Participant's salary from or employment or other service with the Employer will not be affected; the only consequence of refusing or withdrawing consent is that the Company would not be able to grant RSUs or other equity awards to the Participant or administer or maintain such awards.*

***(g) Data Subject Rights.*** ***The Participant understands that data subject rights regarding the processing of personal data vary depending on the applicable law and that, depending on where the Participant is based and subject to the conditions set out in the applicable law, the Participant may have, without limitation, the rights to (i) inquire whether and what kind of Personal Data the Company holds about the Participant and how it is processed, and to access or request copies of such Personal Data, (ii) request the correction or supplementation of Personal Data about the Participant that is inaccurate, incomplete or out-of-date in light of the purposes underlying the processing, (iii) obtain the erasure of Personal Data no longer necessary for the purposes underlying the processing, processed based on withdrawn consent, processed for legitimate interests that, in the context of the Participant's objection, does not prove to be compelling, or processed in non-compliance with applicable legal requirements, (iv) request the Company to restrict the processing of the Participant's Personal Data in certain situations where the Participant feels its processing is inappropriate, (v) object, in certain circumstances, to the processing of Personal Data for legitimate interests, and to (vi) request portability of the Participant's Personal Data that the Participant has actively or passively provided to the Company (which does not include data derived or inferred from the collected data), where the processing of such Personal Data is based on consent or the Participant's employment or service contract and is carried out by automated means. In case of concerns, the Participant understands that the Participant may also have the right to lodge a complaint with the competent local data protection authority. Further, to receive clarification of, or to exercise any of, the Participant's rights the Participant understands that the Participant should contact the Participant's local human resources representative.***

***(h) Alternate Basis and Additional Consents.*** ***Finally, the Participant understands that the Company may rely on a different basis for the processing or transfer of Personal Data in the future and/or request that the Participant provide another data privacy consent. If applicable, the Participant agrees that upon request of the Company or the Employer, the Participant will provide an executed acknowledgement or data privacy consent form (or any other agreements or consents) that the Company and/or the Employer may deem necessary to obtain from the Participant for the purpose of administering the Participant's participation in the Plan in compliance with the data privacy laws in the Participant's country, either now or in the future. The Participant understands and agrees that he or she will not be able to participate in the Plan if he or she fails to provide any such consent or agreement requested by the Company and/or the Employer.***

**5. Electronic Delivery and Acceptance**

The Participant agrees that the Company may, in its sole discretion, decide to deliver by email or other electronic means any documents relating to the Plan or the RSUs. Further, the Participant agrees to receive such documents by electronic delivery and agrees to participate in the Plan through an on-line or electronic system established and maintained by the Company or by a third party designated by the Company.

**6. Insider Trading/Market Abuse Laws**

The Participant agrees to comply with the Company's policy on insider trading (to the extent that it is applicable to the Participant). Depending on the Participant's country or the designated broker's country or country where the Common Stock is listed, the Participant may be subject to insider trading restrictions and/or market abuse laws, which may affect the Participant's ability to accept, acquire, sell, attempt to sell or otherwise dispose of Common Stock, rights to Common Stock (*e.g.*, the RSUs) or rights linked to the value of Common Stock (*e.g.*, phantom awards, futures) during such times as the Participant is considered to have "inside information" regarding the Company (as defined by the laws or regulations in the Participant's country). Local insider trading laws and regulations may prohibit the cancellation or amendment of orders the Participant placed before possessing inside information. Furthermore, the Participant could be prohibited from (i) disclosing the inside information to any third party (other than on a "need to know" basis) and (ii) "tipping" third parties or causing them otherwise to buy or sell securities. Third parties include fellow employees. Any restrictions under these laws or regulations are separate from and in addition to any restrictions that may be imposed under any applicable Company insider trading policy. The Participant is responsible for ensuring compliance with any applicable restrictions and should consult his or her personal legal advisor on this matter.

**7. Exchange Control, Tax and/or Foreign Asset/Account Reporting**

The Participant acknowledges that there may be exchange control, tax, foreign asset and/or account reporting requirements which may affect the Participant's ability to acquire or hold shares of Common Stock acquired under the Plan or cash received from participating in the Plan (including from any dividend equivalents paid with respect to the RSUs or dividends paid on shares of Common Stock acquired under the Plan) in a brokerage/bank account or legal entity outside the Participant's country. The Participant may be required to report such accounts, assets, the balances therein, the value thereof and/or the transactions related thereto to the tax or other authorities in the Participant's country. The Participant also may be required to repatriate sale proceeds or other funds received as a result of the Participant's participation in the Plan to the Participant's country through a designated bank or broker within a certain time after receipt. In addition, the Participant agrees to take any and all actions, and consent to any and all actions taken by the Company or the Employer as may be required to allow the Company or the Employer to comply with local laws, rules and regulations in the Participant's country of residence (and country of employment, if different). The Participant acknowledges that it is the Participant's responsibility to be compliant with such regulations, and the Participant should consult his or her personal legal advisor for any details.

**8. Language**

The Participant acknowledges that he or she is sufficiently proficient in English, or has consulted with an advisor who is sufficiently proficient in English so as to allow the Participant to understand the terms and conditions of this Award Document. Furthermore, if the Award Document or any other document related to the Plan has been translated into a language other than English and the meaning of the translated version is different than the English version, the English version will control, unless otherwise required by applicable law.

**Exhibit 10.30**

**SANDISK CORPORATION**
**2025 LONG-TERM INCENTIVE PLAN**

**GRANT NOTICE FOR**
**RESTRICTED STOCK UNIT AWARD – VICE PRESIDENT AND ABOVE**

On [•] (the "WDC Grant Date"), Western Digital Corporation granted to the Participant named below the number of Restricted Stock Units (the "***RSUs***") listed below (this "***Award***") under the Western Digital Corporation Amended and Restated 2021 Long-Term Incentive Plan. The Award has been assumed by Sandisk Corporation (the "***Company***") under the Sandisk Corporation 2025 Long-Term Incentive Plan (as amended from time to time, the "***Plan***"), pursuant to the Employee Matters Agreement dated [•], in connection with the spinoff of the Company from WDC . Each RSU represents the right to receive one share of Common Stock, subject to the terms and conditions in this Grant Notice, the Plan and the Standard Terms and Conditions (the "***Standard Terms and Conditions***") of such Plan, attached as Exhibit A hereto. Capitalized terms not otherwise defined here shall have the meaning set forth in the Plan.

| | |
|---|---|
| Name of Participant: | |
| Employee ID | |
| Grant Date: | |
| Grant Number | |
| Number of RSUs: | |
| Vesting Schedule: | The RSUs shall vest in accordance with the following schedule:<br><br>[•]<br><br>Vesting shall be subject to Participant's Continuous Service from the Grant Date through each applicable vesting date, unless provided otherwise under Section 2 of the Standard Terms and Conditions. |

**IN CONNECTION WITH THIS GRANT, AND IN addition TO THIS GRANT NOTICE, PARTICIPANT HAS RECEIVED A COPY OF THE PLAN AND THE STANDARD TERMS AND CONDITIONS. PARTICIPANT MAY REJECT THIS AWARD BY NOTIFYING THE COMPANY NO LATER THAN THE FIFTH BUSINESS DAY FOLLOWING RECEIPT OF THIS AWARD DOCUMENT. FAILURE TO REJECT THIS AWARD WITHIN SUCH 5-DAY PERIOD SHALL BE DEEMED ACCEPTANCE OF THIS AWARD AND THE TERMS AND CONDITIONS OF THIS AWARD DOCUMENT.**

**EXHIBIT A**

**SANDISK CORPORATION**
**2025 LONG-TERM INCENTIVE PLAN**

**STANDARD TERMS AND CONDITIONS FOR**
**RESTRICTED STOCK UNITS**

These Standard Terms and Conditions apply to this Award of Restricted Stock Units granted under the Sandisk Corporation 2025 Long-Term Incentive Plan (the "***Plan***"). The Restricted Stock Units are also subject to the terms of the Plan and the attached Grant Notice, which are incorporated here by this reference. Capitalized terms not otherwise defined here shall have the meaning set forth in the Plan.

## 1. TERMS OF RESTRICTED STOCK UNITS

Sandisk Corporation (the "***Company***") has granted to the Participant named in the attached Grant Notice an award of Restricted Stock Units (this "***Award***" or the "***RSUs***") described in the Grant Notice, with each Restricted Stock Unit representing the right to receive one share of Common Stock. For purposes of these Standard Terms and Conditions and the Grant Notice, any reference to the Company shall include a reference to any Subsidiary.

## 2. VESTING AND SETTLEMENT OF RESTRICTED STOCK UNITS

(a) The Award shall be unvested as of the Grant Date and be forfeitable unless and until otherwise vested pursuant to the terms of the Grant Notice and these Standard Terms and Conditions. After the Grant Date, subject to termination or acceleration as provided in these Standard Terms and Conditions and the Plan, this Award shall become vested as described in the Grant Notice. RSUs that have vested and are no longer subject to forfeiture are referred to as "***Vested RSUs***." RSUs that are not vested and remain subject to forfeiture are referred to as "***Unvested RSUs***." No portion of this Award, nor the shares of Common Stock subject to this Award, may be deferred under the Sandisk Corporation Deferred Compensation Plan (or any applicable successor plan) or any other deferred compensation arrangement of the Company.

(b) Following the vesting of the RSUs on a vesting date, the Company shall deliver to the Participant on the Settlement Date a number of shares of Common Stock equal to the number of RSUs that vested on such vesting date. The Company may, in its sole discretion, settle any RSUs accrued as dividend equivalents by a cash payment equal to the Fair Market Value of a share of Common Stock on the date of payment (as opposed to payment in the form of shares of Common Stock). "***Settlement Date***" means as soon as practicable following the vesting of the RSUs on the applicable vesting date but in no event later than 60 days after the applicable vesting date.

(c) *Termination without Cause under the Executive Severance Plan* For a Participant who is subject to the terms of the Sandisk Corporation Executive Severance Plan, as applicable (or any applicable successor plan) (the "***Executive Severance Plan***") at the time of termination of Continuous Service, then upon Participant's termination of employment by the Company without Cause (as defined in the Executive Severance Plan) under circumstances that would entitle the Participant to severance benefits under the Executive Severance Plan, subject to compliance with the terms of the Executive Severance Plan any then Unvested RSUs and any credited dividend equivalents held by the Participant shall vest in accordance with the following formula:

(i) (x) a fraction with a numerator equal to the total number of calendar days from the WDC Grant Date of this Award through and including the Participant's termination of Continuous Service and a denominator equal to the total number of calendar days from the WDC Grant Date of this Award through and including the last scheduled vesting date applicable to this Award ***multiplied by*** (y) the total number of shares of Common Stock originally subject to this Award (subject to adjustment as provided in the Plan but before taking into account any crediting of dividend equivalents); ***minus***

(ii) (z) the number of shares of Common Stock that have already vested on or prior to the Participant's termination of Continuous Service (before taking any accelerated vesting contemplated by this subsection into account and before taking into account any crediting (if applicable) of dividend equivalent rights).

Any Unvested RSUs that do not vest as described above shall be forfeited as of the date of the Participant's termination of Continuous Service.

(d) *Termination without Cause or for Good Reason under the Change in Control Severance Plan* For a Participant who is subject to the terms of the Sandisk Corporation Change in Control Severance Plan, as applicable (or any applicable successor plan) (the "***CIC Severance Plan***") at the time of termination of Continuous Service, then upon Participant's termination of employment by the Company without Cause or due to a resignation by Participant for Good Reason (both as defined in the CIC Severance Plan) under circumstances that would entitle the Participant to severance benefits under the CIC Severance Plan, subject to compliance with the terms of the CIC Severance Plan, any then Unvested RSUs held by the Participant and any credited dividend equivalents will vest in full.

(e) *Resignation*. Upon Participant's termination of Continuous Service by the Company due to a resignation by Participant for any reason, other than a resignation for Good Reason under circumstances that would entitle the Participant to severance benefits under the CIC Severance Plan, subject to compliance with the terms of the CIC Severance Plan, the Unvested RSUs held by the Participant shall be forfeited as of the date of the Participant's termination of Continuous Service.

(f) *Termination due to Death.* Upon Participant's termination of Continuous Service due to death, 50% of the Participant's then Unvested RSUs (including any credited dividend equivalents held by the Participant) shall vest. Any Unvested RSUs that do not vest as described shall be forfeited as of the date of the Participant's termination due to death.

(g) *Termination for Cause.* Upon Participant's termination of Continuous Service by the Company for Cause, the entire Award (both Vested RSUs that have yet to be settled and Unvested RSUs) held by the Participant shall be forfeited as of the date of the Participant's termination of Continuous Service.

(h) *Non-U.S. Eligible Employees Participating in the Executive Severance Plan and Change in Control Severance Plan* For avoidance of doubt, if Participant is not a U.S. Eligible Employee (as defined in the applicable severance plan), the Participant will only be eligible for the vesting treatment on a termination without Cause as described in Section 2(c) or termination without Cause or resignation for Good Reason as described in Section 2(d) in accordance with the terms of the applicable severance plan, which provides that the administrator of such severance plan will compare any Local Severance Benefits (as defined in the applicable severance plan) with the Plan Severance Benefits (as defined in the applicable severance plan) and if the value of the Local Severance Benefits equals or exceeds the value of the Plan Severance Benefits, the Participant will not be eligible to receive the vesting treatment on a termination without Cause as described in Section 2(c) or termination without Cause or resignation for Good Reason as described in Section 2(d).

**3. RIGHTS AS STOCKHOLDER; DIVIDEND EQUIVALENTS**

(a) Participant shall not be, nor have any of the rights or privileges of, a stockholder of the Company in respect of any RSUs unless and until shares of Common Stock settled for such RSUs shall have been issued by the Company to Participant.

(b) Notwithstanding Section 3(a), from and after the Grant Date and until the earlier of (i) the Participant's receipt of Common Stock upon settlement of the RSUs and (ii) the time when the Participant's right to receive Common Stock upon settlement of the RSUs is forfeited, the Participant shall be entitled to receive as a dividend equivalent a number of additional RSUs on the date(s) that the Company pays a cash dividend (if any) to Common Stock holders generally. Such dividend equivalent shall be determined by dividing (i) the product of (A) the dollar amount of the cash dividend paid per share of Common Stock on such date and (B) the total number of RSUs (including dividend equivalents accrued thereon) previously credited to the Participant as of such date, by (ii) the Fair Market Value per share of Common Stock on such date. Such dividend equivalents (if any) shall be subject to the same terms and conditions and shall be settled or forfeited in the same manner and at the same time as the RSUs to which the dividend equivalents were credited. Dividend equivalents shall be settled in whole shares of Common Stock with any dividend equivalents accrued in the form of fractional RSUs settled in cash. However, for the avoidance of doubt, the Company may, in its sole discretion, settle any RSUs credited as dividend equivalents by a cash payment equal to the Fair Market Value of a share of Common Stock on the date of payment (as opposed to payment in the form of shares of Common Stock). For the avoidance of doubt, in no event will any dividend equivalents credited to RSUs be delivered to the Participant unless and until such RSUs vest and settle.

**4. RESTRICTIONS ON RESALES OF SHARES**

The Company may impose such restrictions as it determines appropriate as to the timing and manner of any resales by the Participant or other subsequent transfers by the Participant of any shares of Common Stock issued pursuant to Vested RSUs, including (a) restrictions under an insider trading policy, (b) restrictions designed to delay and/or coordinate the timing and manner of sales by Participant and other holders and (c) restrictions as to the use of a specified brokerage firm for such resales or other transfers.

**5. INCOME TAXES**

The Participant may satisfy tax withholding obligations relating to the RSUs by any combination of the following: (i) a cash payment; (ii) a Company deduction from any amounts payable to Participant; (iii) Company withholding of shares from the Common Stock issuable to the Participant in connection with the RSUs (only up to the amount permitted that will not cause an adverse accounting consequence); or (iv) Company withholding a payment from the proceeds from the sale of shares of Common Stock issued pursuant to the RSUs. In addition, the Administrator may, in its sole discretion but only to the extent consistent with Section 409A of the Code, reduce the number of RSUs remaining subject to this Award, with each such RSU to have a value for such purpose equal to the then Fair Market Value of a share of Common Stock, to satisfy such withholding obligation at the applicable withholding rates.

**6. NON -TRANSFERABILITY OF AWARD**

The Participant agrees that, except as otherwise provided in the Plan or as permitted by the Administrator, this Award may not be sold, assigned, transferred, pledged or otherwise directly or indirectly encumbered or disposed of other than by will or the laws of descent and distribution or pursuant to the terms of a qualified domestic relations order, official marital settlement agreement or other divorce or separation instrument.

**7. OTHER AGREEMENTS SUPERSEDED**

The Grant Notice, these Standard Terms and Conditions and the Plan constitute the entire understanding between the Participant and the Company regarding this Award. Any prior agreements, commitments or negotiations concerning this Award are superseded.

**8. NO ADDITIONAL RIGHTS**

The Participant's receipt of the RSUs does not confer upon the Participant any right to continue to serve the Company or an Affiliate in any capacity and will not affect the right of the Company or an Affiliate to terminate the service of the Participant.

**9. GENERAL**

(a) In the event that any provision of these Standard Terms and Conditions (including, for the avoidance of doubt, the Plan, which is incorporated here by this reference) is declared to be unenforceable by an arbitrator selected in accordance with Section 11 below or a court of competent jurisdiction, such provision shall be reformed, if possible, to the extent necessary to render it enforceable, or otherwise deleted, and the remainder of these Standard Terms and Conditions shall not be affected except to the extent necessary to reform or delete such unenforceable provision. Furthermore, except as otherwise provided by Section 11, it is the parties' intent that any order striking any portion of this Award Document and/or the Plan should modify the stricken terms as narrowly as possible to give as much effect as possible to the intentions of the parties hereunder.

(b) The headings preceding the text of the sections in these Standard Terms and Conditions are inserted solely for convenience of reference, and shall not constitute a part of these Standard Terms and Conditions, nor shall they affect its meaning, construction or effect. References to any agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof and not prohibited by the Plan or these Standard Terms and Conditions.

(c) These Standard Terms and Conditions shall inure to the benefit of and be binding upon the parties and their respective permitted heirs, beneficiaries, successors and assigns.

(d) These Standard Terms and Conditions shall be interpreted in accordance with and governed by the laws of the State of Delaware, without regard to principles of conflicts of law.

(e) In the event of any conflict between the Grant Notice, these Standard Terms and Conditions and the Plan, the Grant Notice and these Standard Terms and Conditions shall control. In the event of any conflict between the Grant Notice and these Standard Terms and Conditions, the Grant Notice shall control.

(f) The RSUs and any shares of Common Stock acquired under the Plan, and the income and value of the same, are not part of the Participant's normal or expected compensation for any purposes including, but not limited to, calculating any severance, resignation, termination, redundancy, dismissal, end-of-service payments, bonuses, holiday pay, long-service awards, leave-related pay, pension or retirement benefits or payments or welfare benefits or similar payments and in no event should be considered as compensation for, or relating in any way to, past services for the Company or the Participant's employer or any Subsidiary.

(g) All questions under the Plan or under these Standard Terms and Conditions shall be decided by the Administrator in its total and absolute discretion.

(h) This Award will be subject to recoupment in accordance with the Company's compensation recovery (clawback) policy or policies then in effect. No recovery of compensation under any such policy will be an event giving rise to a right to resign for "good reason" or "constructive termination" (or similar term) under any agreement with the Company or a Subsidiary.

**10. ELECTRONIC DELIVERY**

By accepting the Grant Notice, the Participant hereby consents to the delivery of information (including, without limitation, information required to be delivered to the Participant pursuant to applicable securities laws) regarding the Company and the Subsidiaries, the Plan, and the RSUs via Company web site or other electronic delivery.

**11. ARBITRATION**

Any controversy arising out of or relating to the Grant Notice, these Standard Terms and Conditions, and/or the Plan ("***Covered Claims***"), shall be resolved in accordance with the terms and conditions of the Sandisk Dispute Resolution Agreement (the "***DRA***").

If, however, Participant has opted out of the DRA, any Covered Claims shall be submitted to arbitration pursuant to this Section 11. Unless otherwise agreed to between the Participant and Company, such arbitration shall be held no more than 45 miles from the Company's headquarters. The arbitration will be held before a sole arbitrator selected from Judicial Arbitration and Mediation Services, Inc., or its successor ("***JAMS***"), or if JAMS is no longer able to supply the arbitrator, such arbitrator shall be selected from the American Arbitration Association, and shall be conducted in accordance with the provisions of the Federal Arbitration Act; provided, however, that provisional injunctive relief may, but need not, be sought by either party in a court of law to maintain the status quo while arbitration proceedings are pending, and any provisional injunctive relief granted by such court shall remain effective until the matter is finally determined by the arbitrator. Any such action for provisional injunctive relief shall be subject to the exclusive jurisdiction of the Delaware Chancery Court and each party consents to jurisdiction with respect to any such action in Delaware Chancery Court. To the fullest extent permitted by applicable law, Participant and the Company agree to bring any Covered Claims on an individual basis only, and not on a class, collective, joint, or representative basis. If, however, the preceding sentence be determined invalid or unenforceable by a court of competent jurisdiction and not by an arbitrator with respect to any particular Covered Claim, then that Covered Claim will not proceed in arbitration but rather will be resolved in a court of competent jurisdiction for that Covered Claim only. All other Covered Claims must be resolved in arbitration on an individual basis. Any award or relief granted by the arbitrator shall be final and binding on the Company and the Participant and may be enforced by any court of competent jurisdiction.

The Company shall be responsible for payment of the forum costs of any arbitration hereunder, including the arbitrator's fee. Each party shall bear its own attorney's fees and costs (other than forum costs associated with the arbitration) incurred by it or him or her in connection with the resolution of the dispute. If, however, any party prevails on a statutory claim, which affords the prevailing party attorneys' fees and costs, then the arbitrator may award reasonable fees and costs to the prevailing party. The parties agree that they are hereby waiving any rights to trial by jury in relation to any matter arising out of or in any way connected with any Covered Claim(s).

**12. NON-U.S. EMPLOYEES**

The Award shall be subject to any additional terms and conditions fornon-U.S. employees set forth in Appendix A ("***Appendix A***") and any terms and conditions for the Participant's country set forth in Appendix B ("***Appendix B***"). Moreover, if the Participant relocates to one of the countries included in Appendix B, the terms and conditions for such country will apply to the Participant to the extent the Company determines that the application of such terms and conditions is necessary or advisable for legal or administrative reasons. Appendix A and Appendix B constitute part of the Agreement.

**APPENDIX A**

**ADDITIONAL TERMS AND CONDITIONS OF RESTRICTED STOCK UNIT AWARD DOCUMENT FOR NON-U.S. EMPLOYEES**

**1. Terms of Plan Participation for Non-U.S. Participants**

The Participant understands that this Appendix A contains additional terms and conditions that, together with the Plan and the Award Document, govern the Participant's participation in the Plan if the Participant is working or resident in a country other than the United States. The Participant further understands that the Participant's participation in the Plan also will be subject to any terms and conditions for the Participant's country set forth in Appendix B. *Capitalized terms used but not defined in this Appendix A shall have the same meanings assigned to them in the Plan and/or Award Document.*

**2. Withholding Taxes**

The following provision supplements Section 5 of the Standard Terms and Conditions:

The Participant acknowledges that, regardless of any action taken by the Company or, if different, the Participant's employer ("***Employer***"), the ultimate liability for all income tax, social insurance, payroll tax, fringe benefits tax, payment on account or other tax-related items related to the Participant's participation in the Plan and this Award and legally applicable to the Participant ("***Tax-Related Items***") is and remains the Participant's responsibility and may exceed the amount, if any, actually withheld by the Company or the Employer. The Participant further acknowledges that the Company and/or the Employer (a) make no representations or undertakings regarding the treatment of any Tax-Related Items in connection with any aspect of the RSUs; and (b) are not obligated to structure the terms of the grant or any aspect of the RSUs to reduce or eliminate the Participant's liability for Tax-Related Items or achieve any particular tax result. If the Participant is or becomes subject toTax-Related Items in more than one jurisdiction, the Participant acknowledges that the Company and/or the Employer (or former employer, as applicable) may be required to withhold or account for Tax-Related Items in more than one jurisdiction.

The Participant agrees, in connection with any relevant taxable or tax withholding event, as applicable, to make adequate arrangements satisfactory to the Company and/or the Employer to satisfy all Tax-Related Items. In this regard, the Participant authorizes the Company and/or the Employer to satisfy the obligations with regard to all Tax-Related Items by one or a combination of the methods set forth in Section 8(f) of the Plan and Section 5 of the Standard Terms and Conditions. In addition, the Participant authorizes withholding from proceeds of the sale of shares of Common Stock acquired upon settlement of the RSUs either through a voluntary sale or through a mandatory sale arranged by the Company (on the Participant's behalf pursuant to this authorization without further consent). If the Participant is subject to Section 16 of the Exchange Act, then withholding for Tax-Related Items shall be satisfied in accordance with Section 8(f) of the Plan, Section 5 of the Standard Terms and Conditions, and the withholding methodology approved by the Administrator for officers subject to Section 16 of the Exchange Act.

Depending on the withholding method, the Company and/or the Employer may withhold or account forTax-Related Items by considering applicable minimum withholding amounts or other applicable withholding rates, including maximum applicable rates. In the event of over-withholding, the Participant may receive a refund of any over-withheld amount in cash and will have no entitlement to the equivalent in Common Stock from the Company or the Employer; otherwise, the Participant may be able to seek a refund from the local tax authorities. In the event of under-withholding, the Participant may be required to pay any additional Tax-Related Items directly to the applicable tax authority or to the Company and/or the Employer. If theTax-Related Items are satisfied by withholding in shares of Common Stock, for tax purposes, the Participant is deemed to have been issued the full number of shares subject to the vested RSUs, notwithstanding that a number of the Shares are held back solely for the purpose of paying the Tax-Related Items.

The Participant further agrees to pay to the Company or the Employer, any amount ofTax-Related Items that the Company or the Employer may be required to withhold or account for as a result of the Participant's participation in the Plan that cannot be satisfied by the means previously described. The Company may refuse to issue or deliver the shares of Common Stock or the proceeds from the sale of shares if the Participant fails to comply with the Participant's obligations in connection with the Tax-Related Items.

**3. Nature of Grant**

By accepting the RSUs and any shares of Common Stock, the Participant agrees that:

(a) the Plan is established voluntarily by the Company, it is discretionary in nature, and may be amended, suspended or terminated by the Company at any time, to the extent permitted by the Plan;

(b) the grant of the RSUs is exceptional, voluntary and occasional and does not create any contractual or other right to receive future grants of RSUs, or benefits in lieu of RSUs, even if RSUs have been granted in the past;

(c) all decisions with respect to future RSUs or other grants, if any, will be at the sole discretion of the Company;

(d) the Participant is voluntarily participating in the Plan;

(e) the RSUs and any shares of Common Stock acquired under the Plan, and the income and value of the same, are not intended to replace any pension rights or compensation;

(f) the RSUs and any shares of Common Stock acquired under the Plan, and the income and value of the same, are not part of the Participant's normal or expected compensation for any purposes including, but not limited to, calculating any severance, resignation, termination, redundancy, dismissal, end-of-service payments, bonuses, holiday pay, long-service awards, leave-related pay, pension or retirement benefits or payments or welfare benefits or similar payments and in no event should be considered as compensation for, or relating in any way to, past services for the Company or the Employer or any Subsidiary;

(g) the future value of the shares of Common Stock underlying the RSUs is unknown, indeterminable, and cannot be predicted with certainty;

(h) unless otherwise agreed with the Company, the RSUs and the shares of Common Stock acquired under the Plan, and the income and value of same, are not granted as consideration for, or in connection with, the service the Participant may provide as a director of any Subsidiary;

(i) no claim or entitlement to compensation or damages shall arise from forfeiture of the RSUs resulting from the termination of the Participant's employment (for any reason whatsoever, whether or not later found to be invalid or in breach of employment laws in the jurisdiction where the Participant is employed or providing services, or the terms of the Participant's employment or service agreement, if any) or from the application of any clawback or recoupment policy adopted by the Company or imposed by applicable law;

(j) unless otherwise provided in the Plan or by the Company in its discretion, the RSUs and the benefits evidenced by the Award Document do not create any entitlement to have the RSUs or any such benefits transferred to, or assumed by, another company nor to be exchanged, cashed out or substituted for, in connection with any corporate transaction affecting the shares; and

(k) neither the Company, the Employer nor any Subsidiary shall be liable for any foreign exchange rate fluctuation between the Participant's local currency and the U.S. dollar that may affect the value of the RSUs or of any amounts due to the Participant pursuant to the vesting of the RSUs or the subsequent sale of any shares of Common Stock acquired upon vesting.

**4. Data Privacy**

***By accepting the RSUs via the Company's acceptance procedure, the Participant is declaring that he or she agrees with the data processing practices described herein and consents to the collection, processing and use of Personal Data (as defined below) by the Company and the transfer of Personal Data to the recipients mentioned herein, including recipients located in countries which do not adduce an adequate level of protection from a European (or other non-U.S.) data protection law perspective, for the purposes described herein.***

**(a)** ***Declaration of Consent****. The Participant understands that he or she needs to review the following information about the processing of the Participant's personal data by or on behalf of the Company, the Employer and/or any Subsidiary as described in this Award Document and any other RSU grant materials (the "Personal Data") and declare his or her consent. As regards the processing of the Participant's Personal Data in connection with the Plan and this Award Document, the Participant understands that the Company is the controller of the Participant's Personal Data.*

**(b)** ***Data Processing and Legal Basis*** *The Company collects, uses and otherwise processes Personal Data about the Participant for the purposes of allocating shares of Common Stock and implementing, administering and managing the Plan. The Participant understands that this Personal Data may include, without limitation, the Participant's name, home address and telephone number, email address, date of birth, social insurance number, passport number or other identification number (e.g., resident registration number), salary, nationality, job title, any shares of stock or directorships held in the Company or its Subsidiaries, details of all RSUs or any other entitlement to shares of stock or equivalent benefits awarded, canceled, exercised, vested, unvested or outstanding in the Participant's favor. The legal basis for the processing of the Participant's Personal Data will be the Participant's consent.*

**(c)** ***Stock Plan Administration Service Providers****. The Participant understands that the Company transfers the Participant's Personal Data, or parts thereof, to E*TRADE Financial Corporation Services, Inc. (and its affiliated companies), an independent service provider based in the United States or IBI Capital for Israeli employees, each of which assists the Company with the implementation, administration and management of the Plan. In the future, the Company may select a different service provider and share the Participant's Personal Data with such different service provider that serves the Company in a similar manner. The Participant understands and acknowledges that the Company's service provider will open an account for the Participant to receive and trade shares of Common Stock acquired under the Plan and that the Participant will be asked to agree on separate terms and data processing practices with the service provider, which is a condition of the Participant's ability to participate in the Plan.*

**(d)** ***International Data Transfers.*** *The Participant understands that the Company and, as of the date hereof, any third parties assisting in the implementation, administration and management of the Plan, such as the Company's service providers, are based in the United States. If the Participant is located outside the United States, the Participant understands and acknowledges that the Participant's country has enacted data privacy laws that are different from the laws of the United States. Transfers of personal data from the EEA or the United Kingdom to the United States can be made on the basis of Standard Contractual Clauses approved by the European Commission, United Kingdom or other appropriate safeguards permissible under the applicable law. If the Participant is located in the EU, EEA or the United Kingdom, the Company may receive, process and transfer the Participant's Personal Data onward to third-party service providers solely on the basis of appropriate data transfer agreements or other appropriate safeguards permissible under applicable law. If applicable, the Participant understands that the Participant can ask for a copy of the appropriate data processing agreements underlying the transfer of the Participant's Personal Data by contacting the Participant's local human resources representative. The Company's legal basis for the transfer of the Participant's Personal Data is the Participant's consent.*

**(e)** ***Data Retention.*** *The Company will hold and use the Data only as long as is necessary to implement, administer and manage participation in the Plan or as required to comply with tax, exchange control, labor and securities laws, other applicable law, exercise or defense of legal rights, and archiving, back-up and deletion processes. This period may extend beyond the Participant's period of employment with the Employer.*

**(f)** ***Voluntariness and Consequences of Denial/Withdrawal of Consent*** *Participation in the Plan is voluntary and the Participant is providing the consents herein on a purely voluntary basis. If the Participant does not consent, or later seeks to revoke their consent, the Participant's salary from or employment or other service with the Employer will not be affected; the only consequence of refusing or withdrawing consent is that the Company would not be able to grant RSUs or other equity awards to the Participant or administer or maintain such awards.*

**(g)** ***Data Subject Rights.*** ***The Participant understands that data subject rights regarding the processing of personal data vary depending on the applicable law and that, depending on where the Participant is based and subject to the conditions set out in the applicable law, the Participant may have, without limitation, the rights to (i) inquire whether and what kind of Personal Data the Company holds about the Participant and how it is processed, and to access or request copies of such Personal Data, (ii) request the correction or supplementation of Personal Data about the Participant that is inaccurate, incomplete or out-of-date in light of the purposes underlying the processing, (iii) obtain the erasure of Personal Data no longer necessary for the purposes underlying the processing, processed based on withdrawn consent, processed for legitimate interests that, in the context of the Participant's objection, does not prove to be compelling, or processed in non-compliance with applicable legal requirements, (iv) request the Company to restrict the processing of the Participant's Personal Data in certain situations where the Participant feels its processing is inappropriate, (v) object, in certain circumstances, to the processing of Personal Data for legitimate interests, and to (vi) request portability of the Participant's Personal Data that the Participant has actively or passively provided to the Company (which does not include data derived or inferred from the collected data), where the processing of such Personal Data is based on consent or the Participant's employment or service contract and is carried out by automated means. In case of concerns, the Participant understands that the Participant may also have the right to lodge a complaint with the competent local data protection authority. Further, to receive clarification of, or to exercise any of, the Participant's rights the Participant understands that the Participant should contact the Participant's local human resources representative.***

**(h)** ***Alternate Basis and Additional Consents.*** ***Finally, the Participant understands that the Company may rely on a different basis for the processing or transfer of Personal Data in the future and/or request that the Participant provide another data privacy consent. If applicable, the Participant agrees that upon request of the Company or the Employer, the Participant will provide an executed acknowledgement or data privacy consent form (or any other agreements or consents) that the Company and/or the Employer may deem necessary to obtain from the Participant for the purpose of administering the Participant's participation in the Plan in compliance with the data privacy laws in the Participant's country, either now or in the future. The Participant understands and agrees that he or she will not be able to participate in the Plan if he or she fails to provide any such consent or agreement requested by the Company and/or the Employer.***

**5. Electronic Delivery and Acceptance**

The Participant agrees that the Company may, in its sole discretion, decide to deliver by email or other electronic means any documents relating to the Plan or the RSUs. Further, the Participant agrees to receive such documents by electronic delivery and agrees to participate in the Plan through an on-line or electronic system established and maintained by the Company or by a third party designated by the Company.

**6. Insider Trading/Market Abuse Laws**

The Participant agrees to comply with the Company's policy on insider trading (to the extent that it is applicable to the Participant). Depending on the Participant's country or the designated broker's country or country where the Common Stock is listed, the Participant may be subject to insider trading restrictions and/or market abuse laws, which may affect the Participant's ability to accept, acquire, sell, attempt to sell or otherwise dispose of Common Stock, rights to Common Stock (*e.g.*, the RSUs) or rights linked to the value of Common Stock (*e.g.*, phantom awards, futures) during such times as the Participant is considered to have "inside information" regarding the Company (as defined by the laws or regulations in the Participant's country). Local insider trading laws and regulations may prohibit the cancellation or amendment of orders the Participant placed before possessing inside information. Furthermore, the Participant could be prohibited from (i) disclosing the inside information to any third party (other than on a "need to know" basis) and (ii) "tipping" third parties or causing them otherwise to buy or sell securities. Third parties include fellow employees. Any restrictions under these laws or regulations are separate from and in addition to any restrictions that may be imposed under any applicable Company insider trading policy. The Participant is responsible for ensuring compliance with any applicable restrictions and should consult his or her personal legal advisor on this matter.

**7. Exchange Control, Tax and/or Foreign Asset/Account Reporting**

The Participant acknowledges that there may be exchange control, tax, foreign asset and/or account reporting requirements which may affect the Participant's ability to acquire or hold shares of Common Stock acquired under the Plan or cash received from participating in the Plan (including from any dividend equivalents paid with respect to the RSUs or dividends paid on shares of Common Stock acquired under the Plan) in a brokerage/bank account or legal entity outside the Participant's country. The Participant may be required to report such accounts, assets, the balances therein, the value thereof and/or the transactions related thereto to the tax or other authorities in the Participant's country. The Participant also may be required to repatriate sale proceeds or other funds received as a result of the Participant's participation in the Plan to the Participant's country through a designated bank or broker within a certain time after receipt. In addition, the Participant agrees to take any and all actions, and consent to any and all actions taken by the Company or the Employer as may be required to allow the Company or the Employer to comply with local laws, rules and regulations in the Participant's country of residence (and country of employment, if different). The Participant acknowledges that it is the Participant's responsibility to be compliant with such regulations, and the Participant should consult his or her personal legal advisor for any details.

**8. Language**

The Participant acknowledges that he or she is sufficiently proficient in English, or has consulted with an advisor who is sufficiently proficient in English so as to allow the Participant to understand the terms and conditions of this Award Document. Furthermore, if the Award Document or any other document related to the Plan has been translated into a language other than English and the meaning of the translated version is different than the English version, the English version will control, unless otherwise required by applicable law.

**Exhibit 10.31**

**SANDISK CORPORATION**
**2025 LONG-TERM INCENTIVE PLAN**

**GRANT NOTICE FOR**
**PERFORMANCE STOCK UNIT AWARD**

On [•] (the "WDC Grant Date"), Western Digital Corporation ("***WDC***") granted to the Participant named below [•] Performance Stock Units (the "***Prior PSU Award***") under the Western Digital Corporation 2021 Long-Term Incentive Plan. In connection with the spinoff of Sandisk Corporation (the "***Company***") from WDC and pursuant to the Employee Matters Agreement dated [•], the Company is assuming the number of PSUs listed below (this "***Award***") under the Sandisk Corporation 2025 Long-Term Incentive Plan (as amended from time to time, the "***Plan***"). Each PSU represents the right to receive one share of Common Stock, subject to the terms and conditions in this Grant Notice, the Plan and the Standard Terms and Conditions (the "***Standard Terms and Conditions***") of such Plan, attached as Exhibit A hereto. Capitalized terms not otherwise defined here shall have the meaning set forth in the Plan.

| | |
|---|---|
| Name of Participant: | |
| Employee ID | |
| Grant Date: | |
| Grant Number | |
| Number of PSUs: | |
| Vesting Schedule: | The vesting date of the PSUs is August 20, 2025 (the "***Vesting Date***"). Vesting shall be subject to Participant's Continuous Service from the Grant Date through the Vesting Date, unless provided otherwise under Section 2 of the Standard Terms and Conditions. |
| Performance Period and Measurement Periods: | n/a |

**IN CONNECTION WITH THIS GRANT, AND IN ADDITION TO THIS GRANT NOTICE, PARTICIPANT HAS RECEIVED A COPY OF THE PLAN AND THE STANDARD TERMS AND CONDITIONS. PARTICIPANT MAY REJECT THIS AWARD BY NOTIFYING THE COMPANY NO LATER THAN THE FIFTH BUSINESS DAY FOLLOWING RECEIPT OF THIS AWARD DOCUMENT. FAILURE TO REJECT THIS AWARD WITHIN SUCH 5-DAY PERIOD SHALL BE DEEMED ACCEPTANCE OF THIS AWARD AND THE TERMS AND CONDITIONS OF THE AWARD DOCUMENT.**

**EXHIBIT A**

**SANDISK CORPORATION**
**2025 LONG-TERM INCENTIVE PLAN**

**STANDARD TERMS AND CONDITIONS FOR**
**PERFORMANCE STOCK UNITS**

These Standard Terms and Conditions apply to this Award of Performance Stock Units granted under the Sandisk Corporation 2025 Long-Term Incentive Plan (the "***Plan***"). The Performance Stock Units are also subject to the terms of the Plan and the attached Grant Notice, which are incorporated here by this reference. Capitalized terms not otherwise defined here shall have the meaning set forth in the Plan.

**1. TERMS OF PERFORMANCE STOCK UNITS**

Sandisk Corporation (the "***Company***") has granted to the Participant named in the attached Grant Notice an award of Performance Stock Units (this "***Award***" or the "***PSUs***") described in the Grant Notice, with each PSU representing the right to receive one share of Common Stock. For purposes of these Standard Terms and Conditions and the Grant Notice, any reference to the Company shall include a reference to any Subsidiary.

**2. VESTING AND SETTLEMENT OF PERFORMANCE STOCK UNITS**

(a) The Award shall be unvested as of the Grant Date and be forfeitable unless and until otherwise vested pursuant to the terms of the Grant Notice and these Standard Terms and Conditions. After the Grant Date, subject to termination or acceleration as provided in these Standard Terms and Conditions and the Plan, this Award shall become vested as described in the Grant Notice. PSUs that have vested and are no longer subject to forfeiture are referred to as "***Vested PSUs***." PSUs that are not vested and remain subject to forfeiture are referred to as "***Unvested PSUs***." No portion of this Award, nor the shares of Common Stock subject to this Award, may be deferred under the Sandisk Corporation Deferred Compensation Plan (or any applicable successor plan) or any other deferred compensation arrangement of the Company.

The Company shall deliver to the Participant on the Settlement Date a number of shares of Common Stock equal to the number of Vested PSUs. The Company may, in its sole discretion, settle any PSUs accrued as dividend equivalents by a cash payment equal to the Fair Market Value of a share of Common Stock on the date of payment (as opposed to payment in the form of shares of Common Stock). "***Settlement Date***" means: as soon as practicable following the vesting of the PSUs on the Vesting Date but in no event later than December 31 of the calendar year in which the Vesting Date occurs.

(b) *Termination without Cause under the Executive Severance Plan* For a Participant who is subject to the terms of the Sandisk Corporation Executive Severance Plan, as applicable (or any applicable successor plan) (the "***Executive Severance Plan***") at the time of termination of Continuous Service, then upon Participant's termination of employment by the Company without Cause (as defined in the Executive Severance Plan) under circumstances that would entitle the Participant to severance benefits under the Executive Severance Plan, subject to compliance with the terms of the Executive Severance Plan, then the PSUs will be payable in accordance with the Vesting Schedule set forth in the Grant Notice above, with no acceleration, and vest as follows:

(i) A pro-rated portion of the PSUs (and any credited dividend equivalent rights) will vest (with the number of shares vesting determined before taking the crediting of (if applicable) dividend equivalent rights into account) with such pro-rated portion equal to a fraction with a numerator equal to the total number of calendar days in the period beginning with July 2, 2022, through and including the Participant's termination of Continuous Service and a denominator equal to 1,097.

Any Unvested PSUs that do not vest as described above shall be forfeited as of the date of the Participant's termination of Continuous Service.

(c) *Termination without Cause or for Good Reason under the Change in Control Severance Plan.* For a Participant who is subject to the terms of the Sandisk Corporation Change in Control Severance Plan, as applicable (or any applicable successor plan) (the "***CIC Severance Plan***") at the time of termination of Continuous Service, then upon Participant's termination of employment by the Company without Cause or due to a resignation by Participant for Good Reason (both as defined in the CIC Severance Plan) under circumstances that would entitle the Participant to severance benefits under the CIC Severance Plan, subject to compliance with the terms of the CIC Severance Plan, the PSUs (and any credited dividend equivalents) will vest and be payable upon the Participant's termination of Continuous Service.

(d) *Termination due to Death; Termination due to a Qualifying Retirement.* (1) Upon Participant's termination of Continuous Service due to death, or (2) upon Participant's termination of employment due to a Qualifying Retirement (as defined below), the PSUs will be payable in accordance with the Vesting Schedule set forth in the Grant Notice above, with no acceleration, and vest as follows:

(i) A pro-rated portion of the PSUs (and any credited dividend equivalent rights) will vest (with the number of shares vesting determined before taking the crediting of (if applicable) dividend equivalent rights into account) with such pro-rated portion equal to a fraction with a numerator equal to the total number of calendar days in the period beginning with July 2, 2022, through and including the Participant's termination of Continuous Service and a denominator equal to 1,097.

"***Qualifying Retirement***" means the termination of the Participant's employment with the Company and its Subsidiaries due to his or her retirement from employment with the Company or one of its Subsidiaries after satisfying all of the following requirements at the time of such termination: (i) the Participant is at least 55 years of age, (ii) the Participant has five or more whole years of credited service with the Company and/or any of its Subsidiaries; and (iii) the Participant's age plus years of credited service with the Company and/or any of its Subsidiaries (including only whole years in the case of both age and credited service for purposes of this requirement) totals at least 70.

Any Unvested PSUs that do not vest as described above shall be forfeited as of the date of the Participant's termination of Continuous Service, provided that the Unvested PSUs shall remain eligible to vest in accordance with the Grant Notice and these Standard Terms and Conditions in the event the Participant terminates employment due to a Qualifying Retirement yet continues to provide services to the Company and its Subsidiaries in a capacity other than as an employee. Such continued vesting is subject to the Participant's Continuous Services through the Vesting Date.

(e) *Resignation*. Upon Participant's termination of Continuous Service by the Company due to a resignation by Participant for any reason, other than a Qualifying Retirement or a resignation for Good Reason under circumstances that would entitle the Participant to severance benefits under the CIC Severance Plan, subject to compliance with the terms of the CIC Severance Plan, the PSUs held by the Participant shall be forfeited as of the date of the Participant's termination of Continuous Service.

(f) Upon Participant's termination of Continuous Service by the Company for Cause, the entire Award held by the Participant shall be forfeited as of the date of the Participant's termination of Continuous Service.

(g) *Non-U.S. Eligible Employees Participating in the Executive Severance Plan and Change in Control Severance Plan.* For avoidance of doubt, if Participant is not a U.S. Eligible Employee (as defined in the applicable severance plan), the Participant will only be eligible for the vesting treatment on a termination without Cause as described in Section 2(b) or termination without Cause or resignation for Good Reason as described in Section 2(c) in accordance with the terms of the applicable severance plan, which provides that the administrator of such severance plan will compare any Local Severance Benefits (as defined in the applicable severance plan) with the Plan Severance Benefits (as defined in the applicable severance plan) and if the value of the Local Severance Benefits equals or exceeds the value of the Plan Severance Benefits, the Participant will not be eligible to receive the vesting treatment on a termination without Cause as described in Section 2(b) or termination without Cause or resignation for Good Reason as described in Section 2(c). For the avoidance of doubt, a Participant who is retirement-eligible and receives Local Severance Benefits shall also receive the vesting treatment described in Section 2(d) as though the Participant had experienced a Qualifying Retirement.

**3. RIGHTS AS STOCKHOLDER; DIVIDEND EQUIVALENTS**

(a) Participant shall not be, nor have any of the rights or privileges of, a stockholder of the Company in respect of any PSUs unless and until shares of Common Stock settled for such PSUs shall have been issued by the Company to Participant.

(b) Notwithstanding Section 3(a), from and after the Grant Date and until the earlier of (i) the Participant's receipt of Common Stock upon settlement of the PSUs and (ii) the time when the Participant's right to receive Common Stock upon settlement of the PSUs is forfeited, the Participant shall be entitled to receive as a dividend equivalent a number of additional PSUs on the date that the Company pays a cash dividend (if any) to Common Stock holders generally. Such dividend equivalent shall be determined by dividing (i) the product of (A) the dollar amount of the cash dividend paid per share of Common Stock on such date and (B) the total number of PSUs (including dividend equivalents accrued thereon) previously credited to the Participant as of such date, by (ii) the Fair Market Value per share of Common Stock on such date. Such dividend equivalents (if any) shall be subject to the same terms and conditions and shall be settled or forfeited in the same manner and at the same time as the PSUs to which the dividend equivalents were credited. Dividend equivalents shall be settled in whole shares of Common Stock with any dividend equivalents accrued in the form of fractional PSUs settled in cash. However, for the avoidance of doubt, the Company may, in its sole discretion, settle any PSUs accrued as dividend equivalents by a cash payment equal to the Fair Market Value of a share of Common Stock on the date of payment (as opposed to payment in the form of shares of Common Stock). For the avoidance of doubt, in no event will any dividend equivalents credited to PSUs be delivered to the Participant unless and until such PSUs vest and settle.

**4. RESTRICTIONS ON RESALES OF SHARES**

The Company may impose such restrictions as it determines appropriate as to the timing and manner of any resales by the Participant or other subsequent transfers by the Participant of any shares of Common Stock issued pursuant to Vested PSUs, including (a) restrictions under an insider trading policy, (b) restrictions designed to delay and/or coordinate the timing and manner of sales by Participant and other holders and (c) restrictions as to the use of a specified brokerage firm for such resales or other transfers.

**5. INCOME TAXES**

The Participant may satisfy tax withholding obligations relating to the PSUs by any combination of the following: (i) a cash payment; (ii) a Company deduction from any amounts payable to Participant; (iii) Company withholding of shares from the Common Stock issuable to the Participant in connection with the PSUs (only up to the amount permitted that will not cause an adverse accounting consequence); or (iv) Company withholding a payment from the proceeds from the sale of shares of Common Stock issued pursuant to the PSUs. In addition, the Administrator may, in its sole discretion but only to the extent consistent with Section 409A of the Code, reduce the number of PSUs remaining subject to this Award, with each such PSU to have a value for such purpose equal to the then Fair Market Value of a share of Common Stock, to satisfy such withholding obligation at the applicable withholding rates.

**6. NON -TRANSFERABILITY OF AWARD**

The Participant agrees that, except as otherwise provided in the Plan or as permitted by the Administrator, this Award may not be sold, assigned, transferred, pledged or otherwise directly or indirectly encumbered or disposed of other than by will or the laws of descent and distribution or pursuant to the terms of a qualified domestic relations order, official marital settlement agreement or other divorce or separation instrument.

**7. OTHER AGREEMENTS SUPERSEDED**

The Grant Notice, these Standard Terms and Conditions and the Plan constitute the entire understanding between the Participant and the Company regarding this Award. Any prior agreements, commitments or negotiations concerning this Award are superseded.

**8. NO ADDITIONAL RIGHTS**

The Participant's receipt of the PSUs does not confer upon the Participant any right to continue to serve the Company or an Affiliate in any capacity and will not affect the right of the Company or an Affiliate to terminate the service of the Participant.

**9. GENERAL**

(a) In the event that any provision of these Standard Terms and Conditions (including, for the avoidance of doubt, the Plan, which is incorporated here by this reference) is declared to be unenforceable by an arbitrator selected in accordance with Section 11 below or a court of competent jurisdiction, such provision shall be reformed, if possible, to the extent necessary to render it enforceable, or otherwise deleted, and the remainder of these Standard Terms and Conditions shall not be affected except to the extent necessary to reform or delete such unenforceable provision. Furthermore, except as otherwise provided by Section 11, it is the parties' intent that any order striking any portion of this Award Document and/or the Plan should modify the stricken terms as narrowly as possible to give as much effect as possible to the intentions of the parties hereunder.

(b) The headings preceding the text of the sections in these Standard Terms and Conditions are inserted solely for convenience of reference, and shall not constitute a part of these Standard Terms and Conditions, nor shall they affect its meaning, construction or effect. References to any agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof and not prohibited by the Plan or these Standard Terms and Conditions.

(c) These Standard Terms and Conditions shall inure to the benefit of and be binding upon the parties and their respective permitted heirs, beneficiaries, successors and assigns.

(d) These Standard Terms and Conditions shall be interpreted in accordance with and governed by the laws of the State of Delaware, without regard to principles of conflicts of law.

(e) In the event of any conflict between the Grant Notice, these Standard Terms and Conditions and the Plan, the Grant Notice and these Standard Terms and Conditions shall control. In the event of any conflict between the Grant Notice and these Standard Terms and Conditions, the Grant Notice shall control.

(f) The PSUs and any shares of Common Stock acquired under the Plan, and the income and value of the same, are not part of the Participant's normal or expected compensation for any purposes including, but not limited to, calculating any severance, resignation, termination, redundancy, dismissal, end-of-service payments, bonuses, holiday pay, long-service awards, leave-related pay, pension or retirement benefits or payments or welfare benefits or similar payments and in no event should be considered as compensation for, or relating in any way to, past services for the Company or the Participant's employer or any Subsidiary.

(g) All questions under the Plan or under these Standard Terms and Conditions shall be decided by the Administrator in its total and absolute discretion.

(h) This Award will be subject to recoupment in accordance with the Company's compensation recovery (clawback) policy or policies then in effect. No recovery of compensation under any such policy will be an event giving rise to a right to resign for "good reason" or "constructive termination" (or similar term) under any agreement with the Company or a Subsidiary.

**10. ELECTRONIC DELIVERY**

By accepting the Grant Notice, the Participant hereby consents to the delivery of information (including, without limitation, information required to be delivered to the Participant pursuant to applicable securities laws) regarding the Company and the Subsidiaries, the Plan, and the PSUs via Company web site or other electronic delivery.

**11. ARBITRATION**

Any controversy arising out of or relating to the Grant Notice, these Standard Terms and Conditions, and/or the Plan ("***Covered Claims***"), shall be resolved in accordance with the terms and conditions of the Sandisk Dispute Resolution Agreement (the "***DRA***"), except with respect to any specific performance provided for in Section 13(f) below.

If, however, Participant has opted out of the DRA, any Covered Claims shall be submitted to arbitration pursuant to this Section 11. Unless otherwise agreed to between the Participant and Company, such arbitration shall be held no more than 45 miles from the Company's headquarters. The arbitration will be held before a sole arbitrator selected from Judicial Arbitration and Mediation Services, Inc., or its successor ("***JAMS***"), or if JAMS is no longer able to supply the arbitrator, such arbitrator shall be selected from the American Arbitration Association, and shall be conducted in accordance with the provisions of the Federal Arbitration Act; provided, however, that provisional injunctive relief may, but need not, be sought by either party in a court of law to maintain the status quo while arbitration proceedings are pending, and any provisional injunctive relief granted by such court shall remain effective until the matter is finally determined by the arbitrator. Any such action for provisional injunctive relief shall be subject to the exclusive jurisdiction of the Delaware Chancery Court and each party consents to jurisdiction with respect to any such action in Delaware Chancery Court. To the fullest extent permitted by applicable law, Participant and the Company agree to bring any Covered Claims on an individual basis only, and not on a class, collective, joint, or representative basis. If, however, the preceding sentence be determined invalid or unenforceable by a court of competent jurisdiction and not by an arbitrator with respect to any particular Covered Claim, then that Covered Claim will not proceed in arbitration but rather will be resolved in a court of competent jurisdiction for that Covered Claim only. All other Covered Claims must be resolved in arbitration on an individual basis. Any award or relief granted by the arbitrator shall be final and binding on the Company and the Participant and may be enforced by any court of competent jurisdiction.

The Company shall be responsible for payment of the forum costs of any arbitration hereunder, including the arbitrator's fee. Each party shall bear its own attorney's fees and costs (other than forum costs associated with the arbitration) incurred by it or him or her in connection with the resolution of the dispute. If, however, any party prevails on a statutory claim, which affords the prevailing party attorneys' fees and costs, then the arbitrator may award reasonable fees and costs to the prevailing party. The parties agree that they are hereby waiving any rights to trial by jury in relation to any matter arising out of or in any way connected with any Covered Claim(s).

**12. NON-U.S. EMPLOYEES**

The Award shall be subject to any additional terms and conditions fornon-U.S. employees set forth in Appendix A ("***Appendix A***") and any terms and conditions for the Participant's country set forth in Appendix B ("***Appendix B***"). Moreover, if the Participant relocates to one of the countries included in Appendix B, the terms and conditions for such country will apply to the Participant to the extent the Company determines that the application of such terms and conditions is necessary or advisable for legal or administrative reasons. Appendix A and Appendix B constitute part of the Agreement.

**13. ADDITIONAL PARTICIPANT OBLIGATIONS**

(a) The Participant, in accepting this Award, (i) agrees to the terms of this Award as set forth in this Award Document generally, and (ii) specifically (and without limiting the generality of clause (i)) agrees to the provisions of this Section 13.

(b) The Participant agrees that during the Restricted Period (as defined below), the Participant will not directly or indirectly solicit, induce or encourage, or attempt to solicit, induce or encourage, any employee or independent contractor of the Company or any of its Subsidiaries to leave the employ or service, as applicable, of the Company or any such Subsidiary, or become employed or engaged by any third party, or in any way interfere with the relationship between the Company or any such Subsidiary, on the one hand, and any employee or independent contractor thereof, on the other hand. This Section 13(b) does not limit any general advertising or job posting not directed at any individual or group of employees of the Company or any of its Subsidiaries. For purposes of this Award Document, "Restricted Period" means the period of time the Participant is employed by or provides services to the Company or one of its Subsidiaries and the period of twenty-four (24) months after the date on which the Participant's Continuous Service terminates.

(c) The Participant agrees that if the Participant were to become employed by, or substantially involved in, the business of a competitor of the Company or any of its Subsidiaries, it would be very difficult for the Participant not to rely on or use the Company's and its Subsidiaries' trade secrets and confidential information. Thus, to avoid the inevitable disclosure of the Company's and its Subsidiaries' trade secrets and confidential information, and to protect such trade secrets and confidential information and the Company's and its Subsidiaries' relationships and goodwill with customers, during the Restricted Period, the Participant will not directly or indirectly through any other person engage in, enter the employ of, render any services to, have any ownership interest in, nor participate in the financing, operation, management or control of, any Competing Business. For purposes of this Agreement, the phrase "directly or indirectly through any other Person engage in" shall include, without limitation, any direct or indirect ownership or profit participation interest in such enterprise, whether as an owner, stockholder, member, partner, joint venturer or otherwise, and shall include any direct or indirect participation in such enterprise as an employee, consultant, director, officer, advisor, licensor of technology or otherwise. For purposes of this Agreement, "Competing Business" means a person anywhere in the continental United States and elsewhere in the world where the Company or any of its Subsidiaries engages in business, or reasonably anticipates engaging in business, (the "Restricted Area") that is engaged in design, development, manufacture, maintenance, offering, production or sales of hard disk drives or flash-based memory or other data storage devices or solutions. However, nothing in this Section 13(c) shall prohibit the Participant from being a passive owner of a *de minimis* amount of outstanding stock of any class of a corporation which is publicly traded, so long as such ownership is indirect through a mutual fund, similar passive common investment fund, or a broadly-diversified account managed by an unaffiliated third party.

(d) The Participant acknowledges that, in the course of the Participant's employment with the Company and/or its Subsidiaries and their predecessors, the Participant has become familiar, or will become familiar, with the Company's and its Subsidiaries' and their predecessors' trade secrets and with other confidential and proprietary information concerning the Company, its Subsidiaries and their respective predecessors and that the Participant's services have been and will be of special, unique and extraordinary value to the Company and its Subsidiaries. The Participant agrees that the covenants set forth in Sections 13(b) and (c) (together, the "Restrictive Covenants") are reasonable and necessary to protect the Company's and its Subsidiaries' trade secrets and other confidential and proprietary information, good will, stable workforce, and customer relations.

(e) Without limiting the generality of the Participant's agreement in Section 13(d), the Participant (i) represents that the Participant is familiar with and has carefully considered the Restrictive Covenants, (ii) represents that the Participant is fully aware of the Participant's obligations hereunder, (iii) agrees to the reasonableness of the length of time, scope and geographic coverage, as applicable, of the Restrictive Covenants, (iv) agrees that the Company and its Subsidiaries currently conduct business throughout the world, and (v) agrees that the Restrictive Covenants will continue in effect for the applicable periods set forth above in this Section 13 regardless of whether the Participant is then entitled to receive any form of compensation, severance pay or benefits from the Company or any of its Subsidiaries. The Participant understands that the Restrictive Covenants may limit the Participant's ability to earn a livelihood in a business similar to the business of the Company or any of its Subsidiaries, but the Participant nevertheless believes that the Participant has received and will receive sufficient consideration and other benefits as an employee of the Company or one of its Subsidiaries, and as otherwise provided hereunder, to clearly justify such restrictions which, in any event (given the Participant's education, skills and ability), the Participant does not believe would prevent the Participant from otherwise earning a living. The Participant agrees that the Restrictive Covenants do not confer a benefit upon the Company and its Subsidiaries that is disproportionate to the detriment of the Participant.

(f) The Participant agrees that a breach by the Participant of any of the covenants in this Section 13 would cause immediate and irreparable harm to the Company that would be difficult or impossible to measure, and that damages to the Company for any such injury would therefore be an inadequate remedy for any such breach. Therefore, the Participant agrees that in the event of any breach or threatened breach of any provision of this Section 13, the Company (or its applicable Subsidiary, as the case may be) shall be entitled, in addition to and without limitation upon all other remedies the Company (or any of its Subsidiaries) may have under this Award Document, at law or otherwise, to obtain specific performance, injunctive relief and/or other appropriate relief (without posting any bond or deposit) in order to enforce or prevent any violations of the provisions of this Section 13, or require the Participant to account for and pay over to the Company all compensation, profits, moneys, accruals, increments or other benefits derived from or received as a result of any transactions constituting a breach of this Section 13 if and when final judgment of a court of competent jurisdiction or arbitrator, as applicable, is so entered against the Participant. The Participant further agrees that the applicable period of time any Restrictive Covenant is in effect following the date of the Participant's termination of Continuous Service shall be extended by the same amount of time that the Participant is in breach of any Restrictive Covenant following the date on which the Participant's Continuous Service terminates. The Participant further agrees that in the event of any breach of any provision of this Section 13, in addition to and without limitation upon all other remedies the Company (or any of its Subsidiaries) may have under this Award Document, at law or otherwise, this Award (to the extent outstanding at the time of such breach) shall automatically terminate and be forfeited as of the time of such breach.

**APPENDIX A**

**ADDITIONAL TERMS AND CONDITIONS OF PERFORMANCE STOCK UNIT AWARD DOCUMENT FOR NON-U.S. EMPLOYEES**

**1. Terms of Plan Participation for Non-U.S. Participants**

The Participant understands that this Appendix A contains additional terms and conditions that, together with the Plan and the Award Document, govern the Participant's participation in the Plan if the Participant is working or resident in a country other than the United States. The Participant further understands that the Participant's participation in the Plan also will be subject to any terms and conditions for the Participant's country set forth in Appendix B. *Capitalized terms used but not defined in this Appendix A shall have the same meanings assigned to them in the Plan and/or Award Document.*

**2. Withholding Taxes**

The following provision supplements Section 5 of the Standard Terms and Conditions:

The Participant acknowledges that, regardless of any action taken by the Company or, if different, the Participant's employer ("***Employer***"), the ultimate liability for all income tax, social insurance, payroll tax, fringe benefits tax, payment on account or other tax-related items related to the Participant's participation in the Plan and this Award and legally applicable to the Participant ("***Tax-Related Items***") is and remains the Participant's responsibility and may exceed the amount, if any, actually withheld by the Company or the Employer. The Participant further acknowledges that the Company and/or the Employer (a) make no representations or undertakings regarding the treatment of any Tax-Related Items in connection with any aspect of the PSUs; and (b) are not obligated to structure the terms of the grant or any aspect of the PSUs to reduce or eliminate the Participant's liability for Tax-Related Items or achieve any particular tax result. If the Participant is or becomes subject toTax-Related Items in more than one jurisdiction, the Participant acknowledges that the Company and/or the Employer (or former employer, as applicable) may be required to withhold or account for Tax-Related Items in more than one jurisdiction.

The Participant agrees, in connection with any relevant taxable or tax withholding event, as applicable, to make adequate arrangements satisfactory to the Company and/or the Employer to satisfy all Tax-Related Items. In this regard, the Participant authorizes the Company and/or the Employer to satisfy the obligations with regard to all Tax-Related Items by one or a combination of the methods set forth in Section 8(f) of the Plan and Section 5 of the Standard Terms and Conditions. In addition, the Participant authorizes withholding from proceeds of the sale of shares of Common Stock acquired upon settlement of the PSUs either through a voluntary sale or through a mandatory sale arranged by the Company (on the Participant's behalf pursuant to this authorization without further consent). If the Participant is subject to Section 16 of the Exchange Act, then withholding for Tax-Related Items shall be satisfied in accordance with Section 8(f) of the Plan, Section 5 of the Standard Terms and Conditions, and the withholding methodology approved by the Administrator for officers subject to Section 16 of the Exchange Act.

Depending on the withholding method, the Company and/or the Employer may withhold or account forTax-Related Items by considering applicable minimum withholding amounts or other applicable withholding rates, including maximum applicable rates. In the event of over-withholding, the Participant may receive a refund of any over-withheld amount in cash and will have no entitlement to the equivalent in Common Stock from the Company or the Employer; otherwise, the Participant may be able to seek a refund from the local tax authorities. In the event of under-withholding, the Participant may be required to pay any additional Tax-Related Items directly to the applicable tax authority or to the Company and/or the Employer. If theTax-Related Items are satisfied by withholding in shares of Common Stock, for tax purposes, the Participant is deemed to have been issued the full number of shares subject to the vested PSUs, notwithstanding that a number of the Shares are held back solely for the purpose of paying the Tax-Related Items.

The Participant further agrees to pay to the Company or the Employer, any amount ofTax-Related Items that the Company or the Employer may be required to withhold or account for as a result of the Participant's participation in the Plan that cannot be satisfied by the means previously described. The Company may refuse to issue or deliver the shares of Common Stock or the proceeds from the sale of shares if the Participant fails to comply with the Participant's obligations in connection with the Tax-Related Items.

**3. Nature of Grant**

By accepting the PSUs and any shares of Common Stock, the Participant agrees that:

(a) the Plan is established voluntarily by the Company, it is discretionary in nature, and may be amended, suspended or terminated by the Company at any time, to the extent permitted by the Plan;

(b) the grant of the PSUs is exceptional, voluntary and occasional and does not create any contractual or other right to receive future grants of PSUs, or benefits in lieu of PSUs, even if PSUs have been granted in the past;

(c) all decisions with respect to future PSUs or other grants, if any, will be at the sole discretion of the Company;

(d) the Participant is voluntarily participating in the Plan;

(e) the PSUs and any shares of Common Stock acquired under the Plan, and the income and value of the same, are not intended to replace any pension rights or compensation;

(f) the PSUs and any shares of Common Stock acquired under the Plan, and the income and value of the same, are not part of the Participant's normal or expected compensation for any purposes including, but not limited to, calculating any severance, resignation, termination, redundancy, dismissal, end-of-service payments, bonuses, holiday pay, long-service awards, leave-related pay, pension or retirement benefits or payments or welfare benefits or similar payments and in no event should be considered as compensation for, or relating in any way to, past services for the Company or the Employer or any Subsidiary;

(g) the future value of the shares of Common Stock underlying the PSUs is unknown, indeterminable, and cannot be predicted with certainty;

(h) unless otherwise agreed with the Company, the PSUs and the shares of Common Stock acquired under the Plan, and the income and value of same, are not granted as consideration for, or in connection with, the service the Participant may provide as a director of any Subsidiary;

(i) no claim or entitlement to compensation or damages shall arise from forfeiture of the PSUs resulting from the termination of the Participant's employment (for any reason whatsoever, whether or not later found to be invalid or in breach of employment laws in the jurisdiction where the Participant is employed or providing services, or the terms of the Participant's employment or service agreement, if any);

(j) unless otherwise provided in the Plan or by the Company in its discretion, the PSUs and the benefits evidenced by the Award Document do not create any entitlement to have the PSUs or any such benefits transferred to, or assumed by, another company nor to be exchanged, cashed out or substituted for, in connection with any corporate transaction affecting the shares; and

(k) neither the Company, the Employer nor any Subsidiary shall be liable for any foreign exchange rate fluctuation between the Participant's local currency and the U.S. dollar that may affect the value of the PSUs or of any amounts due to the Participant pursuant to the vesting of the PSUs or the subsequent sale of any shares of Common Stock acquired upon vesting.

**4. Data Privacy**

***By accepting the PSUs via the Company's acceptance procedure, the Participant is declaring that he or she agrees with the data processing practices described herein and consents to the collection, processing and use of Personal Data (as defined below) by the Company and the transfer of Personal Data to the recipients mentioned herein, including recipients located in countries which do not adduce an adequate level of protection from a European (or other non-U.S.) data protection law perspective, for the purposes described herein.***

**(a)** ***Declaration of Consent****. The Participant understands that he or she needs to review the following information about the processing of the Participant's personal data by or on behalf of the Company, the Employer and/or any Subsidiary as described in this Award Document and any other PSU grant materials (the "Personal Data") and declare his or her consent. As regards the processing of the Participant's Personal Data in connection with the Plan and this Award Document, the Participant understands that the Company is the controller of the Participant's Personal Data.*

**(b)** ***Data Processing and Legal Basis*** *The Company collects, uses and otherwise processes Personal Data about the Participant for the purposes of allocating shares of Common Stock and implementing, administering and managing the Plan. The Participant understands that this Personal Data may include, without limitation, the Participant's name, home address and telephone number, email address, date of birth, social insurance number, passport number or other identification number (e.g., resident registration number), salary, nationality, job title, any shares of stock or directorships held in the Company or its Subsidiaries, details of all PSUs or any other entitlement to shares of stock or equivalent benefits awarded, canceled, exercised, vested, unvested or outstanding in the Participant's favor. The legal basis for the processing of the Participant's Personal Data will be the Participant's consent.*

**(c)** ***Stock Plan Administration Service Providers****. The Participant understands that the Company transfers the Participant's Personal Data, or parts thereof, to E*TRADE Financial Corporation Services, Inc. (and its affiliated companies), an independent service provider based in the United States or IBI Capital for Israeli employees, each of which assists the Company with the implementation, administration and management of the Plan. In the future, the Company may select a different service provider and share the Participant's Personal Data with such different service provider that serves the Company in a similar manner. The Participant understands and acknowledges that the Company's service provider will open an account for the Participant to receive and trade shares of Common Stock acquired under the Plan and that the Participant will be asked to agree on separate terms and data processing practices with the service provider, which is a condition of the Participant's ability to participate in the Plan.*

**(d)** ***International Data Transfers.*** *The Participant understands that the Company and, as of the date hereof, any third parties assisting in the implementation, administration and management of the Plan, such as the Company's service providers, are based in the United States. If the Participant is located outside the United States, the Participant understands and acknowledges that the Participant's country has enacted data privacy laws that are different from the laws of the United States. Transfers of personal data from the EEA or the United Kingdom to the United States can be made on the basis of Standard Contractual Clauses approved by the European Commission, United Kingdom or other appropriate safeguards permissible under the applicable law. If the Participant is located in the EU, EEA or the United Kingdom, the Company may receive, process and transfer the Participant's Personal Data onward to third-party service providers solely on the basis of appropriate data transfer agreements or other appropriate safeguards permissible under applicable law. If applicable, the Participant understands that the Participant can ask for a copy of the appropriate data processing agreements underlying the transfer of the Participant's Personal Data by contacting the Participant's local human resources representative. The Company's legal basis for the transfer of the Participant's Personal Data is the Participant's consent.*

**(e)** ***Data Retention.*** *The Company will hold and use the Data only as long as is necessary to implement, administer and manage participation in the Plan or as required to comply with tax, exchange control, labor and securities laws, other applicable law, exercise or defense of legal rights, and archiving, back-up and deletion processes. This period may extend beyond the Participant's period of employment with the Employer.*

**(f)** ***Voluntariness and Consequences of Denial/Withdrawal of Consent*** *Participation in the Plan is voluntary and the Participant is providing the consents herein on a purely voluntary basis. If the Participant does not consent, or later seeks to revoke their consent, the Participant's salary from or employment or other service with the Employer will not be affected; the only consequence of refusing or withdrawing consent is that the Company would not be able to grant PSUs or other equity awards to the Participant or administer or maintain such awards.*

**(g)** ***Data Subject Rights.*** ***The Participant understands that data subject rights regarding the processing of personal data vary depending on the applicable law and that, depending on where the Participant is based and subject to the conditions set out in the applicable law, the Participant may have, without limitation, the rights to (i) inquire whether and what kind of Personal Data the Company holds about the Participant and how it is processed, and to access or request copies of such Personal Data, (ii) request the correction or supplementation of Personal Data about the Participant that is inaccurate, incomplete or out-of-date in light of the purposes underlying the processing, (iii) obtain the erasure of Personal Data no longer necessary for the purposes underlying the processing, processed based on withdrawn consent, processed for legitimate interests that, in the context of the Participant's objection, does not prove to be compelling, or processed in non-compliance with applicable legal requirements, (iv) request the Company to restrict the processing of the Participant's Personal Data in certain situations where the Participant feels its processing is inappropriate, (v) object, in certain circumstances, to the processing of Personal Data for legitimate interests, and to (vi) request portability of the Participant's Personal Data that the Participant has actively or passively provided to the Company (which does not include data derived or inferred from the collected data), where the processing of such Personal Data is based on consent or the Participant's employment or service contract and is carried out by automated means. In case of concerns, the Participant understands that the Participant may also have the right to lodge a complaint with the competent local data protection authority. Further, to receive clarification of, or to exercise any of, the Participant's rights the Participant understands that the Participant should contact the Participant's local human resources representative.***

**(h)** ***Alternate Basis and Additional Consents.*** ***Finally, the Participant understands that the Company may rely on a different basis for the processing or transfer of Personal Data in the future and/or request that the Participant provide another data privacy consent. If applicable, the Participant agrees that upon request of the Company or the Employer, the Participant will provide an executed acknowledgement or data privacy consent form (or any other agreements or consents) that the Company and/or the Employer may deem necessary to obtain from the Participant for the purpose of administering the Participant's participation in the Plan in compliance with the data privacy laws in the Participant's country, either now or in the future. The Participant understands and agrees that he or she will not be able to participate in the Plan if he or she fails to provide any such consent or agreement requested by the Company and/or the Employer.***

**5. Electronic Delivery and Acceptance**

The Participant agrees that the Company may, in its sole discretion, decide to deliver by email or other electronic means any documents relating to the Plan or the PSUs. Further, the Participant agrees to receive such documents by electronic delivery and agrees to participate in the Plan through an on-line or electronic system established and maintained by the Company or by a third party designated by the Company.

**6. Insider Trading/Market Abuse Laws**

The Participant agrees to comply with the Company's policy on insider trading (to the extent that it is applicable to the Participant). Depending on the Participant's country or the designated broker's country or country where the Common Stock is listed, the Participant may be subject to insider trading restrictions and/or market abuse laws, which may affect the Participant's ability to accept, acquire, sell, attempt to sell or otherwise dispose of Common Stock, rights to Common Stock (*e.g.*, the PSUs) or rights linked to the value of Common Stock (*e.g.*, phantom awards, futures) during such times as the Participant is considered to have "inside information" regarding the Company (as defined by the laws or regulations in the Participant's country). Local insider trading laws and regulations may prohibit the cancellation or amendment of orders the Participant placed before possessing inside information. Furthermore, the Participant could be prohibited from (i) disclosing the inside information to any third party (other than on a "need to know" basis) and (ii) "tipping" third parties or causing them otherwise to buy or sell securities. Third parties include fellow employees. Any restrictions under these laws or regulations are separate from and in addition to any restrictions that may be imposed under any applicable Company insider trading policy. The Participant is responsible for ensuring compliance with any applicable restrictions and should consult his or her personal legal advisor on this matter.

**7. Exchange Control, Tax and/or Foreign Asset/Account Reporting**

The Participant acknowledges that there may be exchange control, tax, foreign asset and/or account reporting requirements which may affect the Participant's ability to acquire or hold shares of Common Stock acquired under the Plan or cash received from participating in the Plan (including from any dividend equivalents paid with respect to the PSUs or dividends paid on shares of Common Stock acquired under the Plan) in a brokerage/bank account or legal entity outside the Participant's country. The Participant may be required to report such accounts, assets, the balances therein, the value thereof and/or the transactions related thereto to the tax or other authorities in the Participant's country. The Participant also may be required to repatriate sale proceeds or other funds received as a result of the Participant's participation in the Plan to the Participant's country through a designated bank or broker within a certain time after receipt. In addition, the Participant agrees to take any and all actions, and consent to any and all actions taken by the Company or the Employer as may be required to allow the Company or the Employer to comply with local laws, rules and regulations in the Participant's country of residence (and country of employment, if different). The Participant acknowledges that it is the Participant's responsibility to be compliant with such regulations, and the Participant should consult his or her personal legal advisor for any details.

**8. Language**

The Participant acknowledges that he or she is sufficiently proficient in English, or has consulted with an advisor who is sufficiently proficient in English so as to allow the Participant to understand the terms and conditions of this Award Document. Furthermore, if the Award Document or any other document related to the Plan has been translated into a language other than English and the meaning of the translated version is different than the English version, the English version will control.

**Exhibit 10.32**

**SANDISK CORPORATION**
**2025 LONG-TERM INCENTIVE PLAN**

**GRANT NOTICE FOR**
**PERFORMANCE STOCK UNIT AWARD**

On [•], Western Digital Corporation ("***WDC***") granted to the Participant named below [•] Performance Stock Units (the "***Prior PSU Award***") under the Western Digital Corporation 2021 Long-Term Incentive Plan. In connection with the spinoff of Sandisk Corporation (the "***Company***") from WDC and pursuant to the Employee Matters Agreement dated [•], the Company is assuming the number of PSUs listed below (this "***Award***") under the Sandisk Corporation 2025 Long-Term Incentive Plan (as amended from time to time, the "***Plan***"). Each PSU represents the right to receive one share of Common Stock, subject to the terms and conditions in this Grant Notice, the Plan and the Standard Terms and Conditions (the "***Standard Terms and Conditions***") of such Plan, attached as Exhibit A hereto. Capitalized terms not otherwise defined here shall have the meaning set forth in the Plan.

| | |
|---|---|
| Name of Participant: | |
| Employee ID | |
| Grant Date: | |
| Grant Number | |
| Number of PSUs: | |
| Vesting Schedule: | The vesting date of the PSUs is August 25, 2026 (the "***Vesting Date***"). Vesting shall be subject to Participant's Continuous Service from the Grant Date through the Vesting Date, unless provided otherwise under Section 2 of the Standard Terms and Conditions. |
| Performance Period and Measurement Periods: | n/a |

**IN CONNECTION WITH THIS GRANT, AND IN ADDITION TO THIS GRANT NOTICE, PARTICIPANT HAS RECEIVED A COPY OF THE PLAN AND THE STANDARD TERMS AND CONDITIONS. PARTICIPANT MAY REJECT THIS AWARD BY NOTIFYING THE COMPANY NO LATER THAN THE FIFTH BUSINESS DAY FOLLOWING RECEIPT OF THIS AWARD DOCUMENT. FAILURE TO REJECT THIS AWARD WITHIN SUCH 5-DAY PERIOD SHALL BE DEEMED ACCEPTANCE OF THIS AWARD AND THE TERMS AND CONDITIONS OF THE AWARD DOCUMENT.**

**EXHIBIT A**

**SANDISK CORPORATION**
**2025 LONG-TERM INCENTIVE PLAN**

**STANDARD TERMS AND CONDITIONS FOR**
**PERFORMANCE STOCK UNITS**

These Standard Terms and Conditions apply to this Award of Performance Stock Units granted under the Sandisk Corporation 2025 Long-Term Incentive Plan (the "***Plan***"). The Performance Stock Units are also subject to the terms of the Plan and the attached Grant Notice, which are incorporated here by this reference. Capitalized terms not otherwise defined here shall have the meaning set forth in the Plan.

**1. TERMS OF PERFORMANCE STOCK UNITS**

Sandisk Corporation (the "***Company***") has granted to the Participant named in the attached Grant Notice an award of Performance Stock Units (this "***Award***" or the "***PSUs***") described in the Grant Notice, with each PSU representing the right to receive one share of Common Stock. For purposes of these Standard Terms and Conditions and the Grant Notice, any reference to the Company shall include a reference to any Subsidiary.

**2. VESTING AND SETTLEMENT OF PERFORMANCE STOCK UNITS**

(a) The Award shall be unvested as of the Grant Date and be forfeitable unless and until otherwise vested pursuant to the terms of the Grant Notice and these Standard Terms and Conditions. After the Grant Date, subject to termination or acceleration as provided in these Standard Terms and Conditions and the Plan, this Award shall become vested as described in the Grant Notice. PSUs that have vested and are no longer subject to forfeiture are referred to as "***Vested PSUs***." PSUs that are not vested and remain subject to forfeiture are referred to as "***Unvested PSUs***." No portion of this Award, nor the shares of Common Stock subject to this Award, may be deferred under the Sandisk Corporation Deferred Compensation Plan (or any applicable successor plan) or any other deferred compensation arrangement of the Company.

The Company shall deliver to the Participant on the Settlement Date a number of shares of Common Stock equal to the number of Vested PSUs. The Company may, in its sole discretion, settle any PSUs accrued as dividend equivalents by a cash payment equal to the Fair Market Value of a share of Common Stock on the date of payment (as opposed to payment in the form of shares of Common Stock). "***Settlement Date***" means: as soon as practicable following the vesting of the PSUs on the Vesting Date but in no event later than December 31 of the calendar year in which the Vesting Date occurs.

(b) *Termination without Cause under the Executive Severance Plan* For a Participant who is subject to the terms of the Sandisk Corporation Executive Severance Plan, as applicable (or any applicable successor plan) (the "***Executive Severance Plan***") at the time of termination of Continuous Service, then upon Participant's termination of employment by the Company without Cause (as defined in the Executive Severance Plan) under circumstances that would entitle the Participant to severance benefits under the Executive Severance Plan, subject to compliance with the terms of the Executive Severance Plan, then the PSUs will be payable in accordance with the Vesting Schedule set forth in the Grant Notice above, with no acceleration, and vest as follows:

(i) A pro-rated portion of the PSUs (and any credited dividend equivalent rights) will vest (with the number of shares vesting determined before taking the crediting of (if applicable) dividend equivalent rights into account) with such pro-rated portion equal to a fraction with a numerator equal to the total number of calendar days in the period beginning with July 1, 2023, through and including the Participant's termination of Continuous Service and a denominator equal to 1,097.

Any Unvested PSUs that do not vest as described above shall be forfeited as of the date of the Participant's termination of Continuous Service.

(c) *Termination without Cause or for Good Reason under the Change in Control Severance Plan.* For a Participant who is subject to the terms of the Sandisk Corporation Change in Control Severance Plan, as applicable (or any applicable successor plan) (the "***CIC Severance Plan***") at the time of termination of Continuous Service, then upon Participant's termination of employment by the Company without Cause or due to a resignation by Participant for Good Reason (both as defined in the CIC Severance Plan) under circumstances that would entitle the Participant to severance benefits under the CIC Severance Plan, subject to compliance with the terms of the CIC Severance Plan, the PSUs (and any credited dividend equivalents) will vest and be payable upon the Participant's termination of Continuous Service.

(d) *Termination due to Death; Termination due to a Qualifying Retirement.* (1) Upon Participant's termination of Continuous Service due to death, or (2) upon Participant's termination of employment due to a Qualifying Retirement (as defined below), the PSUs will be payable in accordance with the Vesting Schedule set forth in the Grant Notice above, with no acceleration, and vest as follows:

(i) A pro-rated portion of the PSUs (and any credited dividend equivalent rights) will vest (with the number of shares vesting determined before taking the crediting of (if applicable) dividend equivalent rights into account) with such pro-rated portion equal to a fraction with a numerator equal to the total number of calendar days in the period beginning with July 1, 2023, through and including the Participant's termination of Continuous Service and a denominator equal to 1,097.

"***Qualifying Retirement***" means the termination of the Participant's employment with the Company and its Subsidiaries due to his or her retirement from employment with the Company or one of its Subsidiaries after satisfying all of the following requirements at the time of such termination: (i) the Participant is at least 55 years of age, (ii) the Participant has five or more whole years of credited service with the Company and/or any of its Subsidiaries; and (iii) the Participant's age plus years of credited service with the Company and/or any of its Subsidiaries (including only whole years in the case of both age and credited service for purposes of this requirement) totals at least 70.

Any Unvested PSUs that do not vest as described above shall be forfeited as of the date of the Participant's termination of Continuous Service, provided that the Unvested PSUs shall remain eligible to vest in accordance with the Grant Notice and these Standard Terms and Conditions in the event the Participant terminates employment due to a Qualifying Retirement yet continues to provide services to the Company and its Subsidiaries in a capacity other than as an employee. Such continued vesting is subject to the Participant's Continuous Services through the Vesting Date.

(e) *Resignation*. Upon Participant's termination of Continuous Service by the Company due to a resignation by Participant for any reason, other than a Qualifying Retirement or a resignation for Good Reason under circumstances that would entitle the Participant to severance benefits under the CIC Severance Plan, subject to compliance with the terms of the CIC Severance Plan, the PSUs held by the Participant shall be forfeited as of the date of the Participant's termination of Continuous Service.

(f) Upon Participant's termination of Continuous Service by the Company for Cause, the entire Award held by the Participant shall be forfeited as of the date of the Participant's termination of Continuous Service.

(g) *Non-U.S. Eligible Employees Participating in the Executive Severance Plan and Change in Control Severance Plan.* For avoidance of doubt, if Participant is not a U.S. Eligible Employee (as defined in the applicable severance plan), the Participant will only be eligible for the vesting treatment on a termination without Cause as described in Section 2(b) or termination without Cause or resignation for Good Reason as described in Section 2(c) in accordance with the terms of the applicable severance plan, which provides that the administrator of such severance plan will compare any Local Severance Benefits (as defined in the applicable severance plan) with the Plan Severance Benefits (as defined in the applicable severance plan) and if the value of the Local Severance Benefits equals or exceeds the value of the Plan Severance Benefits, the Participant will not be eligible to receive the vesting treatment on a termination without Cause as described in Section 2(b) or termination without Cause or resignation for Good Reason as described in Section 2(c). For the avoidance of doubt, a Participant who is retirement-eligible and receives Local Severance Benefits shall also receive the vesting treatment described in Section 2(d) as though the Participant had experienced a Qualifying Retirement.

**3. RIGHTS AS STOCKHOLDER; DIVIDEND EQUIVALENTS**

(a) Participant shall not be, nor have any of the rights or privileges of, a stockholder of the Company in respect of any PSUs unless and until shares of Common Stock settled for such PSUs shall have been issued by the Company to Participant.

(b) Notwithstanding Section 3(a), from and after the Grant Date and until the earlier of (i) the Participant's receipt of Common Stock upon settlement of the PSUs and (ii) the time when the Participant's right to receive Common Stock upon settlement of the PSUs is forfeited, the Participant shall be entitled to receive as a dividend equivalent a number of additional PSUs on the date that the Company pays a cash dividend (if any) to Common Stock holders generally. Such dividend equivalent shall be determined by dividing (i) the product of (A) the dollar amount of the cash dividend paid per share of Common Stock on such date and (B) the total number of PSUs (including dividend equivalents accrued thereon) previously credited to the Participant as of such date, by (ii) the Fair Market Value per share of Common Stock on such date. Such dividend equivalents (if any) shall be subject to the same terms and conditions and shall be settled or forfeited in the same manner and at the same time as the PSUs to which the dividend equivalents were credited. Dividend equivalents shall be settled in whole shares of Common Stock with any dividend equivalents accrued in the form of fractional PSUs settled in cash. However, for the avoidance of doubt, the Company may, in its sole discretion, settle any PSUs accrued as dividend equivalents by a cash payment equal to the Fair Market Value of a share of Common Stock on the date of payment (as opposed to payment in the form of shares of Common Stock). For the avoidance of doubt, in no event will any dividend equivalents credited to PSUs be delivered to the Participant unless and until such PSUs vest and settle.

**4. RESTRICTIONS ON RESALES OF SHARES**

The Company may impose such restrictions as it determines appropriate as to the timing and manner of any resales by the Participant or other subsequent transfers by the Participant of any shares of Common Stock issued pursuant to Vested PSUs, including (a) restrictions under an insider trading policy, (b) restrictions designed to delay and/or coordinate the timing and manner of sales by Participant and other holders and (c) restrictions as to the use of a specified brokerage firm for such resales or other transfers.

**5. INCOME TAXES**

The Participant may satisfy tax withholding obligations relating to the PSUs by any combination of the following: (i) a cash payment; (ii) a Company deduction from any amounts payable to Participant; (iii) Company withholding of shares from the Common Stock issuable to the Participant in connection with the PSUs (only up to the amount permitted that will not cause an adverse accounting consequence); or (iv) Company withholding a payment from the proceeds from the sale of shares of Common Stock issued pursuant to the PSUs. In addition, the Administrator may, in its sole discretion but only to the extent consistent with Section 409A of the Code, reduce the number of PSUs remaining subject to this Award, with each such PSU to have a value for such purpose equal to the then Fair Market Value of a share of Common Stock, to satisfy such withholding obligation at the applicable withholding rates.

**6. NON -TRANSFERABILITY OF AWARD**

The Participant agrees that, except as otherwise provided in the Plan or as permitted by the Administrator, this Award may not be sold, assigned, transferred, pledged or otherwise directly or indirectly encumbered or disposed of other than by will or the laws of descent and distribution or pursuant to the terms of a qualified domestic relations order, official marital settlement agreement or other divorce or separation instrument.

**7. OTHER AGREEMENTS SUPERSEDED**

The Grant Notice, these Standard Terms and Conditions and the Plan constitute the entire understanding between the Participant and the Company regarding this Award. Any prior agreements, commitments or negotiations concerning this Award are superseded.

**8. NO ADDITIONAL RIGHTS**

The Participant's receipt of the PSUs does not confer upon the Participant any right to continue to serve the Company or an Affiliate in any capacity and will not affect the right of the Company or an Affiliate to terminate the service of the Participant.

**9. GENERAL**

(a) In the event that any provision of these Standard Terms and Conditions (including, for the avoidance of doubt, the Plan, which is incorporated here by this reference) is declared to be unenforceable by an arbitrator selected in accordance with Section 11 below or a court of competent jurisdiction, such provision shall be reformed, if possible, to the extent necessary to render it enforceable, or otherwise deleted, and the remainder of these Standard Terms and Conditions shall not be affected except to the extent necessary to reform or delete such unenforceable provision. Furthermore, except as otherwise provided by Section 11, it is the parties' intent that any order striking any portion of this Award Document and/or the Plan should modify the stricken terms as narrowly as possible to give as much effect as possible to the intentions of the parties hereunder.

(b) The headings preceding the text of the sections in these Standard Terms and Conditions are inserted solely for convenience of reference, and shall not constitute a part of these Standard Terms and Conditions, nor shall they affect its meaning, construction or effect. References to any agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof and not prohibited by the Plan or these Standard Terms and Conditions.

(c) These Standard Terms and Conditions shall inure to the benefit of and be binding upon the parties and their respective permitted heirs, beneficiaries, successors and assigns.

(d) These Standard Terms and Conditions shall be interpreted in accordance with and governed by the laws of the State of Delaware, without regard to principles of conflicts of law.

(e) In the event of any conflict between the Grant Notice, these Standard Terms and Conditions and the Plan, the Grant Notice and these Standard Terms and Conditions shall control. In the event of any conflict between the Grant Notice and these Standard Terms and Conditions, the Grant Notice shall control.

(f) The PSUs and any shares of Common Stock acquired under the Plan, and the income and value of the same, are not part of the Participant's normal or expected compensation for any purposes including, but not limited to, calculating any severance, resignation, termination, redundancy, dismissal, end-of-service payments, bonuses, holiday pay, long-service awards, leave-related pay, pension or retirement benefits or payments or welfare benefits or similar payments and in no event should be considered as compensation for, or relating in any way to, past services for the Company or the Participant's employer or any Subsidiary.

(g) All questions under the Plan or under these Standard Terms and Conditions shall be decided by the Administrator in its total and absolute discretion.

(h) This Award will be subject to recoupment in accordance with the Company's compensation recovery (clawback) policy or policies then in effect. No recovery of compensation under any such policy will be an event giving rise to a right to resign for "good reason" or "constructive termination" (or similar term) under any agreement with the Company or a Subsidiary.

**10. ELECTRONIC DELIVERY**

By accepting the Grant Notice, the Participant hereby consents to the delivery of information (including, without limitation, information required to be delivered to the Participant pursuant to applicable securities laws) regarding the Company and the Subsidiaries, the Plan, and the PSUs via Company web site or other electronic delivery.

**11. ARBITRATION**

Any controversy arising out of or relating to the Grant Notice, these Standard Terms and Conditions, and/or the Plan ("***Covered Claims***"), shall be resolved in accordance with the terms and conditions of the Sandisk Dispute Resolution Agreement (the "***DRA***"), except with respect to any specific performance provided for in Section 13(f) below.

If, however, Participant has opted out of the DRA, any Covered Claims shall be submitted to arbitration pursuant to this Section 11. Unless otherwise agreed to between the Participant and Company, such arbitration shall be held no more than 45 miles from the Company's headquarters. The arbitration will be held before a sole arbitrator selected from Judicial Arbitration and Mediation Services, Inc., or its successor ("***JAMS***"), or if JAMS is no longer able to supply the arbitrator, such arbitrator shall be selected from the American Arbitration Association, and shall be conducted in accordance with the provisions of the Federal Arbitration Act; provided, however, that provisional injunctive relief may, but need not, be sought by either party in a court of law to maintain the status quo while arbitration proceedings are pending, and any provisional injunctive relief granted by such court shall remain effective until the matter is finally determined by the arbitrator. Any such action for provisional injunctive relief shall be subject to the exclusive jurisdiction of the Delaware Chancery Court and each party consents to jurisdiction with respect to any such action in Delaware Chancery Court. To the fullest extent permitted by applicable law, Participant and the Company agree to bring any Covered Claims on an individual basis only, and not on a class, collective, joint, or representative basis. If, however, the preceding sentence be determined invalid or unenforceable by a court of competent jurisdiction and not by an arbitrator with respect to any particular Covered Claim, then that Covered Claim will not proceed in arbitration but rather will be resolved in a court of competent jurisdiction for that Covered Claim only. All other Covered Claims must be resolved in arbitration on an individual basis. Any award or relief granted by the arbitrator shall be final and binding on the Company and the Participant and may be enforced by any court of competent jurisdiction.

The Company shall be responsible for payment of the forum costs of any arbitration hereunder, including the arbitrator's fee. Each party shall bear its own attorney's fees and costs (other than forum costs associated with the arbitration) incurred by it or him or her in connection with the resolution of the dispute. If, however, any party prevails on a statutory claim, which affords the prevailing party attorneys' fees and costs, then the arbitrator may award reasonable fees and costs to the prevailing party. The parties agree that they are hereby waiving any rights to trial by jury in relation to any matter arising out of or in any way connected with any Covered Claim(s).

**12. NON-U.S. EMPLOYEES**

The Award shall be subject to any additional terms and conditions fornon-U.S. employees set forth in Appendix A ("***Appendix A***") and any terms and conditions for the Participant's country set forth in Appendix B ("***Appendix B***"). Moreover, if the Participant relocates to one of the countries included in Appendix B, the terms and conditions for such country will apply to the Participant to the extent the Company determines that the application of such terms and conditions is necessary or advisable for legal or administrative reasons. Appendix A and Appendix B constitute part of the Agreement.

**13. ADDITIONAL PARTICIPANT OBLIGATIONS**

(a) The Participant, in accepting this Award, (i) agrees to the terms of this Award as set forth in this Award Document generally, and (ii) specifically (and without limiting the generality of clause (i)) agrees to the provisions of this Section 13.

(b) The Participant agrees that during the Restricted Period (as defined below), the Participant will not directly or indirectly solicit, induce or encourage, or attempt to solicit, induce or encourage, any employee or independent contractor of the Company or any of its Subsidiaries to leave the employ or service, as applicable, of the Company or any such Subsidiary, or become employed or engaged by any third party, or in any way interfere with the relationship between the Company or any such Subsidiary, on the one hand, and any employee or independent contractor thereof, on the other hand. This Section 13(b) does not limit any general advertising or job posting not directed at any individual or group of employees of the Company or any of its Subsidiaries. For purposes of this Award Document, "Restricted Period" means the period of time the Participant is employed by or provides services to the Company or one of its Subsidiaries and the period of twenty-four (24) months after the date on which the Participant's Continuous Service terminates.

(c) The Participant agrees that if the Participant were to become employed by, or substantially involved in, the business of a competitor of the Company or any of its Subsidiaries, it would be very difficult for the Participant not to rely on or use the Company's and its Subsidiaries' trade secrets and confidential information. Thus, to avoid the inevitable disclosure of the Company's and its Subsidiaries' trade secrets and confidential information, and to protect such trade secrets and confidential information and the Company's and its Subsidiaries' relationships and goodwill with customers, during the Restricted Period, the Participant will not directly or indirectly through any other person engage in, enter the employ of, render any services to, have any ownership interest in, nor participate in the financing, operation, management or control of, any Competing Business. For purposes of this Agreement, the phrase "directly or indirectly through any other Person engage in" shall include, without limitation, any direct or indirect ownership or profit participation interest in such enterprise, whether as an owner, stockholder, member, partner, joint venturer or otherwise, and shall include any direct or indirect participation in such enterprise as an employee, consultant, director, officer, advisor, licensor of technology or otherwise. For purposes of this Agreement, "Competing Business" means a person anywhere in the continental United States and elsewhere in the world where the Company or any of its Subsidiaries engages in business, or reasonably anticipates engaging in business, (the "Restricted Area") that is engaged in design, development, manufacture, maintenance, offering, production or sales of hard disk drives or flash-based memory or other data storage devices or solutions. However, nothing in this Section 13(c) shall prohibit the Participant from being a passive owner of a *de minimis* amount of outstanding stock of any class of a corporation which is publicly traded, so long as such ownership is indirect through a mutual fund, similar passive common investment fund, or a broadly-diversified account managed by an unaffiliated third party.

(d) The Participant acknowledges that, in the course of the Participant's employment with the Company and/or its Subsidiaries and their predecessors, the Participant has become familiar, or will become familiar, with the Company's and its Subsidiaries' and their predecessors' trade secrets and with other confidential and proprietary information concerning the Company, its Subsidiaries and their respective predecessors and that the Participant's services have been and will be of special, unique and extraordinary value to the Company and its Subsidiaries. The Participant agrees that the covenants set forth in Sections 13(b) and (c) (together, the "Restrictive Covenants") are reasonable and necessary to protect the Company's and its Subsidiaries' trade secrets and other confidential and proprietary information, good will, stable workforce, and customer relations.

(e) Without limiting the generality of the Participant's agreement in Section 13(d), the Participant (i) represents that the Participant is familiar with and has carefully considered the Restrictive Covenants, (ii) represents that the Participant is fully aware of the Participant's obligations hereunder, (iii) agrees to the reasonableness of the length of time, scope and geographic coverage, as applicable, of the Restrictive Covenants, (iv) agrees that the Company and its Subsidiaries currently conduct business throughout the world, and (v) agrees that the Restrictive Covenants will continue in effect for the applicable periods set forth above in this Section 13 regardless of whether the Participant is then entitled to receive any form of compensation, severance pay or benefits from the Company or any of its Subsidiaries. The Participant understands that the Restrictive Covenants may limit the Participant's ability to earn a livelihood in a business similar to the business of the Company or any of its Subsidiaries, but the Participant nevertheless believes that the Participant has received and will receive sufficient consideration and other benefits as an employee of the Company or one of its Subsidiaries, and as otherwise provided hereunder, to clearly justify such restrictions which, in any event (given the Participant's education, skills and ability), the Participant does not believe would prevent the Participant from otherwise earning a living. The Participant agrees that the Restrictive Covenants do not confer a benefit upon the Company and its Subsidiaries that is disproportionate to the detriment of the Participant.

(f) The Participant agrees that a breach by the Participant of any of the covenants in this Section 13 would cause immediate and irreparable harm to the Company that would be difficult or impossible to measure, and that damages to the Company for any such injury would therefore be an inadequate remedy for any such breach. Therefore, the Participant agrees that in the event of any breach or threatened breach of any provision of this Section 13, the Company (or its applicable Subsidiary, as the case may be) shall be entitled, in addition to and without limitation upon all other remedies the Company (or any of its Subsidiaries) may have under this Award Document, at law or otherwise, to obtain specific performance, injunctive relief and/or other appropriate relief (without posting any bond or deposit) in order to enforce or prevent any violations of the provisions of this Section 13, or require the Participant to account for and pay over to the Company all compensation, profits, moneys, accruals, increments or other benefits derived from or received as a result of any transactions constituting a breach of this Section 13 if and when final judgment of a court of competent jurisdiction or arbitrator, as applicable, is so entered against the Participant. The Participant further agrees that the applicable period of time any Restrictive Covenant is in effect following the date of the Participant's termination of Continuous Service shall be extended by the same amount of time that the Participant is in breach of any Restrictive Covenant following the date on which the Participant's Continuous Service terminates. The Participant further agrees that in the event of any breach of any provision of this Section 13, in addition to and without limitation upon all other remedies the Company (or any of its Subsidiaries) may have under this Award Document, at law or otherwise, this Award (to the extent outstanding at the time of such breach) shall automatically terminate and be forfeited as of the time of such breach

**Exhibit 10.33**

**SANDISK CORPORATION**
**2025 LONG-TERM INCENTIVE PLAN**

**GRANT NOTICE FOR**
**PERFORMANCE STOCK UNIT AWARD**

On [•], Western Digital Corporation ("***WDC***") granted to the Participant named below [•] Performance Stock Units (the "***Prior PSU Award***") under the Western Digital Corporation 2021 Long-Term Incentive Plan. In connection with the spinoff of Sandisk Corporation (the "***Company***") from WDC and pursuant to the Employee Matters Agreement dated [•], the Company is assuming the number of PSUs listed below (this "***Award***") under the Sandisk Corporation 2025 Long-Term Incentive Plan (as amended from time to time, the "***Plan***"). Each PSU represents the right to receive one share of Common Stock, subject to the terms and conditions in this Grant Notice, the Plan and the Standard Terms and Conditions (the "***Standard Terms and Conditions***") of such Plan, attached as Exhibit A hereto. Capitalized terms not otherwise defined here shall have the meaning set forth in the Plan.

| | |
|---|---|
| Name of Participant: | |
| Employee ID | |
| Grant Date: | |
| Grant Number | |
| Number of PSUs: | |
| Vesting Schedule: | The vesting date of the PSUs is August 21, 2027 (the "***Vesting Date***"). Vesting shall be subject to Participant's Continuous Service from the Grant Date through the Vesting Date, unless provided otherwise under Section 2 of the Standard Terms and Conditions. |
| Performance Period and Measurement Periods: | n/a |

**IN CONNECTION WITH THIS GRANT, AND IN ADDITION TO THIS GRANT NOTICE, PARTICIPANT HAS RECEIVED A COPY OF THE PLAN AND THE STANDARD TERMS AND CONDITIONS. PARTICIPANT MAY REJECT THIS AWARD BY NOTIFYING THE COMPANY NO LATER THAN THE FIFTH BUSINESS DAY FOLLOWING RECEIPT OF THIS AWARD DOCUMENT. FAILURE TO REJECT THIS AWARD WITHIN SUCH 5-DAY PERIOD SHALL BE DEEMED ACCEPTANCE OF THIS AWARD AND THE TERMS AND CONDITIONS OF THE AWARD DOCUMENT.**

**EXHIBIT A**

**SANDISK CORPORATION**
**2025 LONG-TERM INCENTIVE PLAN**

**STANDARD TERMS AND CONDITIONS FOR**
**PERFORMANCE STOCK UNITS**

These Standard Terms and Conditions apply to this Award of Performance Stock Units granted under the Sandisk Corporation 2025 Long-Term Incentive Plan (the "***Plan***"). The Performance Stock Units are also subject to the terms of the Plan and the attached Grant Notice, which are incorporated here by this reference. Capitalized terms not otherwise defined here shall have the meaning set forth in the Plan.

## 1. TERMS OF PERFORMANCE STOCK UNITS

Sandisk Corporation (the "***Company***") has granted to the Participant named in the attached Grant Notice an award of Performance Stock Units (this "***Award***" or the "***PSUs***") described in the Grant Notice, with each PSU representing the right to receive one share of Common Stock. For purposes of these Standard Terms and Conditions and the Grant Notice, any reference to the Company shall include a reference to any Subsidiary.

## 2. VESTING AND SETTLEMENT OF PERFORMANCE STOCK UNITS

(a) The Award shall be unvested as of the Grant Date and be forfeitable unless and until otherwise vested pursuant to the terms of the Grant Notice and these Standard Terms and Conditions. After the Grant Date, subject to termination or acceleration as provided in these Standard Terms and Conditions and the Plan, this Award shall become vested as described in the Grant Notice. PSUs that have vested and are no longer subject to forfeiture are referred to as "***Vested PSUs***." PSUs that are not vested and remain subject to forfeiture are referred to as "***Unvested PSUs***." No portion of this Award, nor the shares of Common Stock subject to this Award, may be deferred under the Sandisk Corporation Deferred Compensation Plan (or any applicable successor plan) or any other deferred compensation arrangement of the Company.

The Company shall deliver to the Participant on the Settlement Date a number of shares of Common Stock equal to the number of Vested PSUs. The Company may, in its sole discretion, settle any PSUs accrued as dividend equivalents by a cash payment equal to the Fair Market Value of a share of Common Stock on the date of payment (as opposed to payment in the form of shares of Common Stock). "***Settlement Date***" means: as soon as practicable following the vesting of the PSUs on the Vesting Date but in no event later than December 31 of the calendar year in which the Vesting Date occurs.

(b) *Termination without Cause under the Executive Severance Plan* For a Participant who is subject to the terms of the Sandisk Corporation Executive Severance Plan, as applicable (or any applicable successor plan) (the "***Executive Severance Plan***") at the time of termination of Continuous Service, then upon Participant's termination of employment by the Company without Cause (as defined in the Executive Severance Plan) under circumstances that would entitle the Participant to severance benefits under the Executive Severance Plan, subject to compliance with the terms of the Executive Severance Plan, then the PSUs will be payable in accordance with the Vesting Schedule set forth in the Grant Notice above, with no acceleration, and vest as follows:

(i) A pro-rated portion of the PSUs (and any credited dividend equivalent rights) will vest (with the number of shares vesting determined before taking the crediting of (if applicable) dividend equivalent rights into account) with such pro-rated portion equal to a fraction with a numerator equal to the total number of calendar days in the period beginning with June 29, 2024, through and including the Participant's termination of Continuous Service and a denominator equal to 1,097.

Any Unvested PSUs that do not vest as described above shall be forfeited as of the date of the Participant's termination of Continuous Service.

(c) *Termination without Cause or for Good Reason under the Change in Control Severance Plan.* For a Participant who is subject to the terms of the Sandisk Corporation Change in Control Severance Plan, as applicable (or any applicable successor plan) (the "***CIC Severance Plan***") at the time of termination of Continuous Service, then upon Participant's termination of employment by the Company without Cause or due to a resignation by Participant for Good Reason (both as defined in the CIC Severance Plan) under circumstances that would entitle the Participant to severance benefits under the CIC Severance Plan, subject to compliance with the terms of the CIC Severance Plan, the PSUs (and any credited dividend equivalents) will vest and be payable upon the Participant's termination of Continuous Service.

(d) *Termination due to Death; Termination due to a Qualifying Retirement.* (1) Upon Participant's termination of Continuous Service due to death, or (2) upon Participant's termination of employment due to a Qualifying Retirement (as defined below), the PSUs will be payable in accordance with the Vesting Schedule set forth in the Grant Notice above, with no acceleration, and vest as follows:

(i) A pro-rated portion of the PSUs (and any credited dividend equivalent rights) will vest (with the number of shares vesting determined before taking the crediting of (if applicable) dividend equivalent rights into account) with such pro-rated portion equal to a fraction with a numerator equal to the total number of calendar days in the period beginning with June 29, 2024, through and including the Participant's termination of Continuous Service and a denominator equal to 1,097.

"***Qualifying Retirement***" means the termination of the Participant's employment with the Company and its Subsidiaries due to his or her retirement from employment with the Company or one of its Subsidiaries after satisfying all of the following requirements at the time of such termination: (i) the Participant is at least 55 years of age, (ii) the Participant has five or more whole years of credited service with the Company and/or any of its Subsidiaries; and (iii) the Participant's age plus years of credited service with the Company and/or any of its Subsidiaries (including only whole years in the case of both age and credited service for purposes of this requirement) totals at least 70.

Any Unvested PSUs that do not vest as described above shall be forfeited as of the date of the Participant's termination of Continuous Service, provided that the Unvested PSUs shall remain eligible to vest in accordance with the Grant Notice and these Standard Terms and Conditions in the event the Participant terminates employment due to a Qualifying Retirement yet continues to provide services to the Company and its Subsidiaries in a capacity other than as an employee. Such continued vesting is subject to the Participant's Continuous Services through the Vesting Date.

(e) *Resignation*. Upon Participant's termination of Continuous Service by the Company due to a resignation by Participant for any reason, other than a Qualifying Retirement or a resignation for Good Reason under circumstances that would entitle the Participant to severance benefits under the CIC Severance Plan, subject to compliance with the terms of the CIC Severance Plan, the PSUs held by the Participant shall be forfeited as of the date of the Participant's termination of Continuous Service.

(f) Upon Participant's termination of Continuous Service by the Company for Cause, the entire Award held by the Participant shall be forfeited as of the date of the Participant's termination of Continuous Service.

(g) *Non-U.S. Eligible Employees Participating in the Executive Severance Plan and Change in Control Severance Plan.* For avoidance of doubt, if Participant is not a U.S. Eligible Employee (as defined in the applicable severance plan), the Participant will only be eligible for the vesting treatment on a termination without Cause as described in Section 2(b) or termination without Cause or resignation for Good Reason as described in Section 2(c) in accordance with the terms of the applicable severance plan, which provides that the administrator of such severance plan will compare any Local Severance Benefits (as defined in the applicable severance plan) with the Plan Severance Benefits (as defined in the applicable severance plan) and if the value of the Local Severance Benefits equals or exceeds the value of the Plan Severance Benefits, the Participant will not be eligible to receive the vesting treatment on a termination without Cause as described in Section 2(b) or termination without Cause or resignation for Good Reason as described in Section 2(c). For the avoidance of doubt, a Participant who is retirement-eligible and receives Local Severance Benefits shall also receive the vesting treatment described in Section 2(d) as though the Participant had experienced a Qualifying Retirement.

**3. RIGHTS AS STOCKHOLDER; DIVIDEND EQUIVALENTS**

(a) Participant shall not be, nor have any of the rights or privileges of, a stockholder of the Company in respect of any PSUs unless and until shares of Common Stock settled for such PSUs shall have been issued by the Company to Participant.

(b) Notwithstanding Section 3(a), from and after the Grant Date and until the earlier of (i) the Participant's receipt of Common Stock upon settlement of the PSUs and (ii) the time when the Participant's right to receive Common Stock upon settlement of the PSUs is forfeited, the Participant shall be entitled to receive as a dividend equivalent a number of additional PSUs on the date that the Company pays a cash dividend (if any) to Common Stock holders generally. Such dividend equivalent shall be determined by dividing (i) the product of (A) the dollar amount of the cash dividend paid per share of Common Stock on such date and (B) the total number of PSUs (including dividend equivalents accrued thereon) previously credited to the Participant as of such date, by (ii) the Fair Market Value per share of Common Stock on such date. Such dividend equivalents (if any) shall be subject to the same terms and conditions and shall be settled or forfeited in the same manner and at the same time as the PSUs to which the dividend equivalents were credited. Dividend equivalents shall be settled in whole shares of Common Stock with any dividend equivalents accrued in the form of fractional PSUs settled in cash. However, for the avoidance of doubt, the Company may, in its sole discretion, settle any PSUs accrued as dividend equivalents by a cash payment equal to the Fair Market Value of a share of Common Stock on the date of payment (as opposed to payment in the form of shares of Common Stock). For the avoidance of doubt, in no event will any dividend equivalents credited to PSUs be delivered to the Participant unless and until such PSUs vest and settle.

**4. RESTRICTIONS ON RESALES OF SHARES**

The Company may impose such restrictions as it determines appropriate as to the timing and manner of any resales by the Participant or other subsequent transfers by the Participant of any shares of Common Stock issued pursuant to Vested PSUs, including (a) restrictions under an insider trading policy, (b) restrictions designed to delay and/or coordinate the timing and manner of sales by Participant and other holders and (c) restrictions as to the use of a specified brokerage firm for such resales or other transfers.

**5. INCOME TAXES**

The Participant may satisfy tax withholding obligations relating to the PSUs by any combination of the following: (i) a cash payment; (ii) a Company deduction from any amounts payable to Participant; (iii) Company withholding of shares from the Common Stock issuable to the Participant in connection with the PSUs (only up to the amount permitted that will not cause an adverse accounting consequence); or (iv) Company withholding a payment from the proceeds from the sale of shares of Common Stock issued pursuant to the PSUs. In addition, the Administrator may, in its sole discretion but only to the extent consistent with Section 409A of the Code, reduce the number of PSUs remaining subject to this Award, with each such PSU to have a value for such purpose equal to the then Fair Market Value of a share of Common Stock, to satisfy such withholding obligation at the applicable withholding rates.

**6. NON -TRANSFERABILITY OF AWARD**

The Participant agrees that, except as otherwise provided in the Plan or as permitted by the Administrator, this Award may not be sold, assigned, transferred, pledged or otherwise directly or indirectly encumbered or disposed of other than by will or the laws of descent and distribution or pursuant to the terms of a qualified domestic relations order, official marital settlement agreement or other divorce or separation instrument.

**7. OTHER AGREEMENTS SUPERSEDED**

The Grant Notice, these Standard Terms and Conditions and the Plan constitute the entire understanding between the Participant and the Company regarding this Award. Any prior agreements, commitments or negotiations concerning this Award are superseded.

**8. NO ADDITIONAL RIGHTS**

The Participant's receipt of the PSUs does not confer upon the Participant any right to continue to serve the Company or an Affiliate in any capacity and will not affect the right of the Company or an Affiliate to terminate the service of the Participant.

**9. GENERAL**

(a) In the event that any provision of these Standard Terms and Conditions (including, for the avoidance of doubt, the Plan, which is incorporated here by this reference) is declared to be unenforceable by an arbitrator selected in accordance with Section 11 below or a court of competent jurisdiction, such provision shall be reformed, if possible, to the extent necessary to render it enforceable, or otherwise deleted, and the remainder of these Standard Terms and Conditions shall not be affected except to the extent necessary to reform or delete such unenforceable provision. Furthermore, except as otherwise provided by Section 11, it is the parties' intent that any order striking any portion of this Award Document and/or the Plan should modify the stricken terms as narrowly as possible to give as much effect as possible to the intentions of the parties hereunder.

(b) The headings preceding the text of the sections in these Standard Terms and Conditions are inserted solely for convenience of reference, and shall not constitute a part of these Standard Terms and Conditions, nor shall they affect its meaning, construction or effect. References to any agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof and not prohibited by the Plan or these Standard Terms and Conditions.

(c) These Standard Terms and Conditions shall inure to the benefit of and be binding upon the parties and their respective permitted heirs, beneficiaries, successors and assigns.

(d) These Standard Terms and Conditions shall be interpreted in accordance with and governed by the laws of the State of Delaware, without regard to principles of conflicts of law.

(e) In the event of any conflict between the Grant Notice, these Standard Terms and Conditions and the Plan, the Grant Notice and these Standard Terms and Conditions shall control. In the event of any conflict between the Grant Notice and these Standard Terms and Conditions, the Grant Notice shall control.

(f) The PSUs and any shares of Common Stock acquired under the Plan, and the income and value of the same, are not part of the Participant's normal or expected compensation for any purposes including, but not limited to, calculating any severance, resignation, termination, redundancy, dismissal, end-of-service payments, bonuses, holiday pay, long-service awards, leave-related pay, pension or retirement benefits or payments or welfare benefits or similar payments and in no event should be considered as compensation for, or relating in any way to, past services for the Company or the Participant's employer or any Subsidiary.

(g) All questions under the Plan or under these Standard Terms and Conditions shall be decided by the Administrator in its total and absolute discretion.

(h) This Award will be subject to recoupment in accordance with the Company's compensation recovery (clawback) policy or policies then in effect. No recovery of compensation under any such policy will be an event giving rise to a right to resign for "good reason" or "constructive termination" (or similar term) under any agreement with the Company or a Subsidiary.

**10. ELECTRONIC DELIVERY**

By accepting the Grant Notice, the Participant hereby consents to the delivery of information (including, without limitation, information required to be delivered to the Participant pursuant to applicable securities laws) regarding the Company and the Subsidiaries, the Plan, and the PSUs via Company web site or other electronic delivery.

**11. ARBITRATION**

Any controversy arising out of or relating to the Grant Notice, these Standard Terms and Conditions, and/or the Plan ("***Covered Claims***"), shall be resolved in accordance with the terms and conditions of the Sandisk Dispute Resolution Agreement (the "***DRA***"), except with respect to any specific performance provided for in Section 13(f) below.

If, however, Participant has opted out of the DRA, any Covered Claims shall be submitted to arbitration pursuant to this Section 11. Unless otherwise agreed to between the Participant and Company, such arbitration shall be held no more than 45 miles from the Company's headquarters. The arbitration will be held before a sole arbitrator selected from Judicial Arbitration and Mediation Services, Inc., or its successor ("***JAMS***"), or if JAMS is no longer able to supply the arbitrator, such arbitrator shall be selected from the American Arbitration Association, and shall be conducted in accordance with the provisions of the Federal Arbitration Act; provided, however, that provisional injunctive relief may, but need not, be sought by either party in a court of law to maintain the status quo while arbitration proceedings are pending, and any provisional injunctive relief granted by such court shall remain effective until the matter is finally determined by the arbitrator. Any such action for provisional injunctive relief shall be subject to the exclusive jurisdiction of the Delaware Chancery Court and each party consents to jurisdiction with respect to any such action in Delaware Chancery Court. To the fullest extent permitted by applicable law, Participant and the Company agree to bring any Covered Claims on an individual basis only, and not on a class, collective, joint, or representative basis. If, however, the preceding sentence be determined invalid or unenforceable by a court of competent jurisdiction and not by an arbitrator with respect to any particular Covered Claim, then that Covered Claim will not proceed in arbitration but rather will be resolved in a court of competent jurisdiction for that Covered Claim only. All other Covered Claims must be resolved in arbitration on an individual basis. Any award or relief granted by the arbitrator shall be final and binding on the Company and the Participant and may be enforced by any court of competent jurisdiction.

The Company shall be responsible for payment of the forum costs of any arbitration hereunder, including the arbitrator's fee. Each party shall bear its own attorney's fees and costs (other than forum costs associated with the arbitration) incurred by it or him or her in connection with the resolution of the dispute. If, however, any party prevails on a statutory claim, which affords the prevailing party attorneys' fees and costs, then the arbitrator may award reasonable fees and costs to the prevailing party. The parties agree that they are hereby waiving any rights to trial by jury in relation to any matter arising out of or in any way connected with any Covered Claim(s).

**12. NON-U.S. EMPLOYEES**

The Award shall be subject to any additional terms and conditions fornon-U.S. employees set forth in Appendix A ("***Appendix A***") and any terms and conditions for the Participant's country set forth in Appendix B ("***Appendix B***"). Moreover, if the Participant relocates to one of the countries included in Appendix B, the terms and conditions for such country will apply to the Participant to the extent the Company determines that the application of such terms and conditions is necessary or advisable for legal or administrative reasons. Appendix A and Appendix B constitute part of the Agreement.

**13. ADDITIONAL PARTICIPANT OBLIGATIONS**

(a) The Participant, in accepting this Award, (i) agrees to the terms of this Award as set forth in this Award Document generally, and (ii) specifically (and without limiting the generality of clause (i)) agrees to the provisions of this Section 13.

(b) The Participant agrees that during the Restricted Period (as defined below), the Participant will not directly or indirectly solicit, induce or encourage, or attempt to solicit, induce or encourage, any employee or independent contractor of the Company or any of its Subsidiaries to leave the employ or service, as applicable, of the Company or any such Subsidiary, or become employed or engaged by any third party, or in any way interfere with the relationship between the Company or any such Subsidiary, on the one hand, and any employee or independent contractor thereof, on the other hand. This Section 13(b) does not limit any general advertising or job posting not directed at any individual or group of employees of the Company or any of its Subsidiaries. For purposes of this Award Document, "Restricted Period" means the period of time the Participant is employed by or provides services to the Company or one of its Subsidiaries and the period of twenty-four (24) months after the date on which the Participant's Continuous Service terminates.

(c) The Participant agrees that if the Participant were to become employed by, or substantially involved in, the business of a competitor of the Company or any of its Subsidiaries, it would be very difficult for the Participant not to rely on or use the Company's and its Subsidiaries' trade secrets and confidential information. Thus, to avoid the inevitable disclosure of the Company's and its Subsidiaries' trade secrets and confidential information, and to protect such trade secrets and confidential information and the Company's and its Subsidiaries' relationships and goodwill with customers, during the Restricted Period, the Participant will not directly or indirectly through any other person engage in, enter the employ of, render any services to, have any ownership interest in, nor participate in the financing, operation, management or control of, any Competing Business. For purposes of this Agreement, the phrase "directly or indirectly through any other Person engage in" shall include, without limitation, any direct or indirect ownership or profit participation interest in such enterprise, whether as an owner, stockholder, member, partner, joint venturer or otherwise, and shall include any direct or indirect participation in such enterprise as an employee, consultant, director, officer, advisor, licensor of technology or otherwise. For purposes of this Agreement, "Competing Business" means a person anywhere in the continental United States and elsewhere in the world where the Company or any of its Subsidiaries engages in business, or reasonably anticipates engaging in business, (the "Restricted Area") that is engaged in design, development, manufacture, maintenance, offering, production or sales of hard disk drives or flash-based memory or other data storage devices or solutions. However, nothing in this Section 13(c) shall prohibit the Participant from being a passive owner of a *de minimis* amount of outstanding stock of any class of a corporation which is publicly traded, so long as such ownership is indirect through a mutual fund, similar passive common investment fund, or a broadly-diversified account managed by an unaffiliated third party.

(d) The Participant acknowledges that, in the course of the Participant's employment with the Company and/or its Subsidiaries and their predecessors, the Participant has become familiar, or will become familiar, with the Company's and its Subsidiaries' and their predecessors' trade secrets and with other confidential and proprietary information concerning the Company, its Subsidiaries and their respective predecessors and that the Participant's services have been and will be of special, unique and extraordinary value to the Company and its Subsidiaries. The Participant agrees that the covenants set forth in Sections 13(b) and (c) (together, the "Restrictive Covenants") are reasonable and necessary to protect the Company's and its Subsidiaries' trade secrets and other confidential and proprietary information, good will, stable workforce, and customer relations.

(e) Without limiting the generality of the Participant's agreement in Section 13(d), the Participant (i) represents that the Participant is familiar with and has carefully considered the Restrictive Covenants, (ii) represents that the Participant is fully aware of the Participant's obligations hereunder, (iii) agrees to the reasonableness of the length of time, scope and geographic coverage, as applicable, of the Restrictive Covenants, (iv) agrees that the Company and its Subsidiaries currently conduct business throughout the world, and (v) agrees that the Restrictive Covenants will continue in effect for the applicable periods set forth above in this Section 13 regardless of whether the Participant is then entitled to receive any form of compensation, severance pay or benefits from the Company or any of its Subsidiaries. The Participant understands that the Restrictive Covenants may limit the Participant's ability to earn a livelihood in a business similar to the business of the Company or any of its Subsidiaries, but the Participant nevertheless believes that the Participant has received and will receive sufficient consideration and other benefits as an employee of the Company or one of its Subsidiaries, and as otherwise provided hereunder, to clearly justify such restrictions which, in any event (given the Participant's education, skills and ability), the Participant does not believe would prevent the Participant from otherwise earning a living. The Participant agrees that the Restrictive Covenants do not confer a benefit upon the Company and its Subsidiaries that is disproportionate to the detriment of the Participant.

(f) The Participant agrees that a breach by the Participant of any of the covenants in this Section 13 would cause immediate and irreparable harm to the Company that would be difficult or impossible to measure, and that damages to the Company for any such injury would therefore be an inadequate remedy for any such breach. Therefore, the Participant agrees that in the event of any breach or threatened breach of any provision of this Section 13, the Company (or its applicable Subsidiary, as the case may be) shall be entitled, in addition to and without limitation upon all other remedies the Company (or any of its Subsidiaries) may have under this Award Document, at law or otherwise, to obtain specific performance, injunctive relief and/or other appropriate relief (without posting any bond or deposit) in order to enforce or prevent any violations of the provisions of this Section 13, or require the Participant to account for and pay over to the Company all compensation, profits, moneys, accruals, increments or other benefits derived from or received as a result of any transactions constituting a breach of this Section 13 if and when final judgment of a court of competent jurisdiction or arbitrator, as applicable, is so entered against the Participant. The Participant further agrees that the applicable period of time any Restrictive Covenant is in effect following the date of the Participant's termination of Continuous Service shall be extended by the same amount of time that the Participant is in breach of any Restrictive Covenant following the date on which the Participant's Continuous Service terminates. The Participant further agrees that in the event of any breach of any provision of this Section 13, in addition to and without limitation upon all other remedies the Company (or any of its Subsidiaries) may have under this Award Document, at law or otherwise, this Award (to the extent outstanding at the time of such breach) shall automatically terminate and be forfeited as of the time of such breach.

**Exhibit 10.34**

**SANDISK CORPORATION**
**2025 LONG-TERM INCENTIVE PLAN**
**NON-EMPLOYEE DIRECTOR**
**RESTRICTED STOCK UNIT GRANT PROGRAM**

**1. Establishment**. The Company hereby adopts the Sandisk Corporation Non-Employee Director Restricted Stock Unit Program (the "**Program**"), effective as of [•] (the "**Effective Date**"). Any shares of Common Stock issued with respect to Restricted Stock Unit Awards granted under the Program shall be charged against the applicable share limits of the Sandisk Corporation 2024 Long-Term Incentive Plan, as may be amended and/or restated from time to time (the "**Plan**"). For the avoidance of doubt, the grant of a Cash Award, and its subsequent settlement, shall in no event reduce the number of shares of Common Stock available for issuance under the Plan. Except as otherwise expressly provided herein, the provisions of the Plan shall govern all awards made pursuant to the Program. Capitalized terms are defined in the Plan if not defined herein.

**2. Purpose**. The purpose of the Program is to promote the success of the Company and the interests of its stockholders by providing a means to attract and retain qualified persons who are not officers or employees of the Company or one of its Subsidiaries to serve as members of the Board ("**Non-Employee Directors**") through an opportunity to receive Cash Awards or to acquire an ownership interest in the Company and more closely aligning the interests of Non-Employee Directors and stockholders.

**3. Participation**. A Restricted Stock Unit Award under the Program shall be made only to Non-Employee Directors, shall be evidenced by a Notice of Award of Restricted Stock Units substantially in the form attached as Exhibit 1 hereto and shall be further subject to such other terms and conditions set forth therein. As used in the Program, the term "**Restricted Stock Unit**" shall mean a non-voting unit of measurement which is deemed for bookkeeping purposes to be equivalent to one outstanding share of Common Stock (subject to adjustment as provided in Section 9 of the Plan) solely for purposes of the Program. Restricted Stock Units shall be used solely as a device for the determination of the number of shares of Common Stock to eventually be delivered to a Non-Employee Director if Restricted Stock Units held by such Non-Employee Director vest pursuant to Section 7 or Section 9. Restricted Stock Units shall not be treated as property or as a trust fund of any kind. Restricted Stock Units granted to a Non-Employee Director pursuant to the Program shall be credited to an unfunded bookkeeping account maintained by the Company on behalf of the Non-Employee Director (a "**Program Account**").

Notwithstanding anything to the contrary herein, any Non-Employee Director who serves as a member of the Board pursuant to a contractual right of an investor of the Company (an "**Investor Designated Director**") shall receive his or her award in the form of a Cash Award in lieu of a Restricted Stock Unit Award. As used in the Program, the term "Cash Award" shall mean an award of cash that is granted under the Plan. A Cash Award under the Program shall be made only to Investor Designated Directors and shall be further subject to such other terms and conditions set forth therein.

**4. Annual Restricted Stock Unit Awards.**

**4.1** ***Annual Awards.*** On the date of and immediately following the Company's regular annual meeting of stockholders in each year during the term of the Plan commencing with 2025, each Non-Employee Director who is not an Investor Designated Director then in office shall be granted automatically (without any action by the Board or the Administrator) a Restricted Stock Unit Award with respect to a number (rounded down to the nearest whole number) of Restricted Stock Units equal to (i) $240,000 ($290,000 in the case of a Non-Employee Director then serving as Chair of the Board and $280,000 in the case of a Non-Employee Director then serving as Lead Independent Director), divided by (ii) the Fair Market Value of a share of Common Stock on the applicable annual meeting date (subject to adjustment as provided in Section 9 of the Plan). An individual who was previously a member of the Board, who then ceased to be a member of the Board for any reason, and who then again becomes a Non-Employee Director shall thereupon again become eligible to be granted Restricted Stock Units under this Section 4.1.

**4.2** ***Initial Award for New Directors.*** Upon first being appointed or elected to the Board, a Non-Employee Director who is not an Investor Designated Director and who has not previously served on the Board shall be granted automatically (without any action by the Board or the Administrator) a Restricted Stock Unit Award with respect to a number of Restricted Stock Units equal to (i) the number of Restricted Stock Units in the annual Restricted Stock Unit Award immediately preceding the date such Non-Employee Director is first appointed or elected to the Board, divided by (ii) 365, multiplied by (iii) the number of days from the date such Non-Employee Director is first appointed or elected to the Board to the scheduled date of the Company's next annual meeting of stockholders.

Notwithstanding the foregoing, the initial Restricted Stock Unit Award granted for Non-Employee Directors appointed in connection with the separation of the Company from Western Digital Corporation (the "Separation") shall be a number (rounded down to the nearest whole number) of Restricted Stock Units equal to (i) $240,000 ($290,000 in the case of a Non-Employee Director then serving as Chair of the Board and $280,000 in the case of a Non-Employee Director then serving as Lead Independent Director), divided by (ii) the simple average of the closing trading price per-share of Common Stock trading on the applicable securities exchange during each of the five (5) full trading sessions, commencing with the first trading session following the effective date of the Separation. Such initial Restricted Stock Unit Award shall be prorated based on the following formula: (i) the number of Restricted Stock Units as determined above, divided by (ii) 365, multiplied by (iii) the number of days from the date of such Non-Employee is first appointed to the Board to the scheduled date of the Company's next annual meeting of stockholders.

**4.3** ***Transfer Restrictions.*** Restricted Stock Units granted pursuant to this Section 4 shall be non-transferable and shall not be subject in any manner to sale, transfer, anticipation, alienation, assignment, pledge, encumbrance or charge and any shares of Common Stock issuable pursuant to the Restricted Stock Units shall be delivered only to (or for the account of) the Non-Employee Director to whom such Restricted Stock Units were granted.

**5. Annual Cash Awards.**

**5.1** ***Annual Awards.*** On the date of and immediately following the Company's regular annual meeting of stockholders in each year during the term of the Plan commencing with 2025, each Investor Designated Director then in office shall be granted automatically (without any action by the Board or the Administrator) a Cash Award with a value equal to $240,000 ($290,000 in the case of an Investor Designated Director then serving as Chair of the Board and $280,000 in the case of an Investor Designated Director then serving as Lead Independent Director). An individual who was previously a member of the Board, who then ceased to be a member of the Board for any reason, and who then again becomes an Investor Designated Director shall thereupon again become eligible to be granted a Cash Award under this Section 5.1.

**5.2** ***Initial Award for New Directors.*** Upon first being appointed or elected to the Board, an Investor Designated Director who has not previously served on the Board shall be granted automatically (without any action by the Board or the Administrator) a Cash Award in an amount equal to (i) $240,000 ($290,000 in the case of an Investor Designated Director then serving as Chair of the Board and $280,000 in the case of an Investor Designated Director then serving as Lead Independent Director) divided by (ii) 365, multiplied by (iii) the number of days from the date such Investor Designated Director is first appointed or elected to the Board to the scheduled date of the Company's next annual meeting of stockholders.

**5.3** ***Transfer Restrictions.*** Cash Awards granted pursuant to this Section 5 shall be non-transferable and shall not be subject in any manner to sale, transfer, anticipation, alienation, assignment, pledge, encumbrance or charge and any cash payable pursuant to the Cash Award shall be delivered only to the Investor Designated Director to whom such Cash Award was granted, or his or her designee, if applicable.

**6. Dividend and Voting Rights.**

**6.1** ***Limitation of Rights Associated with Restricted Stock Units.*** A Non-Employee Director shall have no rights as a stockholder of the Company, no dividend rights (except as expressly provided in Section 6.2 with respect to dividend equivalent rights) and no voting rights, with respect to Restricted Stock Units granted pursuant to the Program and any shares of Common Stock underlying or issuable in respect of such Restricted Stock Units until such shares of Common Stock are actually issued to and held of record by the Non-Employee Director. No adjustments will be made for dividends or other rights of a holder for which the record date is prior to the date of issuance of the stock certificate.

**6.2** ***Dividend Equivalent Rights****.* As of any date that the Company pays a dividend (other than in shares of Common Stock) upon issued and outstanding Common Stock, or makes a distribution (other than in shares of Common Stock) with respect thereto, a Non-Employee Director's Program Account shall be credited with an additional number (rounded down to the nearest whole number) of Restricted Stock Units equal to (i) the "fair value" of any dividend (or other distribution) with respect to one share of Common Stock, multiplied by (ii) the number of unpaid Restricted Stock Units credited to the Non-Employee Director's Program Account immediately prior to such dividend or distribution, divided by (iii) the Fair Market Value of a share of Common Stock on the date of payment of such dividend or distribution. In the case of a cash dividend or distribution, the "fair value" thereof shall be the amount of such cash, and, in the case of any other dividend or distribution (other than in shares of Common Stock), the "fair value" thereof shall be such amount as shall be determined in good faith by the Administrator. Restricted Stock Units credited pursuant to the foregoing provisions of this Section 6.2 shall be subject to the same vesting, payment and other terms, conditions and restrictions as the original Restricted Stock Units to which they relate. No adjustment shall be made pursuant to Section 9 of the Plan as to Restricted Stock Units granted pursuant to the Program in connection with any dividend (other than in shares of Common Stock) or distribution (other than in shares of Common Stock) for which dividend equivalents are credited pursuant to the foregoing provisions of this Section 6.2. Restricted Stock Units granted pursuant to the Program shall otherwise be subject to adjustment pursuant to Section 9 of the Plan (for example, and without limitation, in connection with a split or reverse split of the outstanding Common Stock).

**7. Vesting**. Subject to Section 9 hereof and Section 9 of the Plan, a Restricted Stock Unit Award or Cash Award granted to aNon-Employee Director pursuant to the Program (whether pursuant to Section 4, Section 5 or Section 6.2) (an "**Award**") shall vest and become payable as to 100% of the total number of Restricted Stock Units or cash, as applicable, subject thereto on the first to occur of (i) the first anniversary of the date of grant of the Award or (ii) immediately prior to the Company's first regular meeting of stockholders following the date of grant of the Award.

**8. Continuation of Services**. The vesting schedule requires continued service through each applicable vesting date as a condition to the vesting of the applicable installment of an Award and the rights and benefits under the Program. Service for only a portion of the vesting period, even if a substantial portion, will not entitle a Non-Employee Director to any proportionate vesting or avoid or mitigate a termination of rights and benefits upon or following a termination of services as provided in Section 9 below. Nothing contained in the Program constitutes a continued service commitment by the Company, confers upon a Non-Employee Director any right to remain in service to the Company, interferes with the right of the Company at any time to terminate such service, or affects the right of the Company to increase or decrease a Non-Employee Director's other compensation.

**9. Termination of Directorship**. Subject to earlier termination pursuant to Section 9 of the Plan, if aNon-Employee Director incurs a Separation from Service (as defined below) for any reason, the following rules shall apply with respect to any Award granted to the Non-Employee Director pursuant to Section 4 or 5 above:

- other than as expressly provided below in this Section 9, all Awards granted to theNon-Employee Director pursuant to the Program that have not vested as of the Non-Employee Director's Separation from Service, shall immediately terminate without payment therefor;

- if the Non-Employee Director's Separation from Service occurs due to his or her death or Disability (as defined below), all Awards granted to the Non-Employee Director pursuant to the Program shall immediately vest and become payable as provided in Section 10 below; and
- if the Non-Employee Director ceases to be a member of the Board due to his or her Removal (as defined below), all then-unvested Awards granted to the Non-Employee Director pursuant to the Program shall immediately terminate without payment therefor.

For purposes of this Section 9, the term "**Disability**" shall mean a period of disability during which a Non-Employee Director qualified for permanent disability benefits under the Company's long-term disability plan, or, if the Non-Employee Director does not participate in such a plan, a period of disability during which the Non-Employee Director would have qualified for permanent disability benefits under such a plan had the Non-Employee Director been a participant in such a plan, as determined in the sole discretion of the Administrator. If the Company does not sponsor such a plan, or discontinues to sponsor such a plan, Disability shall be determined by the Administrator in its sole discretion. For purposes of this Section 9, the term "**Removal**" shall mean the removal of a Non-Employee Director from the Board, with or without cause, in accordance with the Company's Certificate of Incorporation, Bylaws or the Delaware General Corporation Law. For purposes of this Section 9, the term "**Separation from Service**," with respect to a Non-Employee Director, shall mean the date the Non-Employee Director ceases to be a member of the Board (regardless of the reason); provided, however, that if the Non-Employee Director is immediately thereafter employed by the Company or one of its Subsidiaries, such director's Separation from Service shall be the date such director incurs a "separation from service" as such term is defined for purposes of Section 409A of the Code.

**10. Timing and Manner of Payment of Awards**. Except as provided in Section 11 below, on or within thirty (30) business days following the first to occur of (i) the first anniversary of the date of grant of the Award, (ii) immediately prior to the Company's first regular meeting of stockholders following the date of grant of the Award, or (iii) the Non-Employee Director's Separation from Service, the Company shall deliver to the Non-Employee Director a number of shares of Common Stock (either by delivering one or more certificates for such shares or by entering such shares in book entry form, as determined by the Company in its sole discretion) equal to the number of Restricted Stock Units (if any), or an amount in cash, as applicable, that vested with respect to the corresponding Award in accordance with the provisions hereof, subject to adjustment as provided in Section 9 of the Plan; provided, however, that, to the extent permitted by the Company's Deferred Compensation Plan, as it may be amended from time to time (the "**Deferred Compensation Plan**"), a Non-Employee Director may elect to defer receipt of any or all shares of Common Stock payable, or cash payable, as applicable, with respect to an Award that vests pursuant to the Program. Such elections shall be made, and any such deferral shall be effected and administered, in accordance with the Deferred Compensation Plan. The Company's obligation to deliver shares of Common Stock or cash, as applicable, with respect to a vested Award is subject to the condition precedent that the Non-Employee Director (or other person entitled under the Plan to receive shares of Common Stock or cash, as applicable, with respect to the vested Award) deliver to the Company any representations or other documents or assurances the Company may require with respect to compliance with applicable laws. A Non-Employee Director shall have no further rights with respect to any Restricted Stock Units that are paid or that are terminated pursuant to Section 9 hereof or Section 9 of the Plan, and such Restricted Stock Units shall be removed from the Non-Employee Director's Program Account upon the date of such payment or termination.

**11. Change in Control Events**. An Award may vest and become payable in connection with the occurrence of certain events involving the Company as provided for in Section 9 of the Plan; provided, however, that, notwithstanding anything to the contrary in the Program or the Plan, if the event giving rise to such accelerated vesting is not also a "change in the ownership or effective control" of the Company or a "change in the ownership of a substantial portion of the assets" of the Company for purposes of Section 409A of the Code, or an acceleration of payment of the Award would otherwise result in any tax liability pursuant to Section 409A of the Code, then payment with respect to such vested Award shall not be made until such Award would have become vested and payable without regard to this Section 11 or Section 9 of the Plan.

**12. Plan Provisions; Maximum Number of Shares; Amendment; Administration; Construction** Awards granted under the Program shall otherwise be subject to the terms of the Plan (including, without limitation, the provisions of Section 9 of the Plan). If Restricted Stock Unit Awards otherwise required pursuant to the Program would otherwise exceed any applicable share limit under Section 3(a) of the Plan, such grants shall be made pro-rata to Non-Employee Directors entitled to such grants. The Board may from time to time amend the Program without stockholder approval; provided that no such amendment shall materially and adversely affect the rights of a Non-Employee Director as to an Award granted under the Program before the adoption of such amendment. The Board may amend, modify, suspend or terminate outstanding Awards; provided, however, that outstanding Awards shall not be amended, modified, suspended or terminated so as to impair any rights of the recipient of the Award without the consent of such recipient. If any such amendment or modification to an outstanding Award has the result of accelerating the vesting of such Award, then any election that had been made to defer receipt of payment with respect to all or any portion of the Award pursuant to the Deferred Compensation Plan shall be disregarded. The Program does not limit the Board's authority to make other, discretionary grants of Awards to Non-Employee Directors pursuant to the Plan. The Administrator's power and authority to construe and interpret the Plan and Awards thereunder pursuant to Section 2 of the Plan shall extend to the Program and Awards granted hereunder. As provided in Section 2(f) of the Plan, all determinations, interpretations and constructions made by the Administrator in good faith will not be subject to review by any person and will be final, binding and conclusive on all persons. It is intended that the terms of the Program and all Awards granted under the Program will not result in the imposition of any tax liability pursuant to Section 409A of the Code. The Program and all Awards granted hereunder shall be construed and interpreted consistent with that intent.

###

**Exhibit 10.35**

**Sandisk Corporation, Inc.**

**Deferred Compensation Plan**

---

Effective January 1, 2025

**IMPORTANT NOTE**

This document has not been approved by the Department of Labor, Internal Revenue Service, or any other governmental entity. An adopting Employer must determine whether the Plan is subject to the Federal securities laws and the securities laws of the various states. An adopting Employer may not rely on this document to ensure any particular tax consequences or to ensure that the Plan is "unfunded and maintained primarily for the purpose of providing deferred compensation to a select group of management or highly compensated employees" under Title I of the Employee Retirement Income Security Act of 1974, as amended, with respect to the Employer's particular situation. FMR LLC, its affiliates and employees cannot provide you with legal advice in connection with the execution of this document. This document should be reviewed by the Employer's attorney prior to execution.

**Table of Contents**

**Preamble**

The Plan is intended to be a "plan which is unfunded and is maintained by an employer primarily for the purpose of providing deferred compensation for a select group of management or highly compensated employees" within the meaning of Sections 201(2), 301(a)(3) and 401(a)(1) of the Employee Retirement Income Security Act of 1974, as amended, or an "excess benefit plan" within the meaning of Section 3(36) of the Employee Retirement Income Security Act of 1974, as amended, or a combination of both. The Plan is further intended to conform with the requirements of Internal Revenue Code Section 409A and the final regulations issued thereunder and shall be interpreted, implemented, and administered in a manner consistent therewith.

**Article 1 - General**

***1.1. Plan***

The Plan will be referred to by the name specified in the Adoption Agreement.

***1.2. Effective Dates***

(a) Original Effective Date. The Original Effective Date is the date as of which the Plan was initially adopted.

(b) Amendment Effective Date. The Amendment Effective Date is the date specified in the Adoption Agreement as of which the Plan is amended and restated. Except as otherwise provided in the Adoption Agreement, all amounts deferred under the Plan prior to the Amendment Effective Date shall be governed by the terms of the Plan as in effect on the day before the Amendment Effective Date.

(c) Special Effective Date. A Special Effective Date may apply to any given provision if so specified in Appendix A of the Adoption Agreement. A Special Effective Date will control over the Original Effective Date or Amendment Effective Date, whichever is applicable, with respect to such provision of the Plan.

***1.3. Amounts Not Subject to Code Section 409A***

Except as otherwise indicated by the Plan Sponsor in Section 1.01 of the Adoption Agreement, amounts deferred before January 1, 2005 that are earned and vested on December 31, 2004 will be separately accounted for and administered in accordance with the terms of the Plan as in effect on December 31, 2004.

**Article 2 - Definitions**

Wherever used herein, the following terms have the meanings set forth below, unless a different meaning is clearly required by the context:

***2.1. Account***

"Account" means an account and any subaccounts established for the purpose of recording amounts credited on behalf of a Participant and any earnings, expenses, gains, losses, or distributions included thereon. The Account shall be a bookkeeping entry only and shall be utilized solely as a device for the measurement and determination of the amounts to be paid to a Participant or to the Participant's Beneficiary pursuant to the Plan.

***2.2. Administrator***

"Administrator" means the person or persons designated by the Plan Sponsor in Section 1.05 of the Adoption Agreement to be responsible for the administration of the Plan. If no Administrator is designated in the Adoption Agreement, the Administrator is the Plan Sponsor.

***2.3. Adoption Agreement***

"Adoption Agreement" means the agreement adopted by the Plan Sponsor that establishes the Plan.

***2.4. Beneficiary***

"Beneficiary" means the persons, trusts, estates, or other entities entitled under Section 8.2 to receive benefits under the Plan upon the death of a Participant.

***2.5. Board or Board of Directors***

"Board" or "Board of Directors" means the Board of Directors of the Plan Sponsor.

***2.6. Bonus***

"Bonus" means an amount of incentive remuneration payable by the Employer to a Participant.

***2.7. Change in Control***

"Change in Control" means the occurrence of an event involving the Plan Sponsor that is described in Section 9.7.

***2.8. Code***

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

***2.9. Compensation***

"Compensation" has the meaning specified in Section 3.01 of the Adoption Agreement.

***2.10. Director***

"Director" means a non-employee member of the Board who has been designated by the Employer as eligible to participate in the Plan.

***2.11. Disability***

"Disability" means that a Participant is disabled as defined in Section 6.01(i) of the Adoption Agreement.

***2.12. Eligible Employee***

"Eligible Employee" means an employee of the Employer who satisfies the requirements in Section 2.01 of the Adoption Agreement.

***2.13. Employer***

"Employer" means the Plan Sponsor and any other Related Employer that is listed in Section 1.04 of the Adoption Agreement and which is authorized by the Plan Sponsor to participate in and, in fact, does adopt the Plan.

***2.14. ERISA***

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

***2.15. Identification Date***

"Identification Date" means the date as of which Key Employees are determined which is specified in Section 1.06 of the Adoption Agreement.

***2.16. Key Employee***

"Key Employee" means an employee who satisfies the conditions set forth in Section 9.6.

***2.17. Participant***

"Participant" means an Eligible Employee or Director who commences participation in the Plan in accordance with Article 3.

***2.18. Plan***

"Plan" means the unfunded plan of deferred compensation set forth herein, including the Adoption Agreement and any trust agreement, as adopted by the Plan Sponsor, and as amended from time to time.

***2.19. Plan Sponsor***

"Plan Sponsor" means the entity identified in Section 1.03 of the Adoption Agreement or any successor by merger, consolidation or otherwise.

***2.20. Plan Year***

"Plan Year" means the period identified in Section 1.02 of the Adoption Agreement.

### *2.21. Related Employer*

"Related Employer" means the Plan Sponsor and (a) any corporation that is a member of a controlled group of corporations as defined in Code Section 414(b) that includes the Plan Sponsor and (b) any trade or business that is under common control as defined in Code Section 414(c) that includes the Plan Sponsor.

### *2.22. Retirement*

"Retirement" has the meaning specified in 6.01(f) of the Adoption Agreement.

### *2.23. Separation from Service*

"Separation from Service" means the date that the Participant dies, retires, or otherwise has a termination of employment with respect to all entities comprising the Related Employer. A Separation from Service does not occur if the Participant is on military leave, sick leave or other bona fide leave of absence if the period of leave does not exceed six months or such longer period during which the Participant's right to re-employment is provided by statute or contract. If the period of leave exceeds six months and the Participant's right to re-employment is not provided either by statute or contract, a Separation from Service will be deemed to have occurred on the first day following the six-month period. If the period of leave is due to any medically determinable physical or mental impairment that can be expected to result in death or can be expected to last for a continuous period of not less than six months, where the impairment causes the Participant to be unable to perform the duties of his or her position of employment or any substantially similar position of employment, a 29 month period of absence may be substituted for the six month period.

Whether a termination of employment has occurred is based on whether the facts and circumstances indicate that the Related Employer and the Participant reasonably anticipated that no further services would be performed after a certain date or that the level of bona fide services the Participant would perform after such date (whether as an employee or as an independent contractor) would permanently decrease to no more than 20 percent of the average level of bona fide services performed (whether as an employee or an independent contractor) over the immediately preceding 36 month period (or the full period of services to the Related Employer if the employee has been providing services to the Related Employer for less than 36 months).

An independent contractor is considered to have experienced a Separation from Service with the Related Employer upon the expiration of the contract (or, in the case of more than one contract, all contracts) under which services are performed for the Related Employer if the expiration constitutes a good-faith and complete termination of the contractual relationship.

If a Participant provides services as both an employee and an independent contractor of the Related Employer, the Participant must separate from service both as an employee and as an independent contractor to be treated as having incurred a Separation from Service. If a Participant ceases providing services as an independent contractor and begins providing services as an employee, or ceases providing services as an employee and begins providing services as an independent contractor, the Participant will not be considered to have experienced a Separation from Service until the Participant has ceased providing services in both capacities.

If a Participant provides services both as an employee and as a member of the Board of Directors of a corporate Related Employer (or an analogous position with respect to a noncorporate Related Employer), the services provided as a Director are not taken into account in determining whether the Participant has incurred a Separation from Service as an employee for purposes of a nonqualified deferred compensation plan in which the Participant participates as an employee that is not aggregated under Code Section 409A with any plan in which the Participant participates as a Director.

If a Participant provides services both as an employee and as a member of the Board of Directors of a corporate related Employer (or an analogous position with respect to a noncorporate Related Employer), the services provided as an employee are not taken into account in determining whether the Participant has experienced a Separation from Service as a Director for purposes of a nonqualified deferred compensation plan in which the Participant participates as a Director that is not aggregated under Code Section 409A with any plan in which the Participant participates as an employee.

All determinations of whether a Separation from Service has occurred will be made in a manner consistent with Code Section 409A and the final regulations thereunder.

### *2.24. Unforeseeable Emergency*

"Unforeseeable Emergency" means a severe financial hardship of the Participant resulting from an illness or accident of the Participant, the Participant's spouse, the Participant's Beneficiary, or the Participant's dependent (as defined in Code Section 152, without regard to Code section 152(b)(1), (b)(2) and (d)(1)(B); loss of the Participant's property due to casualty; or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant.

### *2.25. Valuation Date*

"Valuation Date" means each business day of the Plan Year that the New York Stock Exchange is open.

### *2.26. Years of Service*

"Years of Service" means each one-year period for which the Participant receives service credit in accordance with the provisions of Section 7.01(d) of the Adoption Agreement.

**Article 3 - Participation**

***3.1. Participation***

The Participants in the Plan shall be those Eligible Employees and Directors of the Employer who satisfy the requirements of Section 2.01 of the Adoption Agreement.

***3.2. Termination of Participation***

The Administrator may terminate a Participant's participation in the Plan in a manner consistent with Code Section 409A. If the Employer terminates a Participant's participation before the Participant experiences a Separation from Service, the Participant's vested Accounts shall be paid in accordance with the provisions of Article 9.

**Article 4 - Participant Elections**

***4.1. Deferral Agreement***

If permitted by the Plan Sponsor in accordance with Section 4.01 of the Adoption Agreement, each Eligible Employee and Director may elect to defer his or her Compensation within the meaning of Section 3.01 of the Adoption Agreement by executing in writing or electronically, a deferral agreement in accordance with rules and procedures established by the Administrator and the provisions of this Article 4.

A new deferral agreement must be timely executed for each Plan Year during which the Eligible Employee or Director desires to defer Compensation. An Eligible Employee or Director who does not timely execute a deferral agreement shall be deemed to have elected zero deferrals of Compensation for such Plan Year.

A deferral agreement may be changed or revoked during the period specified by the Administrator. Except as provided in Section 9.3, a deferral agreement becomes irrevocable at the close of the specified period.

***4.2. Amount of Deferral***

An Eligible Employee or Director may elect to defer Compensation in any amount permitted by Section 4.01(a) of the Adoption Agreement.

***4.3. Timing of Election to Defer***

Each Eligible Employee or Director who desires to defer Compensation otherwise payable during a Plan Year must execute a deferral agreement within the period preceding the Plan Year specified by the Administrator. Each Eligible Employee who desires to defer Compensation that is a Bonus must execute a deferral agreement within the period preceding the Plan Year during which the Bonus is earned that is specified by the Administrator, except that if the Bonus can be treated as performance based compensation as described in Code Section 409A(a)(4)(B)(iii), the deferral agreement may be executed within the period specified by the Administrator, which period, in no event, shall end after the date which is six months prior to the end of the period during which the Bonus is earned, provided the Participant has performed services continuously from the later of the beginning of the performance period or the date the performance criteria are established through the date the Participant executed the deferral agreement and provided further that the compensation has not yet become 'readily ascertainable' within the meaning of Treas. Reg. § 1.409A-2(a)(8). In addition, if the Compensation qualifies as 'fiscal year compensation' within the meaning of Treas. Reg. § 1.409A-2(a)(6), the deferral agreement may be made not later than the end of the Employer's taxable year immediately preceding the first taxable year of the Employer in which any services are performed for which such Compensation is payable.

Except as otherwise provided below, an employee who is classified or designated as an Eligible Employee during a Plan Year or a Director who is designated as eligible to participate during a Plan Year may elect to defer Compensation otherwise payable during the remainder of such Plan Year in accordance with the rules of this Section 4.3 by executing a deferral agreement within the thirty (30) day period beginning on the date the employee is classified or designated as an Eligible Employee or the date the Director is designated as eligible, whichever is applicable, if permitted by Section 4.01(b)(ii) of the Adoption Agreement. If Compensation is based on a specified performance period that begins before the Eligible Employee or Director executes his or her deferral agreement, the election will be deemed to apply to the portion of such Compensation equal to the total amount of Compensation for the performance period multiplied by the ratio of the number of days remaining in the performance period after the election becomes irrevocable and effective over the total number of days in the performance period. The rules of this paragraph shall not apply unless the Eligible Employee or Director can be treated as initially eligible in accordance with Treas. Reg. § 1.409A-2(a)(7).

***4.4. Election of Payment Schedule and Form of Payment***

All elections of a payment schedule and a form of payment will be made in accordance with rules and procedures established by the Administrator and the provisions of this Section 4.4.

(a) If the Plan Sponsor has elected to permit annual distribution elections in accordance with Section 6.01(h) of the Adoption Agreement the following rules apply. At the time an Eligible Employee or Director completes a deferral agreement, the Eligible Employee or Director must elect a distribution event (which includes a specified time) and a form of payment for the Compensation subject to the deferral agreement from among the options the Plan Sponsor has made available for this purpose and which are specified in 6.01(b) of the Adoption Agreement. Prior to the time required by Treas. Reg. § 1.409A-2, the Eligible Employee or Director shall elect a distribution event (which includes a specified time) and a form of payment for any Employer contributions that may be credited to the Participant's Account during the Plan Year. If an Eligible Employee or Director fails to elect a distribution event, he or she shall be deemed to have elected Separation from Service as the distribution event. If he or she fails to elect a form of payment, he or she shall be deemed to have elected a lump sum form of payment.

(b) If the Plan Sponsor has elected not to permit annual distribution elections in accordance with Section 6.01(h) of the Adoption Agreement the following rules apply. At the time an Eligible Employee or Director first completes a deferral agreement but in no event later than the time required by Treas. Reg. § 1.409A-2, the Eligible Employee or Director must elect a distribution event (which includes a specified time) and a form of payment for amounts credited to his or her Account from among the options the Plan Sponsor has made available for this purpose and which are specified in Section 6.01(b) of the Adoption Agreement. If an Eligible Employee or Director fails to elect a distribution event, he or she shall be deemed to have elected Separation from Service in the distribution event. If the Participant fails to elect a form of payment, he or she shall be deemed to have elected a lump sum form of payment.

**Article 5 - Employer Contributions**

***5.1. Matching Contributions***

If elected by the Plan Sponsor in Section 5.01(a) of the Adoption Agreement, the Employer will credit the Participant's Account with a matching contribution determined in accordance with the formula specified in Section 5.01(a) of the Adoption Agreement. The matching contribution will be treated as allocated to the Participant's Account at the time specified in Section 5.01(a)(iii) of the Adoption Agreement.

***5.2. Other Contributions***

If elected by the Plan Sponsor in Section 5.01(b) of the Adoption Agreement, the Employer will credit the Participant's Account with a contribution or contributions determined in accordance with the formula or method specified in Section 5.01(b) of the Adoption Agreement. These contributions will be treated as allocated to the Participant's Account at the time specified in Section 5.01(b)(iii) of the Adoption Agreement.

**Article 6 - Accounts and Credits**

***6.1. Establishment of Account***

For accounting and computational purposes only, the Administrator will establish and maintain an Account on behalf of each Participant which will reflect the credits made pursuant to Section 6.2, distributions or withdrawals, along with the earnings, expenses, gains and losses allocated thereto, attributable to the hypothetical investments made with the amounts in the Account as provided in Article 7. The Administrator may establish and maintain such other records and accounts, as it decides in its discretion to be reasonably required or appropriate to discharge its duties under the Plan.

***6.2. Credits to Account***

A Participant's Account will be credited for each Plan Year with the amount of his or her elective deferrals under Section 4.1 at the time the amount subject to the deferral election would otherwise have been payable to the Participant and the amount of Employer contributions, if any, treated as allocated on his or her behalf under Article 5.

**Article 7 - Investment of Contributions**

***7.1. Investment Options***

The amount credited to each Account shall be treated as invested in the investment options designated for this purpose by the Administrator.

***7.2. Adjustment of Accounts***

The amount credited to each Account shall be adjusted for hypothetical investment earnings, expenses, gains or losses in an amount equal to the earnings, expenses, gains or losses attributable to the investment options selected by the party designated in Section 9.01 of the Adoption Agreement from among the investment options provided in Section 7.1. If permitted by Section 9.01 of the Adoption Agreement, a Participant (or the Participant's Beneficiary after the death of the Participant) may, in accordance with rules and procedures established by the Administrator, select the investments from among the options provided in Section 7.1 to be used for the purpose of calculating future hypothetical investment adjustments to the Account or to future credits to the Account under Section 6.2 effective as of the Valuation Date coincident with or next following notice to the Administrator. Each Account shall be adjusted as of each Valuation Date to reflect: (a) the hypothetical earnings, expenses, gains, and losses described above; (b) amounts credited pursuant to Section 6.2; and (c) distributions or withdrawals. In addition, each Account may be adjusted for its allocable share of the hypothetical costs and expenses associated with the maintenance of the hypothetical investments provided in Section 7.1.

**Article 8 - Right to Benefits**

***8.1. Vesting***

A Participant, at all times, has a 100% nonforfeitable interest in the amounts credited to his or her Account attributable to his or her elective deferrals made in accordance with Section 4.1.

A Participant's right to the amounts credited to his or her Account attributable to Employer contributions made in accordance with Article 5 shall be determined in accordance with the relevant schedule and provisions in Section 7.01 of the Adoption Agreement. Upon a Separation from Service and after application of the provisions of Section 7.01 of the Adoption Agreement, the Participant shall forfeit the nonvested portion of his or her Account.

***8.2. Death***

The Plan Sponsor may elect to accelerate vesting upon the death of the Participant in accordance with Section 7.01(c) of the Adoption Agreement and/or to accelerate distributions upon death in accordance with Section 6.01(b) or Section 6.01(d) of the Adoption Agreement. If the Plan Sponsor does not elect to accelerate distributions upon death in accordance with Section 6.01(b) or Section 6.01(d) of the Adoption Agreement, the vested amount credited to the Participant's Account will be paid in accordance with the provisions of Article 9.

A Participant may designate a Beneficiary or Beneficiaries, or change any prior designation of Beneficiary or Beneficiaries in accordance with rules and procedures established by the Administrator. Whenever a Participant designates a new Beneficiary, all former Beneficiary designations by such Participant shall be revoked automatically. If a Participant and the Participant's spouse divorce, any designations of the spouse as Beneficiary shall become null and void. The former spouse shall be treated as the Beneficiary under the Plan only if after the divorce is final, the Participant expressly re-designates the former spouse as the Participant's Beneficiary.

A copy of the death notice or other sufficient documentation must be filed with and approved by the Administrator. If upon the death of the Participant there is, in the opinion of the Administrator, no designated Beneficiary for part or all of the Participant's vested Account, such amount will be paid to his or her estate (such estate shall be deemed to be the Beneficiary for purposes of the Plan) in accordance with the provisions of Article 9.

***8.3. Disability***

If the Plan Sponsor has elected to accelerate vesting upon the occurrence of a Disability in accordance with Section 7.01(c) of the Adoption Agreement and/or to permit distributions upon Disability in accordance with Section 6.01(b) or Section 6.01(d) of the Adoption Agreement, the determination of whether a Participant has incurred a Disability shall be based on the definition of Disability in Section 6.01(i) of the Adoption Agreement and in a manner consistent with the requirements of Code Section 409A.

**Article 9 - Distribution of Benefits**

***9.1. Amount of Benefits***

The vested amount credited to a Participant's Account as determined under Articles 6, 7 and 8 shall determine and constitute the basis for the value of benefits payable to the Participant under the Plan.

***9.2. Method and Timing of Distributions***

Except as otherwise provided in this Article 9, distributions under the Plan shall be made in accordance with the elections made or deemed made by the Participant under Article 4. Subject to the provisions of Section 9.6 requiring a six-month delay for certain distributions to Key Employees, distributions following a payment event shall commence at the time specified in Section 6.01(a) of the Adoption Agreement. If permitted by Section 6.01(g) of the Adoption Agreement, a Participant may elect, at least twelve months before a scheduled distribution event, to delay the payment date for a minimum period of sixty months from the originally scheduled date of payment, provided the election does not take effect for at least twelve months from the date on which the election is made. The distribution election change must be made in accordance with procedures and rules established by the Administrator. The Participant may, at the same time the date of payment is deferred, change the form of payment but such change in the form of payment may not effect an acceleration of payment in violation of Code Section 409A or the provisions of Treas. Reg. § 1.409A-2(b). For purposes of this Section 9.2, a series of installment payments is always treated as a single payment and not as a series of separate payments.

***9.3. Unforeseeable Emergency***

A Participant may request a distribution due to an Unforeseeable Emergency if the Plan Sponsor has elected to permit Unforeseeable Emergency withdrawals under Section 8.01(a) of the Adoption Agreement. The request must be in writing and must be submitted to the Administrator along with evidence that the circumstances constitute an Unforeseeable Emergency. The Administrator has the discretion to require whatever evidence it deems necessary to determine whether a distribution is warranted, and may require the Participant to certify that the need cannot be met from other sources reasonably available to the Participant. Whether a Participant has incurred an Unforeseeable Emergency will be determined by the Administrator on the basis of the relevant facts and circumstances in its sole discretion, but, in no event, will an Unforeseeable Emergency be deemed to exist if the hardship can be relieved: (a) through reimbursement or compensation by insurance or otherwise, (b) by liquidation of the Participant's assets to the extent such liquidation would not itself cause severe financial hardship, or (c) by cessation of deferrals under the Plan. A distribution due to an Unforeseeable Emergency must be limited to the amount reasonably necessary to satisfy the emergency need and may include any amounts necessary to pay any federal, state, foreign or local income taxes and penalties reasonably anticipated to result from the distribution. The distribution will be made in the form of a single lump sum cash payment. If permitted by Section 8.01(b) of the Adoption Agreement, a Participant's deferral elections for the remainder of the Plan Year will be cancelled upon a withdrawal due to an Unforeseeable Emergency. If the payment of all or any portion of the Participant's vested Account is being delayed in accordance with Section 9.6 at the time he or she experiences an Unforeseeable Emergency, the amount being delayed shall not be subject to the provisions of this Section 9.3 until the expiration of the six month period of delay required by section 9.6.

### *9.4. Payment Election Overrides*

If the Plan Sponsor has elected one or more payment election overrides in accordance with Section 6.01(d) of the Adoption Agreement, the following provisions apply. Upon the occurrence of the first event selected by the Plan Sponsor, the remaining vested amount credited to the Participant's Account shall be paid in the form designated to the Participant or his or her Beneficiary regardless of whether the Participant had made different elections of time and/or form of payment or whether the Participant was receiving installment payments at the time of the event.

### *9.5. Cashouts of Amounts Not Exceeding Stated Limit*

If the vested amount credited to the Participant's Account does not exceed the limit established for this purpose by the Plan Sponsor in Section 6.01(e) of the Adoption Agreement at the time he or she incurs a Separation from Service for any reason, the Employer shall distribute such amount to the Participant at the time specified in Section 6.01(a) of the Adoption Agreement in a single lump sum cash payment following such Separation from Service regardless of whether the Participant had made different elections of time or form of payment as to the vested amount credited to his or her Account or whether the Participant was receiving installments at the time of such termination. A Participant's Account, for purposes of this Section 9.5, shall include any amounts described in Section 1.3.

### *9.6. Required Delay in Payment to Key Employees*

Except as otherwise provided in this Section 9.6, a distribution made on account of Separation from Service (or Retirement, if applicable) to a Participant who is a Key Employee as of the date of his or her Separation from Service (or Retirement, if applicable) shall not be made before the date which is six months after the Separation from Service (or Retirement, if applicable).

(a) A Participant is treated as a Key Employee if: (i) he or she is employed by a Related Employer any of whose stock is publicly traded on an established securities market, and (ii) he or she satisfies the requirements of Code Section 416(i)(1)(A)(i), (ii) or (iii), determined without regard to Code Section 416(i)(5), at any time during the twelve month period ending on the Identification Date.

(b) A Participant who is a Key Employee on an Identification Date shall be treated as a Key Employee for purposes of the six month delay in distributions for the twelve month period beginning on the first day of a month no later than the fourth month following the Identification Date. The Identification Date and the effective date of the delay in distributions shall be determined in accordance with Section 1.06 of the Adoption Agreement.

(c) The Plan Sponsor may elect to apply an alternative method to identify Participants who will be treated as Key Employees for purposes of the six month delay in distributions if the method satisfies each of the following requirements: (i) is reasonably designed to include all Key Employees, (ii) is an objectively determinable standard providing no direct or indirect election to any Participant regarding its application, and (iii) results in either all Key Employees or no more than 200 Key Employees being identified in the class as of any date. Use of an alternative method that satisfies the requirements of this Section 9.6(c) will not be treated as a change in the time and form of payment for purposes of Treas. Reg. § 1.409A-2(b).

(d) The six-month delay does not apply to payments described in Section 9.9(a), (b) or (d) or to payments that occur after the death of the Participant. If the payment of all or any portion of the Participant's vested Account is being delayed in accordance with this Section 9.6 at the time he or she incurs a Disability which would otherwise require a distribution under the terms of the Plan, no amount shall be paid until the expiration of the six month period of delay required by this Section 9.6.

### *9.7. Change in Control*

Administration Upon Change in Control. Upon a Change in Control, the Committee, as constituted immediately prior to such Change in Control, shall continue to act as the Committee. The individual who was the Chief Executive Officer of the Company (or if such person is unable or unwilling to act, the next highest ranking officer) prior to the Change in Control shall have the authority (but shall not be obligated) to appoint an independent third party to act as the Committee.

Upon such Change in Control, the Company may not remove the Committee, unless 2/3rds of the members of the Board of Directors of the Company and a majority of Participants and Beneficiaries with Account Balances consent to the removal and replacement of the Committee. Notwithstanding the foregoing, upon or after a Change in Control, neither the Committee nor the officer described above shall have authority to direct investment of trust assets under any rabbi trust described in Article 11 (which authority shall be exercised by the trustee of any such trust in accordance with the terms of the trust agreement).

The Participating Employer shall, with respect to the Committee identified under this Section: (i) pay all reasonable expenses and fees of the Committee, (ii) indemnify the Committee (including individuals serving as Committee members) against any costs, expenses and liabilities including, without limitation, attorneys' fees and expenses arising in connection with the performance of the Committee's duties hereunder, except with respect to matters resulting from the Committee's gross negligence or willful misconduct, and (iii) supply full and timely information to the Committee on all matters related to the Plan, any trust, Participants, Beneficiaries and Accounts as the Committee may reasonably require.

If the Plan Sponsor has elected to permit distributions upon a Change in Control, the following provisions shall apply. A distribution made upon a Change in Control will be made at the time specified in Section 6.01(a) of the Adoption Agreement in the form elected by the Participant in accordance with the procedures described in Article 4. Alternatively, if the Plan Sponsor has elected in accordance with Section 11.02 of the Adoption Agreement to require distributions upon a Change in Control, the Participant's remaining vested Account shall be paid to the Participant or the Participant's Beneficiary at the time specified in Section 6.01(a) of the Adoption Agreement as a single lump sum payment. A Change in Control, for purposes of the Plan, will occur upon a change in the ownership of the Plan Sponsor, a change in the effective control of the Plan Sponsor or a change in the ownership of a substantial portion of the assets of the Plan Sponsor, but only if elected by the Plan Sponsor in Section 11.03 of the Adoption Agreement. The Plan Sponsor, for this purpose, includes any corporation identified in this Section 9.7. All distributions made in accordance with this Section 9.7 are subject to the provisions of Section 9.6.

If a Participant continues to make deferrals in accordance with Article 4 after he or she has received a distribution due to a Change in Control, the residual amount payable to the Participant shall be paid at the time and in the form specified in the elections he or she makes in accordance with Article 4 or upon his or her death or Disability as provided in Article 8.

Whether a Change in Control has occurred will be determined by the Administrator in accordance with the rules and definitions set forth in this Section 9.7. A distribution to the Participant will be treated as occurring upon a Change in Control if the Plan Sponsor terminates the Plan in accordance with Section 10.2 and distributes the Participant's benefits within twelve months of a Change in Control as provided in Section 10.3.

(a) Relevant Corporations. To constitute a Change in Control for purposes of the Plan, the event must relate to: (i) the corporation for whom the Participant is performing services at the time of the Change in Control, (ii) the corporation that is liable for the payment of the Participant's benefits under the Plan (or all corporations liable if more than one corporation is liable) but only if either the deferred compensation is attributable to the performance of services by the Participant for such corporation (or corporations) or there is a bona fide business purpose for such corporation (or corporations) to be liable for such payment and, in either case, no significant purpose of making such corporation (or corporations) liable for such payment is the avoidance of federal income tax, or (iii) a corporation that is a majority shareholder of a corporation identified in (i) or (ii), or any corporation in a chain of corporations in which each corporation is a majority shareholder of another corporation in the chain, ending in a corporation identified in (i) or (ii). A majority shareholder is defined as a shareholder owning more than fifty percent (50%) of the total fair market value and voting power of such corporation.

(b) Stock Ownership. Code Section 318(a) applies for purposes of determining stock ownership. Stock underlying a vested option is considered owned by the individual who owns the vested option (and the stock underlying an unvested option is not considered owned by the individual who holds the unvested option). If, however, a vested option is exercisable for stock that is not substantially vested (as defined by Treas. Reg. § 1.83-3(b) and (j)) the stock underlying the option is not treated as owned by the individual who holds the option.

(c) Change in the Ownership of a Corporation. A change in the ownership of a corporation occurs on the date that any one person or more than one person acting as a group, acquires ownership of stock of the corporation that, together with stock held by such person or group, constitutes more than fifty percent (50%) of the total fair market value or total voting power of the stock of such corporation. If any one person or more than one person acting as a group is considered to own more than fifty percent (50%) of the total fair market value or total voting power of the stock of a corporation, the acquisition of additional stock by the same person or persons is not considered to cause a change in the ownership of the corporation (or to cause a change in the effective control of the corporation as discussed below in Section 9.7(d)). An increase in the percentage of stock owned by any one person, or persons acting as a group, as a result of a transaction in which the corporation acquires its stock in exchange for property will be treated as an acquisition of stock. Section 9.7(c) applies only when there is a transfer of stock of a corporation (or issuance of stock of a corporation) and stock in such corporation remains outstanding after the transaction. For purposes of this Section 9.7(c), persons will not be considered to be acting as a group solely because they purchase or own stock of the same corporation at the same time or as a result of a public offering. Persons will, however, be considered to be acting as a group if they are owners of a corporation that enters into a merger, consolidation, purchase, or acquisition of stock, or similar business transaction with the corporation. If a person, including an entity, owns stock in both corporations that enter into a merger, consolidation, purchase or acquisition of stock, or similar transaction, such shareholder is considered to be acting as a group with other shareholders in a corporation only with respect to ownership in that corporation prior to the transaction giving rise to the change and not with respect to the ownership interest in the other corporation.

(d) Change in the Effective Control of a Corporation. A change in the effective control of a corporation occurs on the date that either (i) any one person, or more than one person acting as a group, acquires (or has acquired during the twelve month period ending on the date of the most recent acquisition by such person or persons) ownership of stock of the corporation possessing thirty percent (30%) or more of the total voting power of the stock of such corporation, or (ii) a majority of members of the corporation's Board of Directors is replaced during any twelve month period by Directors whose appointment or election is not endorsed by a majority of the members of the corporation's Board of Directors prior to the date of the appointment or election, provided that for purposes of this paragraph (ii), the term corporation refers solely to the relevant corporation identified in Section 9.7(a) for which no other corporation is a majority shareholder for purposes of Section 9.7(a). In the absence of an event described in Section 9.7(d)(i) or (ii), a change in the effective control of a corporation will not have occurred. A change in effective control may also occur in any transaction in which either of the two corporations involved in the transaction has a change in the ownership of such corporation as described in Section 9.7(c) or a change in the ownership of a substantial portion of the assets of such corporation as described in Section 9.7(e). If any one person, or more than one person acting as a group, is considered to effectively control a corporation within the meaning of this Section 9.7(d), the acquisition of additional control of the corporation by the same person or persons is not considered to cause a change in the effective control of the corporation or to cause a change in the ownership of the corporation within the meaning of Section 9.7(c). For purposes of this Section 9.7(d), persons will or will not be considered to be acting as a group in accordance with rules similar to those set forth in Section 9.7(c) with the following exception. If a person, including an entity, owns stock in both corporations that enter into a merger, consolidation, purchase or acquisition of stock, or similar transaction, such shareholder is considered to be acting as a group with other shareholders in a corporation only with respect to the ownership in that corporation prior to the transaction giving rise to the change and not with respect to the ownership interest in the other corporation.

(e) Change in the Ownership of a Substantial Portion of a Corporation's Assets. A change in the ownership of a substantial portion of a corporation's assets occurs on the date that any one person, or more than one person acting as a group (as determined in accordance with rules similar to those set forth in Section 9.7(d)), acquires (or has acquired during the twelve month period ending on the date of the most recent acquisition by such person or persons) assets from the corporation that have a total gross fair market value equal to or more than forty percent (40%) of the total gross fair market value of all of the assets of the corporation immediately prior to such acquisition or acquisitions. For this purpose, gross fair market value means the value of the assets of the corporation or the value of the assets being disposed of determined without regard to any liabilities associated with such assets. There is no Change in Control event under this Section 9.7(e) when there is a transfer to an entity that is controlled by the shareholders of the transferring corporation immediately after the transfer. A transfer of assets by a corporation is not treated as a change in ownership of such assets if the assets are transferred to (i) a shareholder of the corporation (immediately before the asset transfer) in exchange for or with respect to its stock, (ii) an entity, fifty percent (50%) or more of the total value or voting power of which is owned, directly or indirectly, by the corporation, (iii) a person, or more than one person acting as a group, that owns, directly or indirectly, fifty percent (50%) or more of the total value or voting power of all the outstanding stock of the corporation, or (iv) an entity, at least fifty (50%) of the total value or voting power of which is owned, directly or indirectly, by a person described in Section 9.7(e)(iii). For purposes of the foregoing, and except as otherwise provided, a person's status is determined immediately after the transfer of assets.

### *9.8. Permissible Delays in Payment*

Distributions may be delayed beyond the date payment would otherwise occur in accordance with the provisions of Articles 8 and 9 in any of the following circumstances (as long as the Employer treats all payments to similarly situated Participants on a reasonably consistent basis):

(a) The Employer may delay payment if it reasonably anticipates that its deduction with respect to such payment would be limited or eliminated by the application of Code Section 162(m). Payment must be made during the Participant's first taxable year in which the Employer reasonably anticipates, or should reasonably anticipate, that if the payment is made during such year the deduction of such payment will not be barred by the application of Code Section 162(m) or during the period beginning with the Participant's Separation from Service and ending on the later of the last day of the Employer's taxable year in which the Participant separates from service or the 15th day of the third month following the Participant's Separation from Service. If a scheduled payment to a Participant is delayed in accordance with this Section 9.8(a), all scheduled payments to the Participant that could be delayed in accordance with this Section 9.8(a) will also be delayed.

(b) The Employer may also delay payment if it reasonably anticipates that the making of the payment will violate federal securities laws or other applicable laws provided payment is made at the earliest date on which the Employer reasonably anticipates that the making of the payment will not cause such violation.

(c) The Employer reserves the right to amend the Plan to provide for a delay in payment upon such other events and conditions as the Secretary of the Treasury may prescribe in generally applicable guidance published in the Internal Revenue Bulletin.

***9.9. Permitted Acceleration of Payment***

The Employer may permit acceleration of the time or schedule of any payment or amount scheduled to be paid pursuant to a payment under the Plan provided such acceleration would be permitted by the provisions of Treas. Reg. § 1.409A-3(j)(4), including the following events:

(a) Domestic Relations Order. A payment may be accelerated if such payment is made to an alternate payee pursuant to and following the receipt and qualification of a domestic relations order as defined in Code Section 414(p).

(b) Compliance with Ethics Agreement and Legal Requirements. A payment may be accelerated as may be necessary to comply with ethics agreements with the Federal government or as may be reasonably necessary to avoid the violation of Federal, state, local or foreign ethics law or conflicts of laws, in accordance with the requirements of Code Section 409A.

(c) De Minimis Amounts. A payment may be accelerated if (i) the amount of the payment is not greater than the applicable dollar amount under Code Section 402(g)(1)(B), and (ii) at the time the payment is made the amount constitutes the Participant's entire interest under the Plan and all other plans that are aggregated with the Plan under Treas. Reg. § 1.409A-1(c)(2).

(d) FICA Tax. A payment may be accelerated to the extent required to pay the Federal Insurance Contributions Act tax imposed under Code Sections 3101, 3121(a) and 3121(v)(2) of the Code with respect to compensation deferred under the Plan (the "FICA Amount"). Additionally, a payment may be accelerated to pay the income tax on wages imposed under Code Section 3401 of the Code on the FICA Amount and to pay the additional income tax at source on wages attributable to the pyramiding Code Section 3401 wages and taxes. The total payment under this subsection (d) may not exceed the aggregate of the FICA Amount and the income tax withholding related to the FICA Amount.

(e) Section 409A Additional Tax. A payment may be accelerated if the Plan fails to meet the requirements of Code Section 409A; provided that such payment may not exceed the amount required to be included in income as a result of the failure to comply with the requirements of Code Section 409A.

(f) Offset. A payment may be accelerated in the Employer's discretion as satisfaction of a debt of the Participant to the Employer, where such debt is incurred in the ordinary course of the service relationship between the Participant and the Employer, the entire amount of the reduction in any of the Employer's taxable years does not exceed $5,000, and the reduction is made at the same time and in the same amount as the debt otherwise would have been due and collected from the Participant.

(g) Other Events. A payment may be accelerated in the Administrator's discretion in connection with such other events and conditions as permitted by Code Section 409A.

**Article 10 - Amendment and Termination**

***10.1. Amendment by Plan Sponsor***

The Plan Sponsor reserves the right to amend the Plan (for itself and each Employer) through action of its Board of Directors or other authorized person. No amendment can directly or indirectly deprive any current or former Participant or Beneficiary of all or any portion of his or her Account which had accrued and vested prior to the amendment.

***10.2. Plan Termination Following Change in Control or Corporate Dissolution***

If so elected by the Plan Sponsor in 11.01 of the Adoption Agreement, the Plan Sponsor reserves the right to terminate the Plan and distribute all amounts credited to all Participant Accounts within the 30 days preceding or the twelve months following a Change in Control as determined in accordance with the rules set forth in Section 9.7. For this purpose, the Plan will be treated as terminated only if all agreements, methods, programs and other arrangements sponsored by the Related Employer immediately after the Change in Control which are treated as a single plan under Treas. Reg. § 1.409A-1(c)(2) are also terminated so that all Participants under the Plan and all similar arrangements are required to receive all amounts deferred under the terminated arrangements within twelve months of the date the Plan Sponsor irrevocably takes all necessary action to terminate the arrangements. In addition, the Plan Sponsor reserves the right to terminate the Plan within twelve months of a corporate dissolution taxed under Code Section 331 or with the approval of a bankruptcy court pursuant to 11 U. S. C. Section 503(b)(1)(A) provided that amounts deferred under the Plan are included in the gross incomes of Participants in the latest of (a) the calendar year in which the termination and liquidation occurs, (b) the first calendar year in which the amount is no longer subject to a substantial risk of forfeiture, or (c) the first calendar year in which payment is administratively practicable.

***10.3. Other Plan Terminations***

The Plan Sponsor retains the discretion to terminate the Plan if (a) all arrangements sponsored by the Plan Sponsor that would be aggregated with any terminated arrangement under Code Section 409A and Treas. Reg. § 1.409A-1(c)(2) are terminated, (b) no payments other than payments that would be payable under the terms of the arrangements if the termination had not occurred are made within twelve months of the termination of the arrangements, (c) all payments are made within twenty-four months of the date the Plan Sponsor takes all necessary action to irrevocably terminate and liquidate the arrangements, (d) the Plan Sponsor does not adopt a new arrangement that would be aggregated with any terminated arrangement under Code Section 409A and the regulations thereunder at any time within the three year period following the date of termination of the arrangement, and (e) the termination does not occur proximate to a downturn in the financial health of the Plan Sponsor. The Plan Sponsor also reserves the right to amend the Plan to provide that termination of the Plan will occur under such conditions and events as may be prescribed by the Secretary of the Treasury in generally applicable guidance published in the Internal Revenue Bulletin.

**Article 11 - The Trust**

***11.1. Establishment of Trust***

The Plan Sponsor may but is not required to establish a trust to hold amounts which the Plan Sponsor may contribute from time to time to correspond to some or all amounts credited to Participants under Section 6.2. In the event that the Plan Sponsor wishes to establish a trust to provide a source of funds for the payment of Plan benefits, any such trust shall be constructed to constitute an unfunded arrangement that does not affect the status of the Plan as an unfunded plan for purposes of Title I of ERISA and the Code. If the Plan Sponsor elects to establish a trust in accordance with Section 10.01 of the Adoption Agreement, the provisions of Sections 11.2 and 11.3 shall become operative.

***11.2. Trust***

Any trust established by the Plan Sponsor shall be between the Plan Sponsor and a trustee pursuant to a separate written agreement under which assets are held, administered and managed, subject to the claims of the Plan Sponsor's creditors in the event of the Plan Sponsor's insolvency. The Plan Sponsor must notify the trustee in the event of a bankruptcy or insolvency.

***11.3. Investment of Trust Funds***

Any amounts contributed to the trust by the Plan Sponsor shall be invested by the trustee in accordance with the provisions of the trust and the instructions of the Administrator. Trust investments need not reflect the hypothetical investments selected by Participants under Section 7.1 for the purpose of adjusting Accounts and the earnings or investment results of the trust need not affect the hypothetical investment adjustments to Participant Accounts under the Plan.

**Article 12 - Plan Administration**

***12.1. Powers and Responsibilities of the Administrator***

The Administrator has the full power and the full responsibility to administer the Plan in all of its details; subject, however, to the applicable requirements of ERISA. The Administrator's powers and responsibilities include, but are not limited to, the following:

(a) To make and enforce such rules and procedures as it deems necessary or proper for the efficient administration of the Plan;

(b) To interpret the Plan, its interpretation thereof to be final, except as provided in Section 12.2, on all persons claiming benefits under the Plan;

(c) To decide all questions concerning the Plan and the eligibility of any person to participate in the Plan;

(d) To administer the claims and review procedures specified in Section 12.2;

(e) To compute the amount of benefits which will be payable to any Participant, former Participant or Beneficiary in accordance with the provisions of the Plan;

(f) To determine the person or persons to whom such benefits will be paid;

(g) To authorize the payment of benefits;

(h) To make corrections and recover the overpayment of any benefits;

(i) To comply with the reporting and disclosure requirements of Part 1 of Subtitle B of Title I of ERISA;

(j) To appoint such agents, counsel, accountants, and consultants as may be required to assist in administering the Plan;

(k) By written instrument, to allocate and delegate its responsibilities, including the formation of an Administrative Committee to administer the Plan.

***12.2. Claims and Review Procedures***

(a) Claims Procedure. If any person believes he or she is being denied any rights or benefits under the Plan, such person may file a claim in writing with the Administrator. If any such claim is wholly or partially denied, the Administrator will notify such person of its decision in writing. Such notification will contain (i) specific reasons for the denial, (ii) specific reference to pertinent Plan provisions, (iii) a description of any additional material or information necessary for such person to perfect such claim and an explanation of why such material or information is necessary, and (iv) a description of the Plan's review procedures and the time limits applicable to such procedures, including a statement of the person's right to bring a civil action following an adverse decision on review. If the claim involves a Disability, the denial must also include the standards that governed the decision, including the basis for disagreeing with any health care professionals, vocational professionals or the Social Security Administration as well as an explanation of the scientific or clinical judgment underlying the denial. Such notification will be given within 90 days (45 days in the case of a claim regarding Disability) after the claim is received by the Administrator. The Administrator may extend the period for providing the notification by 90 days (30 days in the case of a claim regarding Disability, which may be extended an additional 30 days) if special circumstances require an extension of time for processing the claim and if written notice of such extension and circumstance is given to such person within the initial 90 day period (45 day period in the case of a claim regarding Disability). If such notification is not given within such period, the claim will be considered denied as of the last day of such period and such person may request a review of his or her claim.

(b) Review Procedure. Within 60 days (180 days in the case of a claim regarding Disability) after the date on which a person receives a written notification of denial of claim (or, if written notification is not provided, within 60 days (180 days in the case of a claim regarding Disability) of the date denial is considered to have occurred), such person (or his or her duly authorized representative) may (i) file a written request with the Administrator for a review of his or her denied claim and of pertinent documents and (ii) submit written issues and comments to the Administrator. The Administrator will notify such person of its decision in writing. Such notification will be written in a manner calculated to be understood by such person and will contain specific reasons for the decision as well as specific references to pertinent Plan provisions. The notification will explain that the person is entitled to receive, upon request and free of charge, reasonable access to and copies of all pertinent documents and has the right to bring a civil action following an adverse decision on review. The decision on review will be made within 60 days (45 days in the case of a claim regarding Disability). The Administrator may extend the period for making the decision on review by 60 days (45 days in the case of a claim regarding Disability) if special circumstances require an extension of time for processing the request such as an election by the Administrator to hold a hearing, and if written notice of such extension and circumstances is given to such person within the initial 60-day period (45 days in the case of a claim regarding Disability). If the decision on review is not made within such period, the claim will be considered denied.

If the claim is regarding Disability, and the determination of Disability has not been made by the Social Security Administration, the Railroad Retirement Board, or under the Plan Sponsor's long-term disability plan, the person may, upon written request and free of charge, also receive the identification of medical or vocational experts whose advice was obtained in connection with the denial of a claim regarding Disability, even if the advice was not relied upon.

Before issuing any decision with respect to a claim involving Disability, the Administrator will provide to the person, free of charge, the following information as soon as possible and sufficiently in advance of the date on which the response is required to be provided to the person to allow the person a reasonable opportunity to respond prior to the due date of the response:

(i) Any new or additional evidence considered, relied upon, or generated by the Administrator or other person making the decision; and

(ii) A new or additional rationale if the decision will be based on that rationale.

(c) Exhaustion of Claims Procedures and Right to Bring Legal Claim. No action at law or equity shall be brought more than one year after the Administrator's affirmation of a denial of a claim, or, if earlier, more than four years after the facts or events giving rise to the claimant's allegation(s) or claim(s) first occurred.

### *12.3. Plan Administrative Costs*

All reasonable costs and expenses (including legal, accounting, and employee communication fees) incurred by the Administrator in administering the Plan shall be paid by the Plan to the extent not paid by the Employer.

**Article 13 - Miscellaneous**

***13.1. Unsecured General Creditor of the Employer***

Participants and their Beneficiaries, heirs, successors, and assigns shall have no legal or equitable rights, interests or claims in any property or assets of the Employer. For purposes of the payment of benefits under the Plan, any and all of the Employer's assets shall be, and shall remain, the general, unpledged, unrestricted assets of the Employer. Each Employer's obligation under the Plan shall be merely that of an unfunded and unsecured promise to pay money in the future.

***13.2. Employer's Liability***

Each Employer's liability for the payment of benefits under the Plan shall be defined only by the Plan and by the deferral agreements entered into between a Participant and the Employer. An Employer shall have no obligation or liability to a Participant under the Plan except as provided by the Plan and a deferral agreement or agreements. An Employer shall have no liability to Participants employed by other Employers.

***13.3. Limitation of Rights***

Neither the establishment of the Plan, nor any amendment thereof, nor the creation of any fund or account, nor the payment of any benefits, will be construed as giving to the Participant or any other person any legal or equitable right against the Employer, the Plan or the Administrator, except as provided herein; and in no event will the terms of employment or service of the Participant be modified or in any way affected hereby.

***13.4. Anti-Assignment***

Except as may be necessary to fulfill a domestic relations order within the meaning of Code Section 414(p), none of the benefits or rights of a Participant or any Beneficiary of a Participant shall be subject to the claim of any creditor. In particular, to the fullest extent permitted by law, all such benefits and rights shall be free from attachment, garnishment, or any other legal or equitable process available to any creditor of the Participant and his or her Beneficiary. Neither the Participant nor his or her Beneficiary shall have the right to alienate, anticipate, commute, pledge, encumber, or assign any of the payments which he or she may expect to receive, contingently or otherwise, under the Plan, except the right to designate a Beneficiary to receive death benefits provided hereunder. Notwithstanding the preceding, the benefit payable from a Participant's Account may be reduced, at the discretion of the Administrator, to satisfy any debt or liability to the Employer.

### *13.5. Facility of Payment*

If the Administrator determines, on the basis of medical reports or other evidence satisfactory to the Administrator, that the recipient of any benefit payments under the Plan is incapable of handling his or her affairs by reason of minority, illness, infirmity or other incapacity, the Administrator may direct the Employer to disburse such payments to a person or institution designated by a court which has jurisdiction over such recipient or a person or institution otherwise having the legal authority under State law for the care and control of such recipient. The receipt by such person or institution of any such payments therefore, and any such payment to the extent thereof, shall discharge the liability of the Employer, the Plan and the Administrator for the payment of benefits hereunder to such recipient.

### *13.6. Notices*

Any notice or other communication to the Employer or Administrator in connection with the Plan shall be deemed delivered in writing if addressed to the Plan Sponsor at the address specified in Section 1.03 of the Adoption Agreement and if either actually delivered at said address or, in the case or a letter, five business days shall have elapsed after the same shall have been deposited in the United States mails, first-class postage prepaid and registered or certified.

### *13.7. Tax Withholding*

If the Employer concludes that tax is owing with respect to any deferral or payment hereunder, the Employer shall withhold such amounts from any payments due the Participant or from amounts deferred, as permitted by law, or otherwise make appropriate arrangements with the Participant or his or her Beneficiary for satisfaction of such obligation. Tax, for purposes of this Section 13.7 means any federal, state, local or any other governmental income tax, employment or payroll tax, excise tax, or any other tax or assessment owing with respect to amounts deferred, any earnings thereon, and any payments made to Participants under the Plan.

***13.8. Indemnification***

(a) Each Indemnitee (as defined in Section 13.8(e)) shall be indemnified and held harmless by the Employer for all actions taken by him or her and for all failures to take action (regardless of the date of any such action or failure to take action), to the fullest extent permitted by the law of the jurisdiction in which the Employer is incorporated, against all expense, liability, and loss (including, without limitation, attorneys' fees, judgments, fines, taxes, penalties, and amounts paid or to be paid in settlement) reasonably incurred or suffered by the Indemnitee in connection with any Proceeding (as defined in subsection (e)). No indemnification pursuant to this Section shall be made, however, in any case where (1) the act or failure to act giving rise to the claim for indemnification is determined by a court to have constituted willful misconduct or recklessness or (2) there is a settlement to which the Employer does not consent.

(b) The right to indemnification provided in this Section shall include the right to have the expenses incurred by the Indemnitee in defending any Proceeding paid by the Employer in advance of the final disposition of the Proceeding, to the fullest extent permitted by the law of the jurisdiction in which the Employer is incorporated; provided that, if such law requires, the payment of such expenses incurred by the Indemnitee in advance of the final disposition of a Proceeding shall be made only on delivery to the Employer of an undertaking, by or on behalf of the Indemnitee, to repay all amounts so advanced without interest if it shall ultimately be determined that the Indemnitee is not entitled to be indemnified under this Section or otherwise.

(c) Indemnification pursuant to this Section shall continue as to an Indemnitee who has ceased to be such and shall inure to the benefit of his or her heirs, executors, and administrators. The Employer agrees that the undertakings made in this Section shall be binding on its successors or assigns and shall survive the termination, amendment, or restatement of the Plan.

(d) The foregoing right to indemnification shall be in addition to such other rights as the Indemnitee may enjoy as a matter of law or by reason of insurance coverage of any kind and is in addition to and not in lieu of any rights to indemnification to which the Indemnitee may be entitled pursuant to the by-laws of the Employer.

(e) For the purposes of this Section, the following definitions shall apply:

(i) "Indemnitee" shall mean each person serving as an Administrator (or any other person who is an employee, Director, or officer of the Employer) who was or is a party to, or is threatened to be made a party to, or is otherwise involved in, any Proceeding, by reason of the fact that he or she is or was performing administrative functions under the Plan.

(ii) "Proceeding" shall mean any threatened, pending, or completed action, suit, or proceeding (including, without limitation, an action, suit, or proceeding by or in the right of the Employer), whether civil, criminal, administrative, investigative, or through arbitration.

### *13.9. Successors*

The provisions of the Plan shall bind and inure to the benefit of the Plan Sponsor, the Employer and their successors and assigns and the Participant and the Participant's designated Beneficiaries.

### *13.10. Disclaimer*

It is the Plan Sponsor's intention that the Plan comply with the requirements of Code Section 409A. Neither the Plan Sponsor nor the Employer shall have any liability to any Participant should any provision of the Plan fail to satisfy the requirements of Code Section 409A.

### *13.11. Governing Law*

The Plan will be construed, administered, and enforced according to the laws of the State specified by the Plan Sponsor in Section 12.01 of the Adoption Agreement.

**Exhibit 10.36**

**SANDISK CORPORATION**
**2025 EMPLOYEE STOCK PURCHASE PLAN**

The Sandisk Corporation 2025 Employee Stock Purchase Plan, as amended and restated from time to time (the "Plan") shall be established and operated in accordance with the following terms and provisions.

1. Definitions.

As used in the Plan the following terms shall have the meanings set forth below:

(a) "Board" means the Board of Directors of the Company.

(b) "Code" means the Internal Revenue Code of 1986, as amended.

(c) "Committee" means the committee appointed by the Board to administer the Plan as described in Section 4 below.

(d) "Common Stock" means the common stock, $0.01 par value, of the Company.

(e) "Company" means Sandisk Corporation, a Delaware corporation.

(f) "Continuous Employment" means the absence of any interruption or termination of service as an Employee with the Company and/or its Participating Subsidiaries. Continuous Employment shall not be considered interrupted in the case of a leave of absence agreed to in writing by the Company, provided that such leave is for a period of not more than three months or reemployment upon the expiration of such leave is guaranteed by contract or statute. If a Participating Subsidiary ceases to be a Subsidiary, each person employed by that Subsidiary will be deemed to have had a break in Continuous Employment for purposes of the Plan at the time the Participating Subsidiary ceased to be a Subsidiary, unless such person continues as an Employee in respect of another Company entity.

(g) "Eligible Compensation" means, with respect to each Participant for each pay period, the full salary and wages paid to such Participant by the Company or a Participating Subsidiary, including commissions, bonuses (to the extent not excluded below), overtime pay and shift differentials. Except as otherwise determined by the Committee, "Eligible Compensation" does not include

(i) any amounts contributed by the Company or a Participating Subsidiary to any pension plan or plan of deferred compensation,

(ii) any automobile or relocation allowances (or reimbursement for any such expenses),

(iii) any amounts paid that arenon-regularly scheduled items of compensation (for example, starting bonus, finder's fee, or other special bonuses),

(iv) any amounts realized under or with respect to any qualified or non-qualified stock options or any other equity-based awards, or

(v) any amounts paid by the Company or a Participating Subsidiary for other fringe benefits, such as health and welfare, hospitalization and group life insurance benefits, or perquisites, or paid in lieu of such benefits, such as cash-out of credits generated under a plan qualified under Code Section 125.

(h) "Eligible Employee" means an Employee who is

(i) customarily employed for at least twenty (20) hours per week and more than five months in a calendar year, and

(ii) eligible to participate in the Plan as described in Section 5 below.

If any person is (a) an Employee due to any classification or reclassification of the person as an employee or common-law employee of the Company or one of its Participating Subsidiaries by reason of action taken by any tax or other governmental authority, or (b) an Employee who has a written employment agreement providing that the Employee shall not participate in the Plan until at least two (2) years of Continuous Employment, then such Employee must be employed for at least two (2) years by the Company or one of its Participating Subsidiaries as well as meet the criteria set forth above in subsections (i) and (ii) in order to be an Eligible Employee. "Eligible Employee" shall not include an Employee who is a citizen or resident of a foreign jurisdiction to whom the grant of an option under the Plan would be prohibited under the laws of such foreign jurisdiction, or compliance with the laws of such foreign jurisdiction would cause the Plan to violate the requirements of Section 423 of the Code. Any exclusions under this Section 1(h) shall be applied in an identical manner to all Employees who are granted options under the Plan, to the extent required pursuant to Treasury Regulation Section 1.423-2(e).

(i) "Employee" means each person currently employed by the Company or one of its Participating Subsidiaries. It shall not include any person who is recorded on the books and records of the Company or one of its Participating Subsidiaries as an independent contractor or consultant or a worker provided by a temporary staffing agency.

(j) "Enrollment Date" means the first day of each Offering Period.

(k) "Exercise Date" means one or more dates during an Offering Period, as established by the Committee in accordance with Section 6 hereof, on which options to purchase Common Stock granted under the Plan shall be exercised as provided in Section 11 hereof.

(l) "Exercise Period" means one or more periods during an Offering Period, the duration of which shall be established by the Committee in accordance with Section 6 hereof, during which payroll deductions are accumulated for purposes of purchasing Common Stock under the Plan on each Exercise Date.

(m) “Exercise Price” means the price per share of shares offered in a given Offering Period determined as provided in Section 10 below.

(n) “Fair Market Value” means, with respect to a share of Common Stock as of any Enrollment Date or Exercise Date (or New Exercise Date, as the case may be), the closing price (in regular trading) of such Common Stock on the NASDAQ Stock Market (or, if the Common Stock is not then traded on the NASDAQ Stock Market, on the principal national securities exchange on which the Common Stock is then listed or admitted to trade (the “Exchange”)). In the event that such a closing price is not available for an Enrollment Date or an Exercise Date, or New Exercise Date, the Fair Market Value of a share of Common Stock on such date shall be the closing price (in regular trading) of a share of the Common Stock on the Exchange for the next preceding day on which sales of Common Stock were made. If the Common Stock is no longer listed or is no longer actively traded on the Exchange as of the applicable date, the fair market value of the Common Stock shall be the value as reasonably determined by the Committee for purposes of the option in the circumstances.

(o) “New Exercise Date” means the new exercise date set by the Board in the case of a sale of all or substantially all of the assets of the Company, or the merger of the Company with or into another corporation or other entity in certain circumstances as described in Section 16(b).

(p) “Offering Period” means a period of time with respect to which options are granted under the Plan, the time and duration of which shall be established by the Committee in accordance with Section 6.

(q) “Parent” means any corporation, domestic or foreign, which owns, directly or indirectly, not less than 50% of the total combined voting power of all classes of stock or other equity interests of the Company and that otherwise qualifies as a “parent corporation” within the meaning of Section 424(e) of the Code or any successor thereto.

(r) “Participant” means an Eligible Employee who has elected to participate in the Plan by filing an enrollment agreement with the Company as provided in Section 7 below.

(s) “Participating Subsidiary” means any Subsidiary other than a Subsidiary excluded from participation in the Plan by the Committee, in its sole discretion.

(t) “Plan” means this Sandisk Corporation 2025 Employee Stock Purchase Plan.

(u) “Subsidiary” means any corporation, domestic or foreign, of which the Company owns, directly or indirectly, not less than 50% of the total combined voting power of all classes of stock or other equity interests and that otherwise qualifies as a “subsidiary corporation” within the meaning of Section 424(f) of the Code or any successor thereto.

2. Purpose of the Plan.

The purpose of the Plan is to provide an incentive for present and future Employees of the Company and its Participating Subsidiaries to acquire a proprietary interest (or increase an existing proprietary interest) in the Company through the purchase of Common Stock. It is the intention of the Company that the Plan qualify as an “employee stock purchase plan” under Section 423 of the Code. Accordingly, the provisions of the Plan shall be administered, interpreted and construed in a manner consistent with the requirements of that section of the Code.

3. Shares Reserved for the Plan.

(a) Subject to adjustment as provided in Section 16 below, there shall be reserved for issuance and purchase by Participants under the Plan an aggregate of [•] shares of Common Stock. Shares of Common Stock subject to the Plan may be newly issued shares or shares reacquired in private transactions or open market purchases. If and to the extent that any right to purchase reserved shares shall not be exercised by any Participant for any reason or if such right to purchase shall terminate as provided herein, shares that have not been so purchased hereunder shall again become available for the purposes of the Plan unless the Plan shall have been terminated, but all shares sold under the Plan, regardless of source, shall be counted against the limitation set forth above.

(b) From time to time and without stockholder approval, the Committee may fix a maximum limit on the number of shares that may be acquired by any individual during an Exercise Period under the Plan, which limit shall be effective no earlier than the first Offering Period that commences after the determination of such limit by the Committee; provided, however, that any adjustment to such limit pursuant to Section 16 shall apply to any Exercise Period in progress at the time such adjustment is made.

4. Administration of the Plan.

(a) The Plan shall be administered by a Committee appointed by, and which shall serve at the pleasure of, the Board. The Committee shall consist of two or more directors, each of whom is a "Non-Employee Director" within the meaning of Rule 16b-3 promulgated under the Securities Exchange Act of 1934, as amended, as such rule may be amended from time to time. The Committee shall have authority to interpret the Plan, to prescribe, amend and rescind rules and regulations relating to the Plan, and to make all other determinations necessary or advisable for the administration of the Plan, all of which actions and determinations shall be final, conclusive and binding on all persons.

(b) The Committee may request advice or assistance or employ such other persons as it in its absolute discretion deems necessary or appropriate for the proper administration of the Plan, including, but not limited to employing a brokerage firm, bank or other financial institution to assist in the purchase of shares, delivery of reports or other administrative aspects of the Plan.

(c) Neither the Board nor any Committee, nor any member thereof or person acting at the direction thereof, shall be liable for any act, omission, interpretation, construction or determination made in good faith in connection with the Plan, and all such persons shall be entitled to indemnification and reimbursement by the Company in respect of any claim, loss, damage or expense (including, without limitation, attorneys' fees) arising or resulting therefrom to the fullest extent permitted by law and/or under any directors and officers liability insurance coverage that may be in effect from time to time.

5. Eligibility to Participate in the Plan.

Subject to limitations imposed by Section 423(b) of the Code, any Eligible Employee who is employed by the Company or a Participating Subsidiary on an Enrollment Date shall be eligible to participate in the Plan for the Offering Period beginning on that Enrollment Date.

6. Offering Periods.

During the term of the Plan, the Company will grant options to purchase shares of Common Stock in each Offering Period to all Participants in that Offering Period. The Committee shall determine from time to time, subject to the requirements of Section 423 of the Code, when Offering Periods will be offered during the term of the Plan and shall establish the Enrollment Date(s), the number and duration of the Exercise Period(s), and the Exercise Date(s) for each such Offering Period, which determinations shall be effective no earlier than the first Offering Period that commences after they are made by the Committee and provided, however, that no Offering Period may exceed twenty-four (24) months in duration. To the extent consistent with Section 423 of the Code, the Committee may provide for a new Offering Period to commence prior to the termination of one or more preceding Offering Periods.

7. Election to Participate in the Plan.

(a) Each Eligible Employee may elect to participate in an Offering Period by completing an enrollment agreement on a form approved by and in a manner prescribed by the Committee (or its delegate) or, if the Committee does not require enrollment forms, by otherwise completing such enrollment procedures as the Committee may prescribe. Such agreement must be filed with the Company or such other procedures must be completed, as applicable, prior to the applicable Enrollment Date, unless the Committee establishes an earlier deadline for filing the enrollment form for all Eligible Employees with respect to a given Offering Period. An Eligible Employee may participate in an Offering Period only if, as of the Enrollment Date of such Offering Period, such Eligible Employee is not participating in any prior Offering Period which is continuing at the time of such proposed enrollment.

(b) Payroll deductions for a Participant shall commence on the first payroll date on or following the Enrollment Date and shall end on the last payroll date in the Offering Period to which such authorization is applicable, unless sooner terminated by the Participant as provided in Section 13.

(c) Unless a Participant elects otherwise prior to the Enrollment Date of the immediately succeeding Offering Period, an Eligible Employee who is participating in an Offering Period as of the last Exercise Date of such Offering Period (the "Prior Offering Period") shall be deemed (i) to have elected to participate in the immediately succeeding Offering Period and (ii) to have authorized the same payroll deduction for such immediately succeeding Offering Period as was in effect for such Participant immediately prior to the expiration or termination of the Prior Offering Period.

(d) In its discretion, the Committee may determine (with such determination to be effective no earlier than the first Offering Period that commences after such determination by the Committee) that the participation of all Participants on an Exercise Date in an Offering Period that includes more than one Exercise Period shall terminate and such Participants shall be enrolled in a new Offering Period commencing immediately following such Exercise Date if, during such Offering Period, the Fair Market Value determined as of such Exercise Date within such Offering Period is lower than the Fair Market Value determined as of the Enrollment Date of such Offering Period. In such event, each of such Participants shall be deemed for purposes of this Plan (i) to have elected to participate in such new Offering Period, and (ii) to have authorized the same payroll deduction for such new Offering Period as was in effect for such Participant immediately prior to the termination of the prior Offering Period.

8. Payroll Deductions.

(a) All Participant contributions to the Plan shall be made only by payroll deductions. At the time a Participant files the enrollment agreement with respect to an Offering Period, the Participant shall authorize payroll deductions to be made on each payroll date during the Offering Period in an amount up to 10% (or such other limit as the Committee may establish prior to the start of the applicable Offering Period) of the Eligible Compensation which the Participant receives on each payroll date during such Offering Period. The Committee also may prescribe other limits, rules or procedures for payroll deductions. Unless otherwise provided by the Committee, the amount of such payroll deductions shall be a whole percentage (i.e., 1%, 2%, 3%, etc.) of the Participant's Eligible Compensation.

(b) All payroll deductions made for a Participant shall be deposited in the Company's general corporate account and shall be credited to the Participant's account under the Plan. No interest shall accrue or be credited with respect to the payroll deductions of a Participant under the Plan. A Participant may not make any additional payments into such account. All payroll deductions received or held by the Company under the Plan may be used by the Company for any corporate purpose, and the Company shall not be obligated to segregate such payroll deductions.

(c) A Participant may discontinue participation in the Plan as provided in Section 13. Unless otherwise provided by the Committee in advance of an Offering Period, a Participant may at any time during the Offering Period (but no more than four times in any calendar year) reduce or increase (subject to the limitations of Section 8(a) above) the rate of his or her payroll deductions by completing and filing with the Company a change notice in the form provided by the Company. Any such reduction in the rate of a Participant's payroll deductions shall be effective as soon as administratively feasible following receipt by the Company of the Participant's change notice, but in no event later than the second payroll date of the Company (or Participating Subsidiary, as the case may be) applicable to the Participant following the date that the Participant files the change notice with the Company. Any such increase in the rate of a Participant's payroll deductions shall be effective as of the first date of the next Exercise Period within such Offering Period (or, if such election is made in the final Exercise Period of such Offering Period, the Enrollment Date of the next Offering Period).

9. Grant of Options.

(a) On the Enrollment Date of each Offering Period, subject to the limitations set forth in Sections 3, 9(b) and 18 hereof, each Participant shall be granted an option to purchase on each Exercise Date during such Offering Period up to a number of shares of the Common Stock determined by dividing such Participant's payroll deductions accumulated during the Exercise Period ending on such Exercise Date by the Exercise Price for such Exercise Period (determined as provided in Section 10 below), provided that the number of shares subject to the option shall not exceed five (5) times the number of shares determined by dividing (i) $40,000, by (ii) the Fair Market Value of a share of the Common Stock on the Enrollment Date multiplied by the percentage (not less than 85%) used to calculate the Exercise Price for that Offering Period.

(b) Notwithstanding any provision of the Plan to the contrary, no Participant shall be granted an option under the Plan (i) if, immediately after the grant, such Participant (or any other person whose stock would be attributed to such Participant pursuant to Section 424(d) of the Code) would own stock and/or hold outstanding options to purchase stock possessing 5% or more of the total combined voting power or value of all classes of stock of the Company or of any Parent or any Subsidiary of the Company, or (ii) which permits such Participant's rights to purchase stock under all employee stock purchase plans of the Company, its Subsidiaries and any Parent to accrue at a rate which exceeds $25,000 of fair market value of such stock (determined at the time such option is granted, before giving effect to any discounted purchase price under any such plan) for each calendar year in which such option is outstanding at any time. For purposes of the foregoing clause (ii), a right to purchase stock accrues when it first becomes exercisable during the calendar year.

10. Exercise Price.

The Committee shall establish from time to time the method for determining the Exercise Price for each Offering Period under the Plan in accordance with this Section 10, which determination shall be effective no earlier than the first Offering Period that commences after such determination is made by the Committee. In making its determination, the Committee may provide that the Exercise Price for an Offering Period shall be determined by applying a discount amount (not to exceed 15%) to either (1) the Fair Market Value of a share of Common Stock on the Enrollment Date of such Offering Period, or (2) the Fair Market Value of a share of Common Stock on the applicable Exercise Date, or (3) the lesser of the Fair Market Value of a share on the Enrollment Date of such Offering Period or the Fair Market Value of a share on the applicable Exercise Date. Notwithstanding anything to the contrary in the preceding provisions of this Section 10, in no event shall the Exercise Price per share be less than the par value of a share of Common Stock.

11. Exercise of Options.

Unless a Participant withdraws from the Plan as provided in Section 13, the Participant's option for the purchase of shares will be exercised automatically on each Exercise Date of the Offering Period, and the maximum number of full shares subject to option will be purchased for the Participant at the applicable Exercise Price with the accumulated payroll deductions in the Participant's account. Any amount remaining in the Participant's account after an Exercise Date that is not sufficient to purchase a whole share shall be held in the account until the next Exercise Date. In the event that an Exercise Period has been over-subscribed or that any other applicable Plan limit has been exceeded by a Participant in an Exercise Period, any amount remaining in such Participant's account shall be refunded to the Participant as soon as administratively practicable after the end of the Offering Period.

12. Delivery of Shares.

As soon as administratively practicable after the Exercise Date, the Company shall, in its discretion, either deliver to each Participant a certificate representing the shares of Common Stock purchased upon exercise of his or her option, provide for the crediting of such shares of Common Stock in book entry form in the name of the Participant, or provide for an alternative arrangement for the delivery of such shares of Common Stock to a broker or recordkeeping service for the benefit of the Participant. In the event the Company is required to obtain from any commission or agency authority to issue any such certificate or otherwise deliver such shares, the Company will seek to obtain such authority. If the Company is unable to obtain from any such commission or agency authority which counsel for the Company deems necessary for the lawful issuance of any such certificate or other delivery of such Common Shares, or if for any reason the Company cannot issue or deliver shares of Common Stock and satisfy Section 20(a), the Company shall be relieved from liability to any Participant except that the Company shall return to each Participant to whom such shares of Common Stock cannot be issued or delivered the amount of the balance credited to his or her account that would have otherwise been used for the purchase of such shares.

13. Withdrawal; Termination of Employment.

(a) A Participant may withdraw all but not less than all of the payroll deductions credited to the Participant's account under the Plan at any time by giving written notice to the Company. All of the Participant's payroll deductions credited to the Participant's account will be paid to him or her promptly after receipt of the Participant's notice of withdrawal, the Participant's participation in the Plan will be automatically terminated, and no further payroll deductions for the purchase of shares will be made. Payroll deductions will not resume on behalf of a Participant who has withdrawn from the Plan unless written notice is delivered to the Company within the open enrollment period preceding the commencement of an Exercise Period directing the Company to resume payroll deductions.

(b) Upon termination of the Participant's Continuous Employment during an Exercise Period for any reason, including retirement or death, the payroll deductions credited to the Participant's account for that Exercise Period will be returned to the Participant or, in the case of death, to the Participant's estate, and the Participant's options to purchase shares under the Plan will be automatically terminated as of the date of such termination of Continuous Employment.

(c) In the event a Participant fails to maintain Continuous Employment for at least twenty (20) hours per week during an Offering Period, the Participant will be deemed to have elected to withdraw from the Plan, the payroll deductions credited to the Participant's account will be returned to the Participant, and the Participant's options to purchase shares under the Plan will be terminated.

(d) A Participant's withdrawal from an Offering Period will not have any effect upon the Participant's eligibility to participate in a succeeding Offering Period or in any similar plan which may hereafter be adopted by the Company.

14. Transferability.

Neither payroll deductions credited to a Participant's account nor options to purchase Common Stock granted under the Plan may be transferred, assigned, pledged or otherwise disposed of by a Participant other than by will or the laws of descent and distribution. Options granted under the Plan are exercisable during a Participant's lifetime only by the Participant.

15. Reports.

Individual accounts will be maintained for each Participant in the Plan. Statements of account will be made available to Participants promptly following each Exercise Date, which statements will set forth the amounts of payroll deductions, the per share Exercise Price, the number of shares purchased and the remaining cash balance, if any.

16. Adjustments Upon Changes in Capitalization.

(a) Subject to Section 16(b), upon (or, as may be necessary to effect the adjustment, immediately prior to): any reclassification, recapitalization, stock split (including a stock split in the form of a stock dividend) or reverse stock split; any merger, combination, consolidation, or other reorganization; any spin-off, split-up, or similar extraordinary dividend distribution in respect of the Common Stock; or any exchange of Common Stock or other securities of the Company, or any similar, unusual or extraordinary corporate transaction in respect of the Common Stock; then the Committee shall equitably and proportionately adjust (1) the number and type of shares of Common Stock (or other securities) that thereafter may be made the subject of options (including the specific share limits, maximums and numbers of shares set forth elsewhere in this Plan), (2) the number, amount and type of shares of Common Stock (or other securities or property) subject to any outstanding options, and (3) the Exercise Price of any outstanding options, in each case to the extent necessary to preserve (but not increase) the level of incentives intended by this Plan and the then-outstanding options.

(b) In the event of the proposed dissolution or liquidation of the Company, each Offering Period then in progress will terminate immediately prior to the consummation of such proposed action, unless otherwise provided by the Committee. Upon any event in which the Company does not survive, or does not survive as a public company in respect of its Common Stock (including, without limitation, a merger, combination, consolidation, or other reorganization; any exchange of Common Stock or other securities of the Company; a sale of all or substantially all the business, stock or assets of the Company; or other event in which the Company does not survive or does not survive as a public company in respect of its Common Stock), then, unless the Committee provides that each option under the Plan shall be assumed or an equivalent option shall be substituted by such successor corporation or entity or a parent or subsidiary of such successor corporation or entity, each Exercise Period then in progress shall be shortened and a new Exercise Date shall be set by the Committee to occur upon or immediately prior to such transaction or event (the "New Exercise Date"), as of which date the Plan and any Exercise Period and related Offering Period then in progress will terminate. The New Exercise Date shall be on or before the date of consummation of the transaction and the Committee shall notify each participant in writing, at least ten (10) days prior to the New Exercise Date (to the extent administratively practicable), that the Exercise Date for his or her option has been changed to the New Exercise Date and that his or her option will be exercised automatically on the New Exercise Date, unless prior to such date he or she has withdrawn from the Offering Period as provided in Section 13. The Exercise Price on the New Exercise Date shall be determined as provided in Section 10 hereof, and for purposes of determining such Exercise Price, the New Exercise Date shall be treated as the "Exercise Date."

(c) In all cases, the Committee shall have full discretion to exercise any of the powers and authority provided under this Section 16, and the Committee's actions hereunder shall be conclusive and binding on all persons. No fractional shares of stock shall be issued under the Plan pursuant to any adjustment authorized under the provisions of this Section 16.

17. Amendment of the Plan.

The Board may at any time, or from time to time, amend or suspend the Plan, in whole or in part and without notice. Stockholder approval for any amendment shall not be required, except to the extent required by law or applicable stock exchange rules, or required under Section 423 of the Code in order to preserve the intended tax consequences of the Plan. No options may be granted during any suspension of the Plan or after a termination of the Plan pursuant to Section 18(b) below, but the Committee will retain jurisdiction as to options then outstanding in accordance with the terms of the Plan. No amendment, suspension or termination pursuant to this Section 17 or Section 18 shall, without written consent of the Participant, affect in any manner materially adverse to the Participant any right or benefits of such Participant or obligations of the Company under any option granted under the Plan prior to the effective date of such change; provided that the Board may amend, suspend or terminate the Plan as to any outstanding options granted under the Plan for an Offering Period, effective as of any Exercise Date within that Offering Period, without the consent of the Participants to whom such options were granted. In no event shall changes contemplated by Section 7(d) or Section 16 be deemed to constitute changes or amendments requiring Participant consent.

18. Termination of the Plan.

The Plan and all rights of Employees hereunder shall terminate:

(a) on the Exercise Date that Participants would become entitled to purchase a number of shares greater than the number of reserved shares remaining available for purchase under the Plan if the final sentence in this Section 18 were not applied; or

(b) at any time, at the discretion of the Board.

In the event that the Plan terminates under circumstances described in Section 18(a) above, reserved shares remaining as of the termination date shall be sold to Participants on a pro rata basis.

19. Notices.

All notices or other communications by a Participant to the Company under or in connection with the Plan shall be deemed to have been duly given when received in the form specified by the Company at the location, or by the person, designated by the Company for the receipt thereof.

20. Conditions Upon Issuance of Shares.

(a) The Plan, the grant and exercise of options to purchase shares of Common Stock under the Plan, and the Company's obligation to sell and deliver shares upon the exercise of options to purchase shares shall be subject to all applicable federal, state, local and foreign laws, rules and regulations, and to such approvals by any listing, regulatory or governmental agency as may, in the opinion of counsel for the Company, be necessary or advisable in connection therewith. The person acquiring any securities under this Plan will, if requested by the Company or one of its Subsidiaries, and as a condition precedent to the exercise of his or her option, provide such assurances and representations to the Company or one of its Subsidiaries as the Committee may deem necessary or desirable to assure compliance with all applicable legal and accounting requirements.

(b) The Company may make such provisions as it deems appropriate for withholding by the Company pursuant to federal, state or local income tax laws of such amounts as the Company determines it is required to withhold in connection with the purchase or sale by a Participant of any Common Stock acquired pursuant to the Plan. The Company shall have the right at its option to (1) require the Participant to pay or provide for payment of the amount of any taxes which the Company or any Subsidiary may be required or permitted to withhold with respect to such event or (2) deduct from any amount otherwise payable in cash to the Participant (or the Participant's personal representative or beneficiary, as the case may be) the amount of any taxes which the Company or any Subsidiary may be required or permitted to withhold with respect to such event. The Company may require a Participant to satisfy any relevant tax requirements before authorizing any issuance of Common Stock to such Participant.

21. Employees' Rights.

(a) Nothing in the Plan (or in any other document related to the Plan) will confer upon any Eligible Employee or Participant any right to continue in the employ or other service of the Company or any Subsidiary, constitute any contract or agreement of employment or other service or effect an employee's status as an employee at will, nor shall interfere in any way with the right of the Company or any Subsidiary to change such person's compensation or other benefits or to terminate his or her employment or other service, with or without cause. Nothing contained in this Section 21(a), however, is intended to adversely affect any express independent right of any such person under a separate employment or service contract.

(b) No Participant or other person will have any right, title or interest in any fund or in any specific asset (including shares of Common Stock) of the Company or any Subsidiary by reason of any option hereunder. Neither the provisions of the Plan (or of any other document related to the Plan), nor the creation or adoption of the Plan, nor any action taken pursuant to the provisions of the Plan will create, or be construed to create, a trust of any kind or a fiduciary relationship between the Company or any Subsidiary and any Participant, beneficiary or other person. To the extent that a Participant, beneficiary or other person acquires a right to receive payment pursuant to the Plan, such right will be no greater than the right of any unsecured general creditor of the Company.

(c) A Participant will not be entitled to any privilege of stock ownership as to any shares of Common Stock not actually delivered to and held of record by the Participant. Except as expressly required by Section 16(a) or otherwise expressly provided by the Committee, no adjustment will be made for dividends or other rights as a stockholder for which a record date is prior to such date of delivery.

22. Miscellaneous.

(a) The Plan, the options granted hereunder and any other documents related to the Plan shall be governed by, and construed in accordance with, the laws of the State of Delaware, notwithstanding any Delaware or other conflict of law provision to the contrary.

(b) If any provision of the Plan shall be held by a court of competent jurisdiction to be invalid and unenforceable, the remaining provisions of the Plan shall continue in effect.

(c) Captions and headings are given to the sections of the Plan solely as a convenience to facilitate reference. Such captions and headings shall not be deemed in any way material or relevant to the construction of interpretation of the Plan or any provision hereof.

(d) The adoption of the Plan shall not affect any other Company or Subsidiary compensation or incentive plans in effect. Nothing in the Plan will limit or be deemed to limit the authority of the Board or Committee (1) to establish any other forms of incentives or compensation for employees of the Company or any Subsidiary (with or without reference to the Common Stock), or (2) to grant or assume options (outside the scope of and in addition to those contemplated by the Plan) in connection with any proper corporate purpose, to the extent consistent with any other plan or authority. Benefits received by a Participant under an option granted pursuant to the Plan shall not be deemed a part of the Participant's compensation for purposes of the determination of benefits under any other employee welfare or benefit plans or arrangements, if any, provided by the Company or any Subsidiary, except where the Committee or the Board (or the Board of Directors of the Subsidiary that sponsors such plan or arrangement, as applicable) expressly otherwise provides or authorizes in writing.

(e) The Committee may also adopt rules, procedures or sub-plans applicable to particular Subsidiaries or locations, which sub-plans may be designed to be outside the scope of Section 423 of the Code and need not comply with the otherwise applicable provisions of the Plan.

**SANDISK CORPORATION**
**EXECUTIVE SEVERANCE PLAN**

## 1. PURPOSE; TERM

Effective as of [•] (the "Effective Date"), Sandisk Corporation, a Delaware corporation (the "Company"), adopted this Sandisk Corporation Executive Severance Plan (the "Plan"). The Company established the Plan to provide severance benefits to Participants (as defined below) whose employment with the Employer (as defined below) terminates under certain circumstances as described more fully in the Plan. The Plan shall remain in effect until modified or terminated pursuant to Section 8.

## 2. DEFINITIONS

"Administrator" means the Committee or any delegate of such committee acting pursuant to Section 7.

"Base Pay" means the Participant's wages earned on a monthly basis, determined as of the employment termination date, excluding incentive payments and commissions.

"Board" means the Board of Directors of the Company.

"Cause" means the occurrence or existence of any of the following with respect to a Participant: (a) the Participant's conviction by, or entry of a plea of guilty or nolo contendere in, a court of competent and final jurisdiction for any crime involving moral turpitude or any felony punishable by imprisonment in the jurisdiction involved; (b) whether prior or subsequent to the Effective Date, the Participant's willful engaging in dishonest or fraudulent actions or omissions; (c) the Participant's failure or refusal to perform his or her duties as reasonably required by the Employer; (d) negligence, insubordination, violation by the Participant of any duty (of loyalty or otherwise) owed to the Employer, or any other material misconduct on the part of the Participant; (e) conduct by the Participant which, upon reasonable investigation, is determined by the Company to violate the Employer's anti-harassment, discrimination or retaliation policies; (f) conduct endangering, or likely to endanger, the health or safety of another employee; (g) falsifying or misrepresenting information on the records of the Employer; (h) the Participant's physical destruction or theft of substantial property or assets of the Employer; or (i) breach of any policy of, or agreement with, the Employer applicable to the Participant or to which the Participant is otherwise bound.

"Code" means the United States Internal Revenue Code of 1986, as amended.

"Code Section 409A" means Section 409A of the Code.

"Committee" means the Compensation and Talent Committee of the Board.

"Disability" shall occur upon the Participant becoming eligible for disability benefits under the Employer's long-term disability plan, or, if earlier, upon the Participant becoming eligible for Social Security disability benefits or any comparable state-provided disability benefits for Participants located in non-United States jurisdictions.

"Eligible Employee" means an individual who is an employee on the payroll of the Employer. An Eligible Employee shall not include any person providing services to the Employer through a temporary service or on a leased basis or who is engaged by the Employer as an independent contractor, consultant, or otherwise as a person who is not an employee for purposes of applicable withholding taxes, as evidenced by payroll records or a written agreement with the individual, regardless of any contrary governmental agency determination or judicial holding relating to such status or tax withholding.

"Employer" means the Company and its Subsidiaries. For purposes of determining the entity responsible for making payments to a Participant, "Employer" shall mean the legal entity on whose payroll records the Participant is listed.

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

"Exchange Act" means the U.S. Securities Exchange Act of 1934, as amended, and the related rules and regulations.

"JAMS" means the Judicial Arbitration and Mediation Services, Inc., or its successor.

"Participant" means an Eligible Employee who has been designated by the Board or Administrator to participate in the Plan, in accordance with Section 3.

"Release" means a release of any and all claims in a form and manner acceptable to the Company.

"Separation from Service" with respect to a Participant, shall mean that the Participant dies, retires, or otherwise has a termination of employment with the Employer that constitutes a "separation from service" within the meaning of Treasury Regulation Section 1.409A-1(h)(1), without regard to the optional alternative definitions available under such regulation.

"Severance Benefits" means the severance payments and benefits specified for a Participant in Appendix A-1 or Appendix A-2, as applicable.

"Subsidiary" means any corporation or other entity a majority of whose outstanding voting stock or voting power is beneficially owned directly or indirectly by the Company.

"U.S. Eligible Employee" means any Eligible Employee who is paid from the United States payroll of the Employer.

## 3. PARTICIPATION

The Administrator may, from time to time, designate Eligible Employees as Participants; provided, that the Administrator shall limit the group of all persons eligible to participate in the Plan to a "select group of management or highly compensated employees" within the meaning of 29 C.F.R. 2520-104-23 or any similar successor provision.

The Administrator designates Participants into one of the following three categories: Tier 1 Participant perAppendix A-1, Tier 2 Participant per Appendix A-2 or Tier 3 Participant per Appendix A-2. The Administrator may, in its sole discretion, remove a Participant from the Plan or modify existing Participant tier designations, regardless of the general designations in Appendix A-1 or Appendix A-2.

**4. ACCRUED RIGHTS; SEVERANCE BENEFITS**

4.1 Accrued Rights. Upon a termination of the Participant's employment for any reason, the Participant (or the Participant's estate) shall be entitled to receive the sum of the Participant's Base Pay through the date of termination that is unpaid; the monetary equivalent of any accrued but unused vacation days; any reasonable business expenses incurred in the performance of his or her duties to the Employer in accordance with applicable expense reimbursement policies and procedures and that remain unpaid as of the date of termination; and any amount owed to the Participant in connection with employee benefit plans (including without limitation, any disability or life insurance benefit plans, programs or arrangements), payable in accordance with the terms and conditions of such employee benefit plans.

4.2 Severance Benefits. A Participant whose employment with the Employer is terminated without Cause (excluding by reason of death or Disability) shall be entitled to receive the Severance Benefits from his or her Employer subject to the conditions set forth in Section 5. In no event shall a Participant become entitled to a duplication of benefits under the Plan and any other severance plan or program of the Employer (including the Company's Change in Control Severance Plan). In the event a Participant is eligible to receive benefits under the Plan and any other severance plan or program of the Employer (including the Company's Change in Control Severance Plan), Participant shall only receive benefits pursuant to the arrangement that yields the greatest benefit to the Participant. Notwithstanding any provision of the Plan to the contrary, to the extent that any Participant is entitled to any period of paid notice under Federal or state law including, but not limited to, the Worker Adjustment Retraining Notification Act, 29 U.S.C. Sections 2101 et seq., the benefits and amounts payable under the Plan shall be reduced (but not below zero) by the Base Pay received by the Participant during the period of such paid notice.

4.3 Specified Employees. It is the Company's intent that the Severance Benefits be exempt from Section 409A as a "short-term deferral" or separation pay due to an involuntary separation from service within the meaning of Code Section 409A. If the Severance Benefits (or any portion thereof) constitute non-exempt "deferred compensation" (within the meaning of Section 409A), then a Participant who is a "specified employee" within the meaning of Code Section 409A shall not be entitled to any such benefits hereunder until the earlier of (i) the date which is six months after the Participant's Separation from Service for any reason other than death, or (ii) the date of the Participant's death. Any amounts otherwise payable to the Participant upon or in the six-month period following the Participant's Separation from Service that are not paid by reason of this Section 4.3 shall be paid (without interest) as soon as practicable (and in all events within 30 days) after (x) the required six-month period or, if earlier (y) the date of the Participant's death.

## 5. CONDITIONS TO SEVERANCE BENEFITS

5.1 Release. The Employer's obligation to pay the Severance Benefits to a Participant is subject to: (i) the Participant's execution of a Release; and (ii) such Release not being revoked by the Participant (pursuant to any revocation rights afforded by applicable law) or otherwise rendered unenforceable by the Participant. The Employer will have no obligation to pay any of the Severance Benefits to the Participant under the Plan until such Release becomes effective.

5.2 Departure and Entitlement Procedure. As a condition to receiving the Severance Benefits, the Participant must return and deliver to the Employer all Employer property within seven days of the Participant's termination date.

5.3 Other Employment; Limitation On Employee Rights. A Participant shall not be required to mitigate the amount of any payments provided by the Plan by seeking employment or otherwise. The Employer reserves the right to offset the benefits payable under the Plan by any advanced monies the Participant owes the Employer. The Plan shall not give any employee the right to be retained in the service of the Employer or to interfere with or restrict the right of the Employer to discharge any employee at any time, with or without Cause.

## 6. RESOLUTION OF DISPUTES

6.1 Claim. Any Participant or other person who believes he or she is entitled to any payment under the Plan (referred to in this section as "claimant") may submit a claim in writing to the Administrator within 90 days of the earlier of (i) the date the claimant learned the amount of his or her benefits under the Plan or (ii) the date the claimant learned that he or she will not be entitled to any benefits under the Plan. If the claim is denied (in full or in part), the claimant will be provided a written notice explaining the specific reasons for the denial and referring to the provisions of the Plan on which the denial is based. The notice also will describe any additional information needed to support the claim and the Plan's procedures for appealing the denial. The denial notice will be provided within 90 days after the claim is received. If special circumstances require an extension of time (up to 90 days), written notice of the extension will be given within the initial 90-day period. This notice of extension will indicate the special circumstances requiring the extension of time and the expected date of the Administrator's decision.

6.2 Appeal Procedure. If the claim is denied, the claimant (or his or her authorized representative) may apply in writing to the Administrator for a review of the decision denying the claim. Review must be requested within 60 days following the date the claimant received the written notice of their claim denial or else the claimant loses the right to review. The claimant then has the right to review and obtain copies of all documents and other information relevant to the claim, upon request and at no charge, and to submit issues and comments in writing within ten business days after receiving documents and other information relevant to the claim. The Administrator will provide written notice of its decision on review within 60 days after it receives a review request. If additional time (up to 60 days) is needed to review the request, the claimant will be given written notice of the reason for the delay. This notice of extension will indicate the special circumstances requiring the extension of time and the expected date of the Administrator's decision. If the claim is denied (in full or in part), the claimant will be provided a written notice explaining the specific reasons for the denial and referring to the provisions of the Plan on which the denial is based. The notice also will include a statement that the claimant will be provided, upon request and free of charge, reasonable access to, and copies of, all documents and other information relevant to the claim and a statement regarding the claimant's right to bring an action under Section 502(a) of ERISA.

6.3 Arbitration. A claimant who followed the procedures in Sections 6.1 through 6.2, but has not obtained full relief on his or her claim for benefits, may, within 90 days following his or her receipt of the Administrator's written decision on review pursuant to Section 6.2, apply in writing to the Administrator for expedited and binding arbitration of his or her claim in a county no more than 45 miles from the Company's headquarters (unless another location has been agreed upon between Participant and Company in writing), before a sole arbitrator selected from JAMS, or if JAMS is no longer able to supply the arbitrator, such arbitrator shall be selected from the American Arbitration Association, and shall be conducted in accordance with the provisions of California Code of Civil Procedure §§ 1280 et seq. as the exclusive forum for the resolution of such dispute. Any award or relief granted by the arbitrator shall be final and binding on the parties hereto and may be enforced by any court of competent jurisdiction. Any rights to trial by jury in any action, proceeding or counterclaim brought by any of the Company, a Subsidiary or a Participant in connection with any matter whatsoever arising out of or in any way connected with the Plan are hereby waived. The Employer shall be responsible for payment of the forum costs of any arbitration hereunder, including the arbitrator's fee.

6.4 Legal Fees and Expenses. If any dispute arises between the parties with respect to the interpretation or performance of the Plan, the prevailing party in any arbitration or proceeding shall be entitled to recover from the other party its attorneys' fees or court costs and other expenses incurred in connection with any such proceeding. Amounts, if any, paid to the Participant under this Section 6.4 shall be in addition to all other amounts due to the Participant pursuant to the Plan.

## 7. ADMINISTRATION

The Plan shall be administered and operated by the Administrator. The Administrator is empowered to construe and interpret the provisions of the Plan and to decide all questions of eligibility for benefits under the Plan and shall make such determinations in its sole and absolute discretion. The Administrator may at any time delegate to any other named person or body, or reassume from any delegate, any of its responsibilities or administrative duties with respect to the Plan.

## 8. AMENDMENT

The Administrator (or the Board) reserves the right to amend, suspend and/or terminate the Plan at any time in its sole discretion. No amendment, suspension or termination shall diminish benefits payable to a Participant who is already entitled to payment under the Plan at the time of such amendment, suspension or termination.

## 9. TAXES

Each Participant shall be solely responsible for his or her own tax liability with respect to participation in the Plan. The Employer may withhold from any amounts payable under the Plan such federal, state and local income, employment, or other applicable taxes as may be required to be withheld.

## 10. GENERAL

10.1 Assignment by Participants. None of the amounts payable pursuant to the Plan shall be subject to any claim of any creditor and shall not be subject to attachment or garnishment or other legal process by any creditor. Participants may not alienate, anticipate, commute, pledge, encumber or assign any of the amounts payable pursuant to the Plan. The amounts payable pursuant to the Plan shall inure to the benefit of and be enforceable by each Participant's personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees, and legatees.

10.2 Binding Effect. The Employer will require any successor to all or substantially all of the business and/or assets of the Company or applicable Subsidiary to expressly assume and agree to perform all of the obligations of the Company or applicable Subsidiary under the Plan (including the obligation to cause any subsequent successor to also assume the obligations of the Plan) unless such assumption occurs by operation of law. For the avoidance of doubt, in the event that a successor of a Subsidiary assumes the Subsidiary's obligations under the Plan, the Company will have no obligations under the Plan with respect to the Participants employed by such Subsidiary.

10.3 No Waiver. No waiver of any term, provision or condition of the Plan, whether by conduct or otherwise, in any one or more instances shall be deemed or be construed as a further or continuing waiver of any such term, provision or condition or as a waiver of any other term, provision or condition of the Plan.

10.4 Expenses; Unsecured General Creditor. The benefits and costs of the Plan shall be paid by the Employer out of its general assets. The status of a claim against the Employer with respect to the benefits provided by the Plan shall be the same as the status of a claim against the Employer by any general or unsecured creditor.

10.5 ERISA. The Plan is an unfunded compensation arrangement for a select group of management or highly compensated employees of the Company or a Subsidiary and any exemptions under ERISA applicable to such an arrangement shall be applicable to the Plan.

10.6 WARN Act. Benefits payable under the Plan are intended to satisfy, where applicable, any Employer obligations under the Federal Worker Adjustment and Retraining Notification Act and any similar obligations that the Employer may have under any successor or other severance pay statute.

10.7 Governing Law. The provisions of the Plan will be construed, administered and enforced in accordance with ERISA and, to the extent applicable, the laws of the State of California without regard to its choice of law provisions.

10.8 Severability. If any provision of the Plan is held to be illegal, invalid or unenforceable under any present or future law, and if the rights or obligations of any party hereto under the Plan will not be materially and adversely affected hereby, (i) such provision will be fully severable, (ii) the Plan will be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof, (iii) the remaining provisions of the Plan will remain in full force and effect and will not be affected by the illegal, invalid or unenforceable provision or by its severance from here and (iv) in lieu of such illegal, invalid or unenforceable provision, there will be added automatically as a part of the Plan a legal, valid and enforceable provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible.

10.9 Additional Information.

| | |
|---|---|
| **Plan Name:** | Sandisk Corporation Executive Severance Plan |
| **Plan Sponsor:** | Sandisk Corporation |
| **Identification Numbers:** | **EIN:** 99-1508671 |
| | **PLAN:** 001 |
| **Plan Year:** | January 1 to December 31 |
| **Plan Administrator:** | Sandisk Corporation<br>951 Sandisk Drive<br>Milpitas, California 95035<br>Attention: Compensation and Talent Committee<br>(408) 801-1000 |
| **Agent for Service of Legal Process:** | Sandisk Corporation<br>251 Little Falls Drive<br>Wilmington, Delaware 19807<br>Attention: Corporation Service Company |
| **Type of Plan:** | Severance Plan/Employee Welfare Benefit Plan |
| **Plan Costs:** | The cost of the Plan is paid by the Company. |

10.10 Statement of ERISA Rights. As a Participant under the Plan, you have certain rights and protections under ERISA:

You may examine (without charge) all Plan documents, including any amendments and copies of all documents filed with the U.S. Department of Labor. These documents are available for your review in the Company's Human Resources Department.

You may obtain copies of all Plan documents and other Plan information upon written request to the Administrator. A reasonable charge may be made for such copies.

In addition to creating rights for Participants, ERISA imposes duties upon the people who are responsible for the operation of the Plan. The people who operate the Plan (called "fiduciaries") have a duty to do so prudently and in the interests of you and the other Participants. No one, including the Company or any other person, may fire you or otherwise discriminate against you in any way to prevent you from obtaining a benefit under the Plan or exercising your rights under ERISA. If your claim for payments or benefits under the Plan is denied, in whole or in part, you must receive a written explanation of the reason for the denial. You have the right to have the denial of your claim reviewed. The claim review procedure is explained in Section 6 above.

Under ERISA, there are steps you can take to enforce the above rights. For example, if you request materials and do not receive them within 30 days, you may file suit in a federal court. In such a case, the court may require the Administrator to provide the materials and to pay you up to $110 a day until you receive the materials, unless the materials were not sent due to reasons beyond the control of the Administrator. If you have a claim which is denied or ignored, in whole or in part, you may file suit in a federal court. If it should happen that you are discriminated against for asserting your rights, you may seek assistance from the U.S. Department of Labor, or you may file suit in a federal court.

In any case, the court will decide who will pay court costs and legal fees. If you are successful, the court may order the person you have sued to pay these costs and fees. If you lose, the court may order you to pay these costs and fees, for example, if it finds that your claim is frivolous.

If you have any questions regarding the Plan, please contact the Administrator. If you have any questions about this statement or about your rights under ERISA, you may contact the nearest area office of the Employee Benefits Security Administration (formerly the Pension and Welfare Benefits Administration), U.S. Department of Labor, listed in your telephone directory, or the Division of Technical Assistance and Inquiries, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W. Washington, D.C. 20210. You also may obtain certain publications about your rights and responsibilities under ERISA by calling the publications hotline of the Employee Benefits Security Administration.

10.11 Section 280G.

Notwithstanding anything to the contrary in the Plan, if a Participant is a "disqualified individual" (as defined in Section 280G(c) of the Code), and the Severance Benefits provided for under the Plan, together with any other payments and benefits which the Participant has the right to receive from the Employer, would constitute a "parachute payment" (as defined in Section 280G(b)(2) of the Code), then the Severance Benefits provided for under the Plan shall be either (a) reduced (but not below zero) so that the present value of such total amounts and benefits received by the Participant from the Employer will be $1.00 less than three times the Participant's "base amount" (as defined in Section 280G(b)(3) of the Code) and so that no portion of such amounts and benefits received by the Participant shall be subject to the excise tax imposed by Section 4999 of the Code, or (b) paid in full, whichever produces the better net after-tax position to the Participant (taking into account any applicable excise tax under Section 4999 of the Code and any other applicable taxes). The determination as to whether any such reduction in the amount of the payments provided hereunder is necessary shall be made by the Employer in good faith. If a reduced payment is made or provided and through error or otherwise that payment, when aggregated with other payments and benefits from the Employer used in determining if a parachute payment exists, exceeds $1.00 less than three times the Participant's base amount, then the Participant shall immediately repay such excess to the Employer upon notification that an overpayment has been made. Nothing in the Plan shall require the Employer to be responsible for, or have any liability or obligation with respect to, the Participant's excise tax liabilities under Section 4999 of the Code.

**Appendix A-1**

A Participant with a title of Executive Vice President (or its equivalent in the internal records of the Employer) or who is an officer of the Company within the meaning of Section 16 of the Exchange Act shall be a Tier 1 Participant. Such a Participant shall be eligible to receive the Severance Benefits described in this Appendix A-1.

1.1 Severance Benefits:

(a) Cash Severance Payment. A Participant shall receive a severance payment equal to the Participant's Base Pay multiplied by 24 months.

(b) Earned Yet Unpaid Incentive Payments. A Participant shall receive payment for any incentive that was earned through a prior incentive cycle but has not yet been paid.

(c) Prorated Incentive Payments. A Participant shall receive a pro-rata portion of an incentive for the incentive cycle in which the Participant's date of termination occurs. Such proration shall assume target performance and shall be based on the following formula: a fraction with a numerator equal to the total number of calendar days from the first day of the incentive cycle through and including the Participant's termination of employment and a denominator equal to the total number of calendar days from the first day of the incentive cycle through and including the last day of the incentive cycle.

(d) Equity Awards. Equity awards shall be treated as follows:

(i) For equity awards that are only subject to time-based vesting, a prorated portion of the award will vest and become exercisable or payable, as applicable, based on the following formula:

(A) (x) a fraction with a numerator equal to the total number of calendar days from the grant date of the award through and including the Participant's termination of employment and a denominator equal to the total number of calendar days from the grant date of the award through and including the last scheduled vesting date applicable to the award ***multiplied by*** (y) the total number of shares of common stock of the Company originally subject to the award (subject to adjustment as provided in the Plan, if applicable, but before taking into account any crediting (if applicable) of dividend equivalent rights); ***minus***

(B) the number of shares of common stock of the Company that have already vested or have already become exercisable, as applicable on or prior to the Participant's termination of employment (before taking the acceleration contemplated by this section into account and before taking into account any crediting (if applicable) of dividend equivalent rights).

Any credited dividend equivalent rights will also become proportionately vested.

(ii) For equity awards that are subject to performance-based vesting, the award shall be payable in accordance with the original schedule set forth in the applicable award agreement, with no acceleration, and the award will vest as follows:

(A) With respect to any such award for which the applicable performance period has not ended as of the date of the Participant's termination of employment, the award will remain outstanding and vest, if at all, based on the actual achievement of the applicable performance goal(s) (with the number of shares vesting determined before taking the crediting of (if applicable) dividend equivalent rights into account) provided that the number of shares of common stock that becomes vested, if any, will be prorated based on the length of employment during the applicable performance period. Any credited dividend equivalent rights will also remain outstanding and eligible to vest based on the actual achievement of the applicable performance goal(s).

The prorated portion is a fraction with a numerator equal to the total number of calendar days from the first day of the applicable performance period through and including the Participant's termination of employment and a denominator equal to the total number of calendar days in the applicable performance period.

(B) With respect to any such award for which the applicable performance period has ended as of the date of the Participant's termination of employment, vesting shall be based on the actual achievement of the applicable performance goal(s).

The post-termination settlement and exercisability, as applicable, of such equity awards, as well any payments made in connection with such equity awards, shall be governed by the applicable stock incentive plan, as amended from time to time, and/or award agreement. In the event of a conflict regarding equity award treatment between an applicable award agreement and the Plan, the award agreement controls.

(e) Outplacement Services. A Participant who is a U.S. Eligible Employee as of the date of such Participant's termination of employment shall be eligible for outplacement services for up to 12 months following the Participant's termination of employment. Such services shall be provided by a vendor chosen by the Employer in its sole discretion.

(f) COBRA Premium Payment. With respect to a Participant who is a U.S. Eligible Employee as of the date of such Participant's termination of employment, the Employer shall pay to the Participant a cash payment in an amount equal to the applicable COBRA premium payments (as reasonably determined by the Administrator) that would be payable by the Participant to continue the Participant's company-provided medical, dental, and/or vision coverage existing as of the Participant's termination date for a period of 18 months following such Participant's termination of employment. For purposes of clarity, such cash payment shall be made regardless of whether the Participant actually elects coverage under COBRA, and shall be determined as of the Participant's termination of employment and not impacted by, or adjusted for, events occurring after such date (including, without limitation, changes in coverage or premiums).

1.2. Payment Timing. Subject to Section 4.3 of the Plan, the payments set forth in Section 1.1 (a), (b), (c) and (f) shall be paid to the Participant in a single lump sum cash payment, subject to applicable tax withholding, no later than the 30th day following the date on which the Release becomes effective; provided, that if the period during which the payment of such Severance Benefits can be initiated commences in one taxable year and ends in a second taxable year, such payment shall be made in the second taxable year to the extent required to avoid any tax, interest or penalties under Code Section 409A.

1.3 Participants who are Not U.S. Eligible Employee. The Administrator delegates to the Company's Chief Human Resources Officer (or equivalent role or any other person the Administrator deems appropriate) the duties of the Administrator set forth in Section 1.3(a) and Section 1.3(b). If a Participant who is not a U.S. Eligible Employee is eligible to receive payments or benefits upon a termination of employment under any applicable local law or Employer policy ("Local Severance"), then the payments and benefits described in this appendix shall be modified as follows:

(a) Benefit Comparison. The Administrator shall compare the payments and benefits payable to the Participant under the Local Severance (excluding the value of any equity awards that accelerate in connection with the Participant's termination of employment) (the "Local Severance Benefits") with the payments and benefits set forth in Section 1.1 of this appendix applicable to the Participant (the "Plan Severance Benefits"). The Administrator has sole discretion to determine the calculation of the Local Severance Benefits.

(b) Benefit Calculation. In the event the value of the Local Severance Benefits equals or exceeds the Plan Severance Benefits, as determined by the Administrator in its sole discretion, then the Participant shall not be eligible to receive any portion of the Plan Severance Benefits. In the event the value of the Local Severance Benefits is less than the value of the Plan Severance Benefits, as determined by the Administrator in its sole discretion, then the Participant shall receive the Plan Severance Benefits (excluding the benefits set forth in 1.1(e) (outplacement services) and 1.1(f) (COBRA premium payments) in this Appendix) in place of any Local Severance Benefits. In the event a Participant is eligible to receive a cash payment under this Section 1.3(b), then references in the Plan to "Severance Benefits" shall be deemed to refer to such cash payment.

(c) Payment Timing. In the event a Participant is eligible to receive a cash payment under the immediately preceding Section 1.3(b), then such payment shall be paid to the Participant in a single lump sum cash payment no later than the 30th day following the date on which the Release becomes effective, subject to applicable tax withholding, local timing rules and subject to Section 4.3; provided, that if the period during which such payment can be made begins in one taxable year and ends in a second taxable year, such payment shall be made in the second taxable year to the extent required to avoid any tax, interest or penalties under Code Section 409A.

(d) Retirement-Eligible Vesting. Notwithstanding any provision of this Section 1.3 to the contrary, non-U.S. Eligible Employees who: (a) are retirement-eligible; and (b) receive Local Severance Benefits shall also receive retirement vesting on their applicable equity awards pursuant to the applicable stock incentive plans and/or award agreements governing such equity awards.

**Appendix A-2**

A Participant with a title of Senior Vice President (or its equivalent in the internal records of the Employer) shall be a Tier 2 Participant, and a Participant with a title of Vice President (or its equivalent in the internal records of the Employer) shall be a Tier 3 Participant.

Such Participants are subject to all the terms, and are eligible to receive all the Severance Benefits, described in Appendix A-1 above, subject to the changes set forth below.

| Provision | Tier 2 Participants | Tier 3 Participants |
|---|---|---|
| Section 1.1(a) Cash Severance Payment | A Participant shall receive a severance payment equal to the Participant's Base Pay multiplied by 18 months | A Participant shall receive a severance payment equal to the Participant's Base Pay multiplied by 12 months |
| Section 1.1(f) COBRA Premium Payment | With respect to a Participant who is a U.S. Eligible Employee as of the date of such Participant's termination of employment, the Employer shall pay to the Participant a cash payment in an amount equal to the applicable COBRA premium payments (as reasonably determined by the Administrator) that would be payable by the Participant to continue the Participant's company-provided medical, dental, and/or vision coverage existing as of the Participant's termination date for a period of 12 months following such Participant's termination of employment. For purposes of clarity, such cash payment shall be made regardless of whether the Participant actually elects coverage under COBRA, and shall be determined as of the Participant's termination of employment and not impacted by, or adjusted for, events occurring after such date (including, without limitation, changes in coverage or premiums). | |

**Exhibit 10.38**

**SANDISK CORPORATION**
**CHANGE IN CONTROL SEVERANCE PLAN**

## 1. PURPOSE; TERM

Effective as of [•] (the "Effective Date"), Sandisk Corporation, a Delaware corporation (the "Company"), adopted this Sandisk Corporation Change in Control Severance Plan (the "Plan"). The Company established the Plan to reinforce and encourage the continued attention and dedication of Participants (as defined below) to their assigned duties in the event the Company undergoes a Change in Control (as defined below). The Plan shall remain in effect until modified or terminated pursuant to Section 8.

## 2. DEFINITIONS

"Administrator" means the Committee or any delegate of such committee acting pursuant to Section 7.

"Base Pay" means the Participant's wages earned on a monthly basis, determined as of the employment termination date, excluding incentive payments and commissions.

"Beneficially Own" or "Beneficial Owner" (as the context may require) means a "beneficial owner" as defined in Rule13d-3 of the Exchange Act, except that a person shall also be deemed the beneficial owner of all securities which such person may have a right to acquire, whether or not such right is presently exercisable.

"Board" means the Board of Directors of the Company.

"Business Combination" means the consummation of any merger, consolidation, reorganization or other extraordinary transaction (or series of related transactions) involving the Company, a sale or other disposition of all or substantially all of the assets of the Company, or the acquisition of assets or stock of another entity by the Company or any of its subsidiaries.

"Cause" means the occurrence or existence of any of the following with respect to a Participant: (a) the Participant's conviction by, or entry of a plea of guilty or nolo contendere in, a court of competent and final jurisdiction for any crime involving moral turpitude or any felony punishable by imprisonment in the jurisdiction involved; (b) whether prior or subsequent to the Effective Date, the Participant's willful engaging in dishonest or fraudulent actions or omissions which results directly or indirectly in any demonstrable material financial or economic harm to the Employer or any of their respective affiliates; (c) the Participant's failure or refusal to perform his or her duties as reasonably required by the Employer, provided that the Participant shall have first received written notice from the Employer stating with specificity the nature of such failure or refusal and affording the Participant at least five days to correct the act or omission complained of; (d) gross negligence, insubordination, material violation by the Participant of any duty of loyalty to the Employer or any of their respective affiliates, or any other material misconduct on the part of the Participant, provided that the Participant shall have first received written notice from the Employer stating with specificity the nature of such action or violation and affording the Participant at least five days to correct such action or violation; (e) conduct by the Participant which, upon reasonable investigation, is determined by the Company to violate the Employer's anti-harassment, discrimination or retaliation policies; (f) conduct endangering, or materially likely to endanger, the health or safety of another employee; (g) falsifying or misrepresenting information on the records of the Employer or any of their respective affiliates; (h) the Participant's physical destruction or theft of substantial property or assets of the Employer or any of their respective affiliates; or (i) material breach of any material policy of, or agreement with, the Employer or any of their respective affiliates applicable to the Participant or to which the Participant is otherwise bound, provided that the Participant shall have first received written notice from the Employer stating with specificity the nature of such breach and affording the Participant at least five days to correct such breach.

The Participant shall not be deemed to have been terminated for Cause unless and until all of the following conditions have been met: (x) the Employer delivers to the Participant a notice of termination specifying the alleged conduct of the Participant that constitutes "Cause"; (y) the Participant is provided a meaningful opportunity to rebut the allegations and be heard by the Board at a meeting called and held for that purpose; and (z) following any such meeting of the Board, the Board approves a legally binding resolution finding that the Participant was guilty of conduct constituting Cause with such resolution approved by the affirmative vote of not less than a majority of the entire membership of the Board (other than the Participant if he or she is a member of the Board at such time).

"Change in Control" means an occurrence of any of the following events, unless the Board shall provide otherwise:

(a) any Person, alone or together with its affiliates and associates, including any group of persons which is deemed a "person" under Section 13(d)(3) of the Exchange Act (other than the Employer or any employee benefit plan (or related trust) of the Employer, or any underwriter in connection with a firm commitment public offering of the Company's capital stock), becomes the Beneficial Owner of: (i) thirty-three and one-third percent or more of the then Outstanding Company Common Stock; or (ii) securities representing thirty-three and one-third percent or more of the Outstanding Company Voting Securities (in each case above, other than an acquisition in the context of a merger, consolidation, reorganization, asset sale or other extraordinary transaction covered by, and which does not constitute a Change in Control under, clause (c) below);

(b) a change, during any period of two consecutive years, of a majority of the Board as constituted as of the beginning of such period, unless the election, or nomination for election by the Company's stockholders, of each director who was not a director at the beginning of such period was approved by vote of at least two-thirds of the Incumbent Directors then in office;

(c) a Business Combination, unless, following such Business Combination, (1) all or substantially all of the individuals and entities that were the Beneficial Owners of the Outstanding Company Common Stock and the Outstanding Company Voting Securities immediately prior to such Business Combination Beneficially Own, directly or indirectly, more than 50% of the then-outstanding shares of common stock and the combined voting power of the then-outstanding voting securities entitled to vote generally in the election of directors, as the case may be, of the entity resulting from such Business Combination (including, without limitation, a Parent), (2) no Person (excluding any entity resulting from such Business Combination or a Parent or any employee benefit plan (or related trust) of the Company or such entity resulting from such Business Combination or Parent, and excluding any underwriter in connection with a firm commitment public offering of the Company's capital stock) Beneficially Owns, directly or indirectly, more than thirty-three and one-third percent of, respectively, the then-outstanding shares of common stock of the entity resulting from such Business Combination or the combined voting power of the then-outstanding voting securities of such entity, and (3) at least a majority of the members of the board of directors of the entity resulting from such Business Combination or a Parent were Incumbent Directors at the time of execution of the initial agreement or of the action of the Board providing for such Business Combination; or

(d) the stockholders of the Company approve a plan of complete liquidation or dissolution of the Company (other than in the context of a merger, consolidation, reorganization, asset sale or other extraordinary transaction covered by, and which does not constitute a Change in Control under, clause (c) above).

Notwithstanding the foregoing definition or any other provision of the Plan, the term Change in Control will not include a sale of assets, merger or other transaction effected exclusively for the purpose of changing the domicile of the Company. If required for compliance with Section 409A of the Code, in no event will a Change in Control be deemed to have occurred if such transaction is not also a "change in the ownership or effective control of" the Company or "a change in the ownership of a substantial portion of the assets of" the Company as determined under U.S. Treasury Regulation Section 1.409A-3(i)(5) (without regard to any alternative definition thereunder). The Board may, in its sole discretion and without a Participant's consent, amend the definition of "Change in Control" to conform to the definition of "Change in Control" under Section 409A of the Code and related regulations.

"Change in Control Period" means:

(a) any period during which the Company or any of its Subsidiaries has become a party to a definitive agreement to consummate a transaction that would result in a Change in Control and before the termination of such agreement without the transaction being consummated;

(b) any period commencing upon the effective date of the Change in Control and ending on the12-month anniversary of the effective date of such Change in Control.

Notwithstanding the foregoing, in no event will the Change in Control Period be deemed to have commenced earlier than six months prior to the Change in Control.

"Code" means the United States Internal Revenue Code of 1986, as amended.

"Code Section 409A" means Section 409A of the Code.

"Committee" means the Compensation and Talent Committee of the Board.

"Covered Termination" means:

(a) A Participant's termination of employment by the Employer without Cause (excluding by reason of death or Disability) during the Change in Control Period; or

(b) A Participant's termination of employment due to his or her resignation for Good Reason during the Change in Control Period.

"Disability" shall occur upon the Participant becoming eligible for disability benefits under the Employer's long-term disability plan, or, if earlier, upon the Participant becoming eligible for Social Security disability benefits or any comparable state-provided disability benefits for Participants located in non-United States jurisdictions.

"Eligible Employee" means an individual who is an employee on the payroll of the Employer. An Eligible Employee shall not include any person providing services to the Employer through a temporary service or on a leased basis or who is engaged by the Employer as an independent contractor, consultant, or otherwise as a person who is not an employee for purposes of applicable withholding taxes, as evidenced by payroll records or a written agreement with the individual, regardless of any contrary governmental agency determination or judicial holding relating to such status or tax withholding.

"Employer" means the Company and its Subsidiaries. For purposes of determining the entity responsible for making payments to a Participant, "Employer" shall mean the legal entity on whose payroll records the Participant is listed.

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

"Exchange Act" means the U.S. Securities Exchange Act of 1934, as amended, and the related rules and regulations.

"Good Reason" means any of the following without the Participant's express written consent: (a) a material diminution in the Participant's authority, duties or responsibilities in effect immediately prior to the Change in Control; (b) a material diminution by the Employer in the Participant's Base Pay in effect immediately prior to the Change in Control; (c) any material breach by the Employer of any provision of the Plan; (d) the relocation of the Participant's principal place of employment by more than 50 miles from his or her place of employment immediately prior to a Change in Control; or (e) the Company's failure to obtain a satisfactory agreement from any successor to assume and agree to perform the Employer's obligations under the Plan, as contemplated in Section 10.2 hereof. However, any such condition shall not constitute "Good Reason" unless (i) the Participant provides written notice to the Employer of the condition claimed to constitute Good Reason within 90 days of the initial existence of such condition and during the Change in Control Period and (ii) the Employer fails to remedy such condition within 30 days of receiving such written notice thereof; and provided, further, that in all events the termination of the Participant's employment with the Employer shall not be treated as a termination for "Good Reason" unless such termination occurs not more than 12 months following the initial existence of the condition claimed to constitute "Good Reason."

"Incumbent Directors" means the directors holding office as of the Effective Date and any person becoming a director subsequent to such date whose election, or nomination for election by the Company's stockholders, is approved by a vote of at least a majority of the Incumbent Directors then in office.

"JAMS" means the Judicial Arbitration and Mediation Services, Inc., or its successor.

"Outstanding Company Common Stock" means the outstanding shares of the Company's common stock.

"Outstanding Company Voting Securities" means the combined voting power of the Company's then outstanding voting securities.

"Parent" means an entity that, as a result of a Business Combination, owns the Company or all or substantially all of the Company's assets directly or through one or more subsidiaries.

"Participant" means an Eligible Employee who has been designated by the Board or Administrator to participate in the Plan, in accordance with Section 3.

"Person" means a person as defined in Sections 13(d) and 14(d) of the Exchange Act.

"Release" means a release of any and all claims in a form and manner acceptable to the Company.

"Separation from Service" with respect to a Participant, shall mean that the Participant dies, retires, or otherwise has a termination of employment with the Employer that constitutes a "separation from service" within the meaning of Treasury Regulation Section 1.409A-1(h)(1), without regard to the optional alternative definitions available under such regulation.

"Severance Benefits" means the severance payments and benefits specified for a Participant inAppendix A-1 or Appendix A-2, as applicable.

"Subsidiary" means any corporation or other entity a majority of whose outstanding voting stock or voting power is beneficially owned directly or indirectly by the Company.

"U.S. Eligible Employee" means any Eligible Employee who is paid from the United States payroll of the Employer.

## 3. PARTICIPATION

The Administrator may, from time to time, designate Eligible Employees as Participants; provided, that the Administrator shall limit the group of all persons eligible to participate in the Plan to a "select group of management or highly compensated employees" within the meaning of 29 C.F.R. 2520-104-23 or any similar successor provision.

The Administrator designates Participants into one of the following three categories: Tier 1 Participant perAppendix A-1, Tier 2 Participant per Appendix A-2 or Tier 3 Participant per Appendix A-2. The Administrator may, in its sole discretion, remove a Participant from the Plan or modify existing Participant tier designations, regardless of the general designations in Appendix A-1 or Appendix A-2.

**4. ACCRUED RIGHTS; COMPENSATION UPON A CHANGE IN CONTROL; SEVERANCE BENEFITS**

4.1 Compensation Upon a Change in Control. Commencing on the date a Change in Control occurs and for 12 months thereafter (or for such shorter period of time as the Participant remains employed following such Change in Control), the Participant shall be entitled to receive:

(i) Base Pay at a rate no less than the Base Pay immediately prior to the date of the Change in Control;

(ii) benefits under employee benefit plans or arrangements (including, without limitation, any pension or welfare plan, life, health, hospitalization and other forms of insurance and all other "fringe" benefits or perquisites) made available to the Participant by the Employer (or any successor thereto), and the Participant's level of participation in, or entitlements under, any such employee benefit plan of any successor to the Employer (or an affiliate thereof) shall be calculated as if the Participant had been an employee of such successor to the Employer (or an affiliate thereof) from the date of employment by Participant's Employer; and

(iii) reimbursement for all reasonable business expenses incurred by the Participant in the performance of his or her duties on behalf of the Employer for so long as the Participant is employed by Employer (or an affiliate thereof), and in no event shall the reimbursement be made later than the end of the taxable year following the taxable year that the related expenses were incurred.

4.2 Accrued Rights. Upon a termination of the Participant's employment for any reason, the Participant (or the Participant's estate) shall be entitled to receive the sum of the Participant's Base Pay through the date of termination that is unpaid; the monetary equivalent of any accrued but unused vacation days; any reasonable business expenses incurred in the performance of his or her duties to the Employer in accordance with applicable expense reimbursement policies and procedures and that remain unpaid as of the date of termination; and any amount owed to the Participant in connection with employee benefit plans (including without limitation, any disability or life insurance benefit plans, programs or arrangements), payable in accordance with the terms and conditions of such employee benefit plans.

4.3 Severance Benefits. In the event a Participant's termination of employment constitutes a Covered Termination, such Participant shall be entitled to receive the Severance Benefits from his or her Employer subject to the conditions set forth in Section 5. In no event shall a Participant become entitled to a duplication of benefits under the Plan and any other severance plan or program of the Employer (including the Company's Executive Severance Plan). In the event a Participant is eligible to receive benefits under the Plan and any other severance plan or program of the Employer (including the Company's Executive Severance Plan), Participant shall only receive benefits pursuant to the arrangement that yields the greatest benefit to the Participant. Notwithstanding any provision of the Plan to the contrary, to the extent that any Participant is entitled to any period of paid notice under Federal or state law including, but not limited to, the Worker Adjustment Retraining Notification Act, 29 U.S.C. Sections 2101 et seq., the benefits and amounts payable under the Plan shall be reduced (but not below zero) by the Base Pay received by the Participant during the period of such paid notice.

4.4 Specified Employees. It is the Company's intent that the Severance Benefits be exempt from Section 409A as a "short-term deferral" or separation pay due to an involuntary separation from service within the meaning of Code Section 409A. If the Severance Benefits (or any portion thereof) constitute non-exempt "deferred compensation" (within the meaning of Section 409A), then a Participant who is a "specified employee" within the meaning of Code Section 409A shall not be entitled to any such benefits hereunder until the earlier of (i) the date which is six months after the Participant's Separation from Service for any reason other than death, or (ii) the date of the Participant's death. Any amounts otherwise payable to the Participant upon or in the six-month period following the Participant's Separation from Service that are not paid by reason of this Section 4.4 shall be paid (without interest) as soon as practicable (and in all events within 30 days) after (x) the required six-month period or, if earlier (y) the date of the Participant's death.

## 5. CONDITIONS TO SEVERANCE BENEFITS

5.1 Release. The Employer's obligation to pay the Severance Benefits to a Participant is subject to: (i) the Participant's execution of a Release; and (ii) such Release not being revoked by the Participant (pursuant to any revocation rights afforded by applicable law) or otherwise rendered unenforceable by the Participant. The Employer will have no obligation to pay any of the Severance Benefits to the Participant under the Plan until such Release becomes effective.

5.2 Departure and Entitlement Procedure. As a condition to receiving the Severance Benefits, the Participant must return and deliver to the Employer all Employer property within seven days of the Participant's termination date.

5.3 Other Employment; Limitation On Employee Rights. A Participant shall not be required to mitigate the amount of any payments provided by the Plan by seeking employment or otherwise. The Employer reserves the right to offset the benefits payable under the Plan by any advanced monies the Participant owes the Employer. The Plan shall not give any employee the right to be retained in the service of the Employer or to interfere with or restrict the right of the Employer to discharge any employee at any time, with or without Cause.

## 6. RESOLUTION OF DISPUTES

6.1 Claim. Any Participant or other person who believes he or she is entitled to any payment under the Plan (referred to in this section as "claimant") may submit a claim in writing to the Administrator within 90 days of the earlier of (i) the date the claimant learned the amount of his or her benefits under the Plan or (ii) the date the claimant learned that he or she will not be entitled to any benefits under the Plan. If the claim is denied (in full or in part), the claimant will be provided a written notice explaining the specific reasons for the denial and referring to the provisions of the Plan on which the denial is based. The notice also will describe any additional information needed to support the claim and the Plan's procedures for appealing the denial. The denial notice will be provided within 90 days after the claim is received. If special circumstances require an extension of time (up to 90 days), written notice of the extension will be given within the initial 90-day period. This notice of extension will indicate the special circumstances requiring the extension of time and the expected date of the Administrator's decision.

6.2 Appeal Procedure. If the claim is denied, the claimant (or his or her authorized representative) may apply in writing to the Administrator for a review of the decision denying the claim. Review must be requested within 60 days following the date the claimant received the written notice of their claim denial or else the claimant loses the right to review. The claimant then has the right to review and obtain copies of all documents and other information relevant to the claim, upon request and at no charge, and to submit issues and comments in writing within ten business days after receiving documents and other information relevant to the claim. The Administrator will provide written notice of its decision on review within 60 days after it receives a review request. If additional time (up to 60 days) is needed to review the request, the claimant will be given written notice of the reason for the delay. This notice of extension will indicate the special circumstances requiring the extension of time and the expected date of the Administrator's decision. If the claim is denied (in full or in part), the claimant will be provided a written notice explaining the specific reasons for the denial and referring to the provisions of the Plan on which the denial is based. The notice also will include a statement that the claimant will be provided, upon request and free of charge, reasonable access to, and copies of, all documents and other information relevant to the claim and a statement regarding the claimant's right to bring an action under Section 502(a) of ERISA.

6.3 Arbitration. A claimant who followed the procedures in Sections 6.1 through 6.2, but has not obtained full relief on his or her claim for benefits, may, within 90 days following his or her receipt of the Administrator's written decision on review pursuant to Section 6.2, apply in writing to the Administrator for expedited and binding arbitration of his or her claim in a county no more than 45 miles from the Company's headquarters (unless another location has been agreed upon between Participant and Company in writing), before a sole arbitrator selected from JAMS, or if JAMS is no longer able to supply the arbitrator, such arbitrator shall be selected from the American Arbitration Association, and shall be conducted in accordance with the provisions of California Code of Civil Procedure §§ 1280 et seq. as the exclusive forum for the resolution of such dispute. Any award or relief granted by the arbitrator shall be final and binding on the parties hereto and may be enforced by any court of competent jurisdiction. Any rights to trial by jury in any action, proceeding or counterclaim brought by any of the Company, a Subsidiary or a Participant in connection with any matter whatsoever arising out of or in any way connected with the Plan are hereby waived. The Employer shall be responsible for payment of the forum costs of any arbitration hereunder, including the arbitrator's fee.

6.4 Legal Fees and Expenses. If any dispute arises between the parties with respect to the interpretation or performance of the Plan, the prevailing party in any arbitration or proceeding shall be entitled to recover from the other party its attorneys' fees or court costs and other expenses incurred in connection with any such proceeding. Amounts, if any, paid to the Participant under this Section 6.4 shall be in addition to all other amounts due to the Participant pursuant to the Plan.

## 7. ADMINISTRATION

The Plan shall be administered and operated by the Administrator. The Administrator is empowered to construe and interpret the provisions of the Plan and to decide all questions of eligibility for benefits under the Plan and shall make such determinations in its sole and absolute discretion. The Administrator may at any time delegate to any other named person or body, or reassume from any delegate, any of its responsibilities or administrative duties with respect to the Plan.

## 8. AMENDMENT

The Administrator (or the Board) reserves the right to amend, suspend and/or terminate the Plan at any time in its sole discretion; provided, that, notwithstanding the foregoing, the Plan shall not be amended, suspended or terminated during a Change in Control Period or with respect to a Participant who is already entitled to payment under the Plan.

## 9. TAXES

Each Participant shall be solely responsible for his or her own tax liability with respect to participation in the Plan. The Employer may withhold from any amounts payable under the Plan such federal, state and local income, employment, or other applicable taxes as may be required to be withheld.

## 10. GENERAL

10.1 Assignment by Participants. None of the amounts payable pursuant to the Plan shall be subject to any claim of any creditor and shall not be subject to attachment or garnishment or other legal process by any creditor. Participants may not alienate, anticipate, commute, pledge, encumber or assign any of the amounts payable pursuant to the Plan. The amounts payable pursuant to the Plan shall inure to the benefit of and be enforceable by each Participant's personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees, and legatees.

10.2 Binding Effect. The Employer will require any successor to all or substantially all of the business and/or assets of the Company or applicable Subsidiary to expressly assume and agree to perform all of the obligations of the Company or applicable Subsidiary under the Plan (including the obligation to cause any subsequent successor to also assume the obligations of the Plan) unless such assumption occurs by operation of law. For the avoidance of doubt, in the event that a successor of a Subsidiary assumes the Subsidiary's obligations under the Plan, the Company will have no obligations under the Plan with respect to the Participants employed by such Subsidiary.

10.3 No Waiver. No waiver of any term, provision or condition of the Plan, whether by conduct or otherwise, in any one or more instances shall be deemed or be construed as a further or continuing waiver of any such term, provision or condition or as a waiver of any other term, provision or condition of the Plan.

10.4 Expenses; Unsecured General Creditor. The benefits and costs of the Plan shall be paid by the Employer out of its general assets. The status of a claim against the Employer with respect to the benefits provided by the Plan shall be the same as the status of a claim against the Employer by any general or unsecured creditor.

10.5 ERISA. The Plan is an unfunded compensation arrangement for a select group of management or highly compensated employees of the Company or a Subsidiary and any exemptions under ERISA applicable to such an arrangement shall be applicable to the Plan.

10.6 WARN Act. Benefits payable under the Plan are intended to satisfy, where applicable, any Employer obligations under the Federal Worker Adjustment and Retraining Notification Act and any similar obligations that the Employer may have under any successor or other severance pay statute.

10.7 Governing Law. The provisions of the Plan will be construed, administered and enforced in accordance with ERISA and, to the extent applicable, the laws of the State of California without regard to its choice of law provisions.

10.8 Severability. If any provision of the Plan is held to be illegal, invalid or unenforceable under any present or future law, and if the rights or obligations of any party hereto under the Plan will not be materially and adversely affected hereby, (i) such provision will be fully severable, (ii) the Plan will be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof, (iii) the remaining provisions of the Plan will remain in full force and effect and will not be affected by the illegal, invalid or unenforceable provision or by its severance from here and (iv) in lieu of such illegal, invalid or unenforceable provision, there will be added automatically as a part of the Plan a legal, valid and enforceable provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible.

10.9 Additional Information.

| | |
|---|---|
| **Plan Name:** | Sandisk Corporation Change in Control Severance Plan |
| **Plan Sponsor:** | Sandisk Corporation |
| **Identification Numbers:** | **EIN:** 99-1508671 |
| | **PLAN:** 002 |
| **Plan Year:** | January 1 to December 31 |

| | |
|---|---|
| **Plan Administrator:** | Sandisk Corporation<br>951 Sandisk Drive<br>Milpitas, California 95035<br>Attention: Compensation and Talent Committee<br>(408) 801-1000 |
| **Agent for Service of Legal Process:** | Sandisk Corporation<br>251 Little Falls Drive<br>Wilmington, Delaware 19807<br>Attention: Corporation Service Company |
| **Type of Plan:** | Severance Plan/Employee Welfare Benefit Plan |
| **Plan Costs:** | The cost of the Plan is paid by the Company. |

10.10 Statement of ERISA Rights. As a Participant under the Plan, you have certain rights and protections under ERISA:

You may examine (without charge) all Plan documents, including any amendments and copies of all documents filed with the U.S. Department of Labor. These documents are available for your review in the Company's Human Resources Department.

You may obtain copies of all Plan documents and other Plan information upon written request to the Administrator. A reasonable charge may be made for such copies.

In addition to creating rights for Participants, ERISA imposes duties upon the people who are responsible for the operation of the Plan. The people who operate the Plan (called "fiduciaries") have a duty to do so prudently and in the interests of you and the other Participants. No one, including the Company or any other person, may fire you or otherwise discriminate against you in any way to prevent you from obtaining a benefit under the Plan or exercising your rights under ERISA. If your claim for payments or benefits under the Plan is denied, in whole or in part, you must receive a written explanation of the reason for the denial. You have the right to have the denial of your claim reviewed. The claim review procedure is explained in Section 6 above.

Under ERISA, there are steps you can take to enforce the above rights. For example, if you request materials and do not receive them within 30 days, you may file suit in a federal court. In such a case, the court may require the Administrator to provide the materials and to pay you up to $110 a day until you receive the materials, unless the materials were not sent due to reasons beyond the control of the Administrator. If you have a claim which is denied or ignored, in whole or in part, you may file suit in a federal court. If it should happen that you are discriminated against for asserting your rights, you may seek assistance from the U.S. Department of Labor, or you may file suit in a federal court.

In any case, the court will decide who will pay court costs and legal fees. If you are successful, the court may order the person you have sued to pay these costs and fees. If you lose, the court may order you to pay these costs and fees, for example, if it finds that your claim is frivolous.

If you have any questions regarding the Plan, please contact the Administrator. If you have any questions about this statement or about your rights under ERISA, you may contact the nearest area office of the Employee Benefits Security Administration (formerly the Pension and Welfare Benefits Administration), U.S. Department of Labor, listed in your telephone directory, or the Division of Technical Assistance and Inquiries, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W. Washington, D.C. 20210. You also may obtain certain publications about your rights and responsibilities under ERISA by calling the publications hotline of the Employee Benefits Security Administration.

10.11 Section 280G.

Notwithstanding anything to the contrary in the Plan, if a Participant is a "disqualified individual" (as defined in Section 280G(c) of the Code), and the Severance Benefits provided for under the Plan, together with any other payments and benefits which the Participant has the right to receive from the Employer, would constitute a "parachute payment" (as defined in Section 280G(b)(2) of the Code), then the Severance Benefits provided for under the Plan shall be either (a) reduced (but not below zero) so that the present value of such total amounts and benefits received by the Participant from the Employer will be $1.00 less than three times the Participant's "base amount" (as defined in Section 280G(b)(3) of the Code) and so that no portion of such amounts and benefits received by the Participant shall be subject to the excise tax imposed by Section 4999 of the Code, or (b) paid in full, whichever produces the better net after-tax position to the Participant (taking into account any applicable excise tax under Section 4999 of the Code and any other applicable taxes). The determination as to whether any such reduction in the amount of the payments provided hereunder is necessary shall be made by the Employer in good faith. If a reduced payment is made or provided and through error or otherwise that payment, when aggregated with other payments and benefits from the Employer used in determining if a parachute payment exists, exceeds $1.00 less than three times the Participant's base amount, then the Participant shall immediately repay such excess to the Employer upon notification that an overpayment has been made. Nothing in the Plan shall require the Employer to be responsible for, or have any liability or obligation with respect to, the Participant's excise tax liabilities under Section 4999 of the Code.

**Appendix A-1**

A Participant with a title of Executive Vice President (or its equivalent in the internal records of the Employer) or who is an officer of the Company within the meaning of Section 16 of the Exchange Act shall be a Tier 1 Participant. Such a Participant shall be eligible to receive the Severance Benefits described in this Appendix A-1.

1.1 Severance Benefits:

(a) Cash Severance Payment. A Participant shall receive a cash severance payment equal to two times the sum of (i) the Participant's Base Pay multiplied by 12 months; *plus* (ii) the Participant's target incentive opportunity under the incentive program in which the Participant participates for the incentive cycle in which the Participant's date of termination occurs; *plus* (iii) the Participant's annual car allowance; provided, that the Base Pay, target incentive opportunity and annual car allowance rates used for purposes of determining such cash severance shall each be based on the rate in effect immediately prior to the Change in Control or date of termination (whichever is higher).

(b) Earned Yet Unpaid Incentive Payments. A Participant shall receive payment for any incentive that was earned through a prior incentive cycle but has not yet been paid.

(c) Equity Awards. Equity awards shall be treated as follows:

(i) The Participant's equity awards that are only subject to time-based vesting, including any credited dividend equivalent rights, will fully vest and become exercisable or payable, as applicable.

(ii) The Participant's equity awards that are subject to performance-based vesting will fully vest and become payable as follows:

(A) With respect to any such award for which the applicable performance period has not ended as of the date of the Participant's termination of employment or the Change in Control (whichever occurs later), the number of shares of common stock of the Company that vest shall be equal to the greater of: (x) the target number of shares of common stock of the Company subject to the award; or (y) the number of shares of common stock of the Company subject to that award that would vest based on the treatment set forth in the definitive agreement providing for the Change in Control. Any credited dividend equivalent rights will also become proportionally vested.

(B) With respect to any such award for which the applicable performance period has ended as of the date of the Participant's termination of employment or the Change in Control (whichever occurs later), vesting shall be based on the actual achievement of the applicable performance goal(s).

(C) With respect to any such award granted on or following the Effective Date, the award shall be payable upon termination. With respect to any such award granted prior to the Effective Date, the award shall be payable in accordance with the original schedule set forth in the applicable award agreement, with no acceleration of the payment date.

The post-termination settlement and exercisability, as applicable, of such equity awards, as well any payments made in connection with such equity awards, shall be governed by the applicable stock incentive plan, as amended from time to time, and/or award agreement. In the event of a conflict regarding equity award treatment between an applicable award agreement and the Plan, the award agreement controls.

(d) COBRA Premium Payment. With respect to a Participant who is a U.S. Eligible Employee as of the date of such Participant's termination of employment, the Employer shall pay to the Participant a cash payment in an amount equal to the applicable COBRA premium payments (as reasonably determined by the Administrator) that would be payable by the Participant to continue the Participant's company-provided medical, dental, and/or vision coverage existing as of the Participant's termination date for a period of 24 months following such Participant's termination of employment. For purposes of clarity, such cash payment shall be made regardless of whether the Participant actually elects coverage under COBRA, and shall be determined as of the Participant's termination of employment and not impacted by, or adjusted for, events occurring after such date (including, without limitation, changes in coverage or premiums).

1.2. Payment Timing. Subject to Section 4.4 of the Plan, the payments set forth in Section 1.1 (a), (b) and (d) shall be paid to the Participant in a single lump sum cash payment, subject to applicable tax withholding, no later than the 30th day following the date on which the Release becomes effective; provided, that if the period during which the payment of such Severance Benefits can be initiated commences in one taxable year and ends in a second taxable year, such payment shall be made in the second taxable year to the extent required to avoid any tax, interest or penalties under Code Section 409A.

1.3 Participants who are Not U.S. Eligible Employee. The Administrator delegates to the Company's Chief Human Resources Officer (or equivalent role or any other person the Administrator deems appropriate) the duties of the Administrator set forth in Section 1.3(a) and Section 1.3(b). If a Participant who is not a U.S. Eligible Employee is eligible to receive payments or benefits upon a termination of employment under any applicable local law or Employer policy ("Local Severance"), then the payments and benefits described in this appendix shall be modified as follows:

(a) Benefit Comparison. The Administrator shall compare the payments and benefits payable to the Participant under the Local Severance (excluding the value of any equity awards that accelerate in connection with the Participant's termination of employment) (the "Local Severance Benefits") with the payments and benefits set forth in Section 1.1 of this appendix applicable to the Participant (the "Plan Severance Benefits"). The Administrator has sole discretion to determine the calculation of the Local Severance Benefits.

(b) Benefit Calculation. In the event the value of the Local Severance Benefits equals or exceeds the Plan Severance Benefits, as determined by the Administrator in its sole discretion, then the Participant shall not be eligible to receive any portion of the Plan Severance Benefits. In the event the value of the Local Severance Benefits is less than the value of the Plan Severance Benefits, as determined by the Administrator in its sole discretion, then the Participant shall receive the Plan Severance Benefits (excluding the benefits set forth in 1.1(d) (COBRA premium payments) in this Appendix) in place of any Local Severance Benefits. In the event a Participant is eligible to receive a cash payment under this Section 1.3(b), then references in the Plan to "Severance Benefits" shall be deemed to refer to such cash payment.

(c) Payment Timing. In the event a Participant is eligible to receive a cash payment under the immediately preceding Section 1.3(b), then such payment shall be paid to the Participant in a single lump sum cash payment no later than the 30th day following the date on which the Release becomes effective, subject to applicable tax withholding, local timing rules and subject to Section 4.4; provided, that if the period during which such payment can be made begins in one taxable year and ends in a second taxable year, such payment shall be made in the second taxable year to the extent required to avoid any tax, interest or penalties under Code Section 409A.

(d) Retirement-Eligible Vesting. Notwithstanding any provision of this Section 1.3 to the contrary, non-U.S. Eligible Employees who: (a) are retirement-eligible; and (b) receive Local Severance Benefits shall also receive retirement vesting on their applicable equity awards pursuant to the applicable stock incentive plans and/or award agreements governing such equity awards.

**Appendix A-2**

A Participant with a title of Senior Vice President (or its equivalent in the internal records of the Employer) shall be a Tier 2 Participant, and a Participant with a title of Vice President (or its equivalent in the internal records of the Employer) shall be a Tier 3 Participant.

Such Participants are subject to all the terms, and are eligible to receive all the Severance Benefits, described in Appendix A-1 above, subject to the changes set forth below.

| Provision | Tier 2 Participants | Tier 3 Participants |
|---|---|---|
| Section 1.1(a) Cash Severance Payment | A Participant shall receive a cash severance payment equal to 1.5 times the sum of (i) the Participant's Base Pay multiplied by 12 months; *plus* (ii) the Participant's target incentive opportunity under the incentive program in which the Participant participates for the incentive cycle in which the Participant's date of termination occurs; *plus* (iii) the Participant's annual car allowance; provided, that the Base Pay, target incentive opportunity and annual car allowance rates used for purposes of determining such cash severance shall each be based on the rate in effect immediately prior to the Change in Control or date of termination (whichever is higher) | A Participant shall receive a cash severance payment equal to 1 times the sum of (i) the Participant's Base Pay multiplied by 12 months; *plus* (ii) the Participant's target incentive opportunity under the incentive program in which the Participant participates for the incentive cycle in which the Participant's date of termination occurs; *plus* (iii) the Participant's annual car allowance; provided, that the Base Pay, target incentive opportunity and annual car allowance rates used for purposes of determining such cash severance shall each be based on the rate in effect immediately prior to the Change in Control or date of termination (whichever is higher) |
| Section 1.1(d) COBRA Premium Payment | With respect to a Participant who is a U.S. Eligible Employee as of the date of such Participant's termination of employment, the Employer shall pay to the Participant a cash payment in an amount equal to the applicable COBRA premium payments (as reasonably determined by the Administrator) that would be payable by the Participant to continue the Participant's company-provided medical, dental, and/or vision coverage existing as of the Participant's termination date for a period of 18 months following such Participant's termination of employment. For purposes of clarity, such cash payment shall be made regardless of whether the Participant actually elects coverage under COBRA, and shall be determined as of the Participant's termination of employment and not impacted by, or adjusted for, events occurring after such date (including, without limitation, changes in coverage or premiums). | With respect to a Participant who is a U.S. Eligible Employee as of the date of such Participant's termination of employment, the Employer shall pay to the Participant a cash payment in an amount equal to the applicable COBRA premium payments (as reasonably determined by the Administrator) that would be payable by the Participant to continue the Participant's company-provided medical, dental, and/or vision coverage existing as of the Participant's termination date for a period of 12 months following such Participant's termination of employment. For purposes of clarity, such cash payment shall be made regardless of whether the Participant actually elects coverage under COBRA, and shall be determined as of the Participant's termination of employment and not impacted by, or adjusted for, events occurring after such date (including, without limitation, changes in coverage or premiums). |

**Exhibit 10.39**

**SANDISK CORPORATION**
**EXECUTIVE SHORT-TERM INCENTIVE PLAN**

**1. Purpose.**

The purpose of this Sandisk Corporation Executive Short-Term Incentive Plan (this **"Plan"**) is to promote the success of Sandisk Corporation, a Delaware corporation (the **"Company"**), by (i) compensating and rewarding participating executives with incentive awards for the achievement of performance goals, (ii) motivating such executives by giving them opportunities to receive incentive awards directly related to performance, and (iii) retaining executives by offering them an opportunity to share in the Company's success.

**2. Definitions.**

**"Administrator"** means (i) the Committee with respect to Participants who are Executive Officers and (ii) for all other Participants who are not Executive Officers, either the Committee or a member of the Company's executive leadership team, as determined in accordance with Section 3.1.

**"Award"** means an award to a Participant of an opportunity to receive an Incentive Award under this Plan, subject to the terms and conditions of this Plan.

**"Board"** means the Company's Board of Directors.

**"Code"** means the Internal Revenue Code of 1986, as amended from time to time.

**"Committee"** means the Compensation and Talent Committee of the Board.

**"Company"** is defined in Section 1 of this Plan.

**"Eligible Wages"** as to a Participant for a particular Performance Period means the amount of base salary or base wages paid to the Participant by the Company and its Subsidiaries during that Performance Period, exclusive of any commissions, incentive awards, bonuses, other actual or imputed income from any benefits, stock or incentive awards, or perquisites provided by the Company or any Subsidiary, or other forms of compensation or benefits, but with base salary and base wages determined prior to any reductions for salary deferred pursuant to any deferred compensation plan or for contributions to a plan qualifying under Section 401(k) of the Code or contributions to a cafeteria plan under Section 125 of the Code.

**"Executive Officer"** means the Company's executive officers, as defined in Rule 16-a-1(f) of the Securities Exchange Act of 1934, as amended.

**"Incentive Award"** means the cash payment payable to a Participant under this Plan.

**"Participant"** means any Executive Officer or other Company executive at the level of Senior Vice President or above who is not a participant in another Company cash-based incentive plan of the Company or any Subsidiary.

**"Performance Period"** means the performance period covered by an Award granted under this Plan. The Administrator may provide for performance periods that correspond to the Company's fiscal year, one or more quarters in any Company fiscal year, or any other period the Administrator may determine to be appropriate.

**"Plan"** is defined in Section 1 of this Plan.

**"Subsidiary"** means any corporation or other entity a majority of whose outstanding voting stock or voting power is beneficially owned directly or indirectly by the Company.

**"Target Incentive Award"** with respect to an Award means the amount obtained by multiplying (i) the Participant's Eligible Wages, by (ii) such Participant's Target Incentive Award Percentage as in effect at the end of the Performance Period applicable to such Award.

**"Target Incentive Award Percentage"** with respect to an Award, means the Participant's Target Incentive Award opportunity as to the Performance Period covered by that Award, expressed as a percentage of the Participant's Eligible Wages for that Performance Period, as determined from time to time by the Administrator or such other target incentive award opportunity percentage as may be determined from time to time by the Administrator.

**3. Administration of the Plan.**

3.1 ***The Administrator.*** This Plan will be administered by the Committee. The Committee may delegate any of its authority under this Plan to a subcommittee consisting of members of the Committee. Notwithstanding the foregoing, and subject to such limitations as the Committee deems appropriate, the Committee may delegate the responsibility for administering the Plan with respect to Participants who are not Executive Officers to the Chief Executive Officer or another member of the executive team. All references in this Plan to the "Administrator" shall be, as applicable, to the Committee, the Chief Executive Officer or any other committee to whom the authority to administer this Plan has been delegated in accordance with this section.

3.2 ***Powers of the Administrator.*** Subject to the express provisions of this Plan, the Administrator will have responsibility for the administration of this Plan in accordance with its terms, including without limitation the authority to (i) determine eligibility to participate in this Plan and, from those individuals determined to be eligible, the particular individuals who will receive an Award under this Plan; (ii) establish the terms and conditions applicable to each Award, including without limitation the applicable Performance Period, Target Incentive Award Percentage, applicable measures of performance, and other terms and conditions; (iii) construe and interpret this Plan and any agreements or other document relating to Awards under this Plan; (iv) adopt rules and regulations relating to the administration of this Plan; and (v) exercise all other duties and powers conferred on it by this Plan. Any determination by the Administrator will be final, binding, and conclusive on all applicable Participants to whom the Administrator's authority extends. Neither the Administrator, nor any person acting at the direction thereof, nor any member of the Board will be liable for any act, omission, interpretation, construction or determination made in good faith in connection with this Plan (or any Award made under this Plan).

**4. Incentive Award Provisions.**

4.1 ***Determination of Incentive Awards.*** The Administrator will establish the formula to be used to determine any Incentive Award payable with respect to an Award for the applicable Performance Period, which formula may be based, or take into account, any or all of the following as may be determined by the Administrator in its sole discretion: (i) performance measures based on Company performance on a consolidated basis; (ii) the performance of a subsidiary, division, business unit, or product line; (iii) individual performance; (iv) measurement of performance based on absolute performance or relative performance (such as, without limitation, relative to another company, group of companies, or an index); (v) objective and/or subjective measures; and (vi) criteria to assess performance, including but not limited to, net operating income or profit, pre- or after-tax income, revenue, funds from operations, total shareholder equity or return, gross margin, cash flow, earnings per share, total addressable market, or any other criterion or criteria the Administrator may select. In no event (unless otherwise provided by the Administrator) will the Incentive Award for any Award exceed an amount equal to three (3) times the Target Incentive Award for such Award.

4.2 ***Newly Hired or Promoted Executives.*** Unless otherwise provided by the Administrator, a newly hired or promoted individual who becomes a Participant during a Performance Period will be eligible to receive an Incentive Award for that Performance Period so long as such individual commences employment at or is promoted to a level that has been determined by the Administrator as eligible for participation in this Plan. Such individual's Incentive Award shall be based on the Eligible Wages the individual actually receives during such Performance Period. Unless otherwise provided by the Administrator, a newly hired individual or a newly promoted individual must be employed by the Company or one of its Subsidiaries in an eligible position for at least one month of a Performance Period to be eligible to receive an Incentive Award during such Performance Period.

4.3 ***Termination of Employment; Death; Changes in Position.*** Unless otherwise expressly provided by the Administrator or under a separate Company plan applicable to the Participant or a written contract between the Participant and the Company, a Participant's Award will immediately terminate in the event that such Participant's employment with the Company and its Subsidiaries terminates for any reason prior to the end of the Performance Period covered by such Award, and the Participant will not be entitled to an Incentive Award payment (and in no event will the Participant be considered to have earned or satisfied the conditions for any Incentive Award payment) in respect of such Award. If a Participant's employment with the Company and its Subsidiaries terminates on or after the end of a Performance Period covered by the Participant's Award, but before such Award is paid, the Participant will receive such Incentive Award payment as soon as reasonably practicable following the termination of employment but in no event later than the period set forth in Section 4.6 of this Plan.

Notwithstanding the foregoing, in the event of a Participant's death during a Performance Period, the Participant's beneficiaries will receive a pro rata portion of the Participant's Target Incentive Award, prorated through the Participant's date of death. Any prorated Incentive Award payment will be based on the actual performance of the Incentive Award metrics for the applicable Performance Period, disregarding any Incentive Award metrics tied to individual performance (for the avoidance of doubt, any such individual performance metrics or modifiers will be deemed to have achieve target achievement). To the extent reasonably practicable, the Incentive Award will be paid to the beneficiaries concurrently with other Participants for the applicable Performance Period.

The Administrator may in its sole discretion make such adjustments (including, without limitation, to the Participant's Target Incentive Award Percentage or to the methodology or measures used to determine the Participant's Incentive Award), or it may terminate the Participant's participation in this Plan, as it may determine to be appropriate in the event of a change in a Participant's position, duties, employment status (for example, full-time or part-time), leave of absence, or similar change in circumstances.

4.4 ***Adjustments; Early Termination.*** The Administrator has the sole discretion to adjust the performance measures, performance goals, relative weights of the measures, and other provisions of then-outstanding Awards under this Plan to reflect one or more of the following: (i) items related to a change in accounting principle, (ii) items relating to financing activities, (iii) expenses for restructuring or productivity initiatives, (iv) other non-operating items, (v) items related to acquisitions, (vi) items attributable to the business operations of any entity acquired by the Company during the Performance Period, (vii) items related to the disposal of a business or segment of a business, (viii) items related to discontinued operations that do not qualify as a segment of a business under applicable accounting standards, (ix) items attributable to any stock dividend, stock split, combination or exchange of stock occurring during the Performance Period, (x) any other items of significant income or expense, (xi) items relating to unusual or extraordinary corporate transactions, events or developments, (xii) items related to amortization of acquired intangible assets, (xiii) items that are outside the scope of core, on-going business activities, (xiv) items related to acquired in-process research and development, (xv) items relating to changes in tax laws, (xvi) items relating to licensing or partnership arrangements, (xvii) items relating to asset impairment charges, (xviii) items relating to gains or losses for litigation, arbitration, and contractual settlements, (xix) items related to fluctuations in currency exchange rates, or (xx) items relating to any other unusual or nonrecurring events or changes in applicable law or business conditions. Notwithstanding any other provision herein, the Administrator will have discretion to settle or terminate, as the Administrator may determine in its sole discretion and (in the case of a settlement) in such amount (if any) as the Administrator may determine to be appropriate in its sole discretion, any Award granted hereunder in connection with any merger, reorganization or other corporation transaction.

4.5 ***Administrator Discretion to Determine Incentive Awards.*** The Administrator has the sole discretion to determine the performance goals and criteria for each Award and whether all or any portion of the amount so calculated will be paid, subject in all cases to the terms, conditions and limits of this Plan. To this same extent, the Administrator may at any time establish additional conditions and terms of an Award or for the payment of Incentive Awards (including but not limited to the achievement of other financial, strategic, or individual goals, which may be objective or subjective) as the Administrator may deem desirable and may take into account such other factors as the Administrator deems appropriate.

4.6 ***Form and Time of Payment.*** Any Incentive Award earned and payable in accordance with this Plan will be paid in cash (subject to tax withholding pursuant to Section 5.4) as soon as reasonably practicable following the determination of such Incentive Award amount pursuant to Section 4.1 of this Plan, but in no event later than (a) March 15 of the calendar year following the calendar year in which the applicable Performance Period ends, or (b) if later, the last day of the period ending on the 15th day of the third month following the end of the Company's fiscal year in which the applicable Performance Period ends, in each case, in accordance with Treasury Regulation Section 1.409A-1(b)(4)(i).

**5. General Provisions.**

5.1 ***Rights of Participants.***

(a) No Right to Awards or Continued Employment. Neither the establishment of this Plan, nor the provision for or payment of any amounts hereunder, nor any action of the Company or any of its officers, employees, or directors in respect of this Plan will be held or construed to confer upon any person any legal right to receive, an Award, an Incentive Award, or any other benefit under the Plan. Nothing contained in this Plan (or in any other documents evidencing any Award under this Plan) will confer upon any employee or Participant any right to continued employment with the Company or any Subsidiary, constitute any contract or agreement of employment, or affect an employee's status as an employee at will, nor will it interfere in any way with the right of the Company or any Subsidiary to change any person's compensation or other benefits, or to terminate his or her employment, with or without cause. Nothing in this Section 5.1(a), however, is intended to adversely affect any express independent right of such person under a separate written employment contract with the Company or any Subsidiary.

(b) Plan Not Funded. Awards payable under this Plan will be payable from the general assets of the Company, and no special or separate reserve, fund, or deposit will be made to assure payment of such Awards. No Participant or other person will have any right, title, or interest in any fund or in any specific asset of the Company or any Subsidiary by reason of any Award hereunder. Neither the provisions of this Plan (or of any related documents), nor the creation or adoption of this Plan, nor any action taken pursuant to the provisions of this Plan will create, or be construed to create, a trust of any kind or a fiduciary relationship between the Company or one of its Subsidiaries and any Participant or other person. To the extent that a Participant or other person acquires a right to receive payment pursuant to any Award hereunder, such right will be no greater than the right of any unsecured general creditor of the Company.

5.2 ***Non-Transferability of Benefits and Interests.*** Except as expressly provided by the Administrator, all Awards arenon-transferable, and no benefit payable under this Plan will be subject in any manner to sale, transfer, anticipation, alienation, assignment, pledge, encumbrance, or charge.

5.3 ***Governing Law; Severability.*** This Plan, the Awards, all documents evidencing Awards, and all other related documents will be governed by, and construed in accordance with, the laws of the State of Delaware, notwithstanding any Delaware or other conflict of law provision to the contrary. If any provision or provisions of this Plan will be held to be invalid, illegal, or unenforceable, such provision will be enforced to the fullest extent permitted by applicable law and the validity, legality, and enforceability of the remaining provisions will not in any way be affected or impaired.

5.4 ***Tax Withholding.*** In connection with the payment of any Incentive Award, the Company will have the right to deduct from the amount of the Incentive Award, or any other compensation or amounts payable to the Participant, the amount of any federal, state, local, or other income, employment, or other taxes that the Company or any Subsidiary may be required to withhold with respect to such Incentive Award payment.

5.5 ***No Vested Rights; Amendments, Suspension, or Termination of Plan.*** No Participant will have, at any time, a vested right to any benefit under this Plan (other than as to Incentive Award amounts theretofore actually paid, subject to Section 5.10). The Company or the Administrator may at any time terminate, amend, modify, or suspend this Plan, in whole or in part and/or with respect to any or all Awards or Participants (other than as to Incentive Award amounts actually paid prior to the date of such action by the Company or the Administrator).

5.6 ***Captions; Construction.*** Captions and headings are given to the sections and subsections of this Plan solely as a convenience to facilitate reference. Such headings will not be deemed in any way material or relevant to the construction or interpretation of this Plan or any provision thereof.

5.7 ***Non-Exclusivity of Plan.*** Nothing in this Plan will limit or be deemed to limit the authority of the Company to grant awards or authorize any other compensation under any other plan or authority.

5.8 ***Dispute Resolution:*** All disputes concerning Plan implementation must be submitted in writing to the next level of management within thirty (30) days of the occurrence of the event triggering a dispute. The Administrator will have the sole responsibility to review and resolve all disputes and will make the final and binding decision with respect thereto.

Furthermore, with respect to each Participant who is employed by the Company or any Subsidiary in the United States: to the fullest extent allowed by law, any dispute regarding the Plan, any claim for wages or compensation or any aspect of this Plan ("**Arbitrable Claims**") will be settled by final and binding arbitration before a single arbitrator in the county in which the Participant worked in accordance with the JAMS Employment Arbitration Rules and Procedures ("**Rules**"), or equivalent rules in effect at the time the arbitration demand is filed, as the exclusive remedy for such dispute, and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. As in any arbitration, the burden of proof will be allocated as provided by applicable law. Both the Participant and the Company will be entitled to file dispositive motions before the arbitrator to the same extent as would be allowed had the dispute been heard in a court of law having jurisdiction over the parties' claims or counterclaims. The arbitrator will have the same authority as a court to award equitable relief, damages, costs, and fees as provided by law or the applicable rules for the particular claims asserted.

The arbitration proceedings do not provide for jury trials, but for a hearing before one independent, neutral arbitrator. Therefore, in agreeing to arbitrate claims, both the Participant and the Company and its affiliates are waiving a trial or hearing before a jury. The Participant agrees that any Arbitrable Claims will be resolved on an individual basis and agrees to waive his or her right, to the extent allowed by applicable law, to consolidate any Arbitrable Claims with the claims of any other person in a class or collective action. For the avoidance of doubt, the arbitrator may not consolidate more than one person's or entity's claims and may not preside over any form of representative or class proceeding.

Participants who are employed by the Company or any Subsidiary outside of the United States (other than Participants who are U.S. citizens and/or taxpayers in the United States) agree that any action arising from, or under, the Plan will be brought only in an administrative agency, court, or other applicable adjudicatory body of competent jurisdiction in the country whose laws govern the terms and conditions of such Participant's employment (including participation in the Plan) with any such action subject to the laws of such country. To the extent permissible under the applicable laws, the parties expressly waive their right to a jury trial.

5.9 ***Code Section 409A.*** The Company's intent is that any payments and benefits paid under this Plan be exempt from, or comply with, Section 409A of the Code so as to not result in any tax, penalty or interest thereunder. To the maximum extent permitted, this Plan will be interpreted and administered consistent with such intent. Each payment under this Plan will be construed as a separate identified payment for purposes of Section 409A of the Code, and any payments described in this Plan that are due within the "short term deferral period" as defined in Section 409A of the Code will not be treated as deferred compensation unless applicable law requires otherwise.

5.10 ***Clawback Provisions.*** All Awards and any Incentive Award paid under this Plan will be subject to the provisions of any clawback or similar policy implemented by the Company from time to time, including, without limitation, any clawback or similar policy adopted to comply with the requirements of applicable law, such as the Dodd-Frank Wall Street Reform and Consumer Protection Act and any rules or regulations promulgated thereunder, to the extent set forth in such clawback.

5.11 ***Effective Date.*** This Plan is effective as of [•].

**Exhibit 10.40**

Western Digital.

Western Digital Corporation
5601 Great Oaks Parkway
San Jose, California 95119

July 1, 2024

Luis Felipe Visoso

Dear Luis,

It is with great pleasure that we at Western Digital Corporation extend this offer of employment to you. Your position will be Executive Vice President and Chief Administrative Officer, reporting to me. This position is exempt and will pay an annual base salary of $825,000 (US Dollars). This offer is contingent upon successful completion of background and reference checks.

As you know, Western Digital Corporation is in the process of separating its flash and hard disk drive (HDD) businesses into two separate and independent public companies (the Separation). Subject to the Separation and the completion of the local separation of the flash and HDD businesses in the US, it is intended that your employment with Western Digital Technologies, Inc. (Western Digital) will be transferred to Sandisk Technologies, Inc. (Sandisk) on October 1, 2024 or such later date as Western Digital or Sandisk will subsequently communicate to you. It is our intent that you will ultimately serve as the Chief Financial Officer of Sandisk following the Separation.

You will be eligible to participate in Western Digital's Short-Term Incentive (STI) Plan. The STI performance period is the company's fiscal year, which begins on or about July 1 of each year. Your individual target award is 150% of your eligible wages earned during each performance period. The payout will be based on corporate business results and your individual accomplishments, subject to approval by the Compensation and Talent Committee of the Board of Directors (C&T Committee).

Contingent upon approval by the C&T Committee, we will recommend asign-on RSU award with a target value of $20,000,000 (US Dollars) that will vest with respect to one half of the award on each of the first two anniversaries of the date of grant. Your sign-on RSU will be converted to a number of units (rounded down to the nearest whole number) equal to (i) $20,000,000 (US Dollars), divided by (ii) the closing stock price of a share of the company's common stock as of the grant date of the award.

Contingent upon approval of the C&T Committee, we will also recommend a fiscal 2025 long-term incentive (LTI) award with a target value of $10,000,000 (US Dollars). Your fiscal 2025 LTI award will consist of 100% RSUs. The target value of your annual LTI award in future fiscal years will be $9,000,000, subject to change at the discretion of the C&T Committee, and will be a combination of performance and time-vested awards.

Your fiscal 2025 LTI award and your sign-on RSU are each subject to Western Digital's Standard Terms and Conditions for RSU awards, as applicable, and will cease upon termination of your employment with Western Digital or one of its subsidiaries (and, following the Separation, Sandisk), provided that if we terminate your employment without "Cause" (within the meaning of Western Digital's Executive Severance Plan), any then-unvested portion of the applicable award will vest pro-rata based on your service.

You will receive a sign-on cash award of $7,150,000 (US Dollars), with $4,000,000 (US Dollars) payable within thirty (30) days of your start date and $3,150,000 (US Dollars) payable within thirty (30) days of the six-month anniversary of your start date. If your employment with Western Digital or one of its subsidiaries (and, following the Separation, Sandisk) terminates prior to the second anniversary of your start date, any portion of the sign-on cash award that you received prior to such termination will be subject to repayment and you will forfeit any unpaid portion of such award. Notwithstanding the foregoing, if we terminate your employment without "Cause" (within the meaning of Western Digital's Executive Severance Plan or applicable post-Separation severance plan), you will not be required to repay the sign-on cash award if you provide a satisfactory release of claims to Western Digital or Sandisk, as applicable. The sign-on cash award is considered taxable income to you when paid.

As a condition of employment, immediately upon hire you will be required to sign an Employee Inventions and Confidentiality Agreement governing inventions, proprietary information, and such other subject matter, which the company considers vital to protect its operation. Please also be advised that the company respects the confidential information and trade secrets of others and endeavors to comply with all laws regarding the use and protection of trade secret information. The company takes its obligations in this respect very seriously and expects the same from its employees. As you prepare to terminate your current employment, please ensure that all documents and property belonging to your employer are returned. This includes documents you may have prepared in the course of your employment and documents that may be in your home, on your home computer or in your car. The company does not want access to any confidential information belonging to your former employer and specifically directs you not to take this information with you or bring onto company premises. You are prohibited from using trade secret or confidential information or property of any previous employer or other person in connection with carrying out your job duties with the company.

You are employed by the company on an at-will basis. This means that either you or the company may terminate the employment relationship at any time, for any reason, with or without cause. The at-will nature of your employment with the company can only be changed by an agreement in writing signed by you and the company's Chief People and Inclusion Officer. Furthermore, by accepting employment with the company, you warrant that you are not bound by the terms of an employment agreement with a third party that would preclude or limit your right to work for the company. You agree to provide the company with a copy of any and all agreements with a third party that contain any restrictions or obligations that conflict with, or are inconsistent with, the performance of your duties for the company.

As a senior leader in the organization, you will not accrue vacation hours, but will coordinate your time off requests with your manager around the needs of the business. You will be eligible on your first day of employment for our benefits plan, which allows you to choose the coverage that fits your needs. You will also be eligible to join the Western Digital Corporation 401(k) Plan immediately. Your position qualifies you for additional benefits provided exclusively to executives of your level including Financial Counseling Reimbursement and company-paid life insurance up to 2x your annual base salary, not to exceed $1,000,000 (US Dollars) (which may require an Evidence of Insurability). You will receive a complete benefits summary during your orientation on your first day of employment.

Your principal place of employment will be at the future Sandisk headquarters at 951 Sandisk Drive, Milpitas, CA 95035. Prior to the Separation, you will also provide services at our corporate headquarters at 5601 Great Oaks Parkway, San Jose, CA 95119. Your first day of employment will be a mutually-agreed date in July 2024. On your first day, we will conduct new hire orientation at our corporate headquarters, or your orientation will be conducted virtually, as needed. At that time, you will be required to provide authentic documents that establish your identity and employment eligibility.

If there are any questions of which I may be of assistance, please let me know.

Sincerely,

David Goeckeler
Chief Executive Officer

***Accepted and Agreed:***

/s/ Luis Felipe Visoso Date: June 30, 2024
Luis Felipe Visoso

**Exhibit 21.1**

**SPINCO**
**LIST OF SUBSIDIARIES**

| Name of Subsidiary | Jurisdiction of Incorporation |
|---|---|
| Amplidata NV | Belgium |
| [EasyStore Memory Ltd. | Ireland] |
| Fusion-io Poland Sp.z o.o. | Poland |
| Prestadora SD, S. de R.L. de C.V. | Mexico |
| SanDisk (Cayman) Limited | Cayman Islands |
| SanDisk (Ireland) Limited | Ireland |
| SanDisk Australia Pty. Ltd. | Australia |
| SanDisk Capital Global Ltd. | Cayman Islands |
| SanDisk Capital LLC | United States |
| SanDisk Cayman Holdings Limited | Cayman Islands |
| SanDisk China Limited | Ireland |
| SanDisk China LLC | United States |
| Sandisk Corporation | United States |
| SanDisk Denmark ApS | Denmark |
| SanDisk Federal, LLC | United States |

| | |
|---|---|
| SanDisk Flash B.V. | Netherlands |
| SanDisk France | France |
| SanDisk Germany GmbH | Germany |
| SanDisk Holding Limited | Cayman Islands |
| SanDisk Holdings B.V. | Netherlands |
| SanDisk Hong Kong Limited | Hong Kong |
| SanDisk India Device Design Centre Private Limited | India |
| SanDisk Information Technology (Shanghai) Co. Ltd. | China |
| SanDisk International Limited | Ireland |
| SanDisk International Middle East FZE | United Arab Emirates |
| SanDisk Korea Limited | Korea |
| SanDisk LLC | United States |
| SanDisk Manufacturing Americas LLC | United States |
| SanDisk Pazarlama Ve Ticaret Limited Sirketi | Turkey |
| SanDisk Semiconductor (Shanghai) Co., Ltd. | China |
| SanDisk Spain, S.L.U. | Spain |
| SanDisk Storage (Italy) S.r.l | Italy |
| SanDisk Storage (Philippines) Corp. | Philippines |
| SanDisk Storage Malaysia Sdn. Bhd. | Malaysia |
| SanDisk Storage Pte. Ltd. | Singapore |
| [SanDisk Switzerland Sarl | Switzerland] |
| SanDisk Technologies LLC | United States |
| Sandisk Technologies, Inc. | United States |
| SanDisk Trading (Shanghai) Co., Ltd. | China |
| SanDisk Trading Holdings Limited | Ireland |
| SanDisk UK Holdings Limited | United Kingdom |
| SanDisk UK Limited | United Kingdom |
| SMART Storage Systems GmbH | Austria |
| WD Technologies Nigeria Limited | Nigeria |
| Western Digital (Argentina) S.A. | Argentina |
| Western Digital (Vietnam) Limited Liability Co. | Vietnam |
| Western Digital Canada Corporation | Canada |
| Western Digital Do Brasil Comercio E. Distribuicao De Produtos De Informatica Ltda. | Brazil |
| Western Digital GK | Japan |
| Western Digital Israel Ltd. | Israel |
| Western Digital Latin America, LLC | United States |

**Exhibit 99.1**

Dear Western Digital Corporation Stockholder:

In October 2023, we announced our plan to separate Western Digital Corporation's ("WDC") flash business from our remaining hard disk drive business pursuant to a spin-off transaction, resulting in two independent, publicly traded companies. The new company distributed to WDC stockholders in the spin-off, Sandisk Corporation ("Spinco"), will hold our flash business. Spinco will focus on delivering a broad and ever-expanding portfolio of flash-based products and pursuing the emerging development of disruptive, new memory technologies. Upon completion of the spin-off, WDC will focus on its existing HDD business. WDC will continue to lead the storage industry in delivering powerful HDD solutions for high-capacity applications.

WDC believes that both the long-term potential and overall valuation of its HDD and flash franchises will be enhanced as a result of separating its current portfolio into two independent companies. Each company will have a strong financial foundation, a compelling innovation roadmap, a sharpened strategic focus and an experienced leadership team.

The spin-off will be effected through a pro rata distribution of 80.1% of the outstanding shares of Spinco common stock to holders of WDC common stock in a transaction that is intended to be tax-free to holders of WDC common stock (except with respect to any cash received in lieu of fractional shares) for U.S. federal income tax purposes. Each WDC stockholder will receive one-third (1/3) of one share of Spinco common stock for each share of WDC common stock held by such WDC stockholder as of [●] Pacific time on [●], the record date for the distribution. You will receive cash in lieu of any fractional shares which you would have received after the application of the above ratio. Stockholder approval of the distribution is not required, and you do not need to take any action to receive the shares of Spinco common stock to which you are entitled as a WDC stockholder. In addition, you do not need to pay any consideration or surrender or exchange your WDC common stock in order to receive shares of Spinco common stock.

We expect Spinco common stock to be approved for listing on the Nasdaq Stock Market LLC ("Nasdaq") under the ticker symbol "SNDK." Following the spin-off, we expect shares of WDC common stock will continue to trade on Nasdaq.

I encourage you to read the attached information statement, which is being made available to all holders of WDC common stock as of [●], 2024. The information statement describes the separation and distribution in detail and contains important business and financial information about Spinco.

We believe the separation provides tremendous opportunities for our businesses as we work to continue to build long-term value. We appreciate your continuing support of WDC and look forward to your future support of Spinco.

Sincerely,

[●]
[●]
Western Digital Corporation

Dear Future Sandisk Corporation Stockholder:

I am delighted to welcome you as a future stockholder of our new company, Sandisk Corporation ("Spinco"). Spinco will focus on delivering a broad and ever-expanding portfolio of flash-based products and pursuing the emerging development of disruptive, new memory technologies.

We are eager to begin our journey at this exciting time for our business. Over the past several years, we have strengthened the fundamentals of our business and enhanced our operational efficiency. Having laid that important groundwork, we believe Spinco is well positioned to drive growth and deliver long-term stockholder value with our leading flash product portfolio, premium consumer brand and differentiated semiconductor innovation engine. We expect Spinco common stock to be approved for listing on the Nasdaq Stock Market LLC under the ticker symbol "SNDK."

We invite you to learn more about Spinco by reviewing the enclosed information statement. As we prepare to become an independent, publicly traded company, we look to build upon our legacy, define the future for our industry and serve our customers' needs in the best way possible. Our future is bright, and we look forward to enhancing stockholder value and your support as a stockholder.

Sincerely,

**[Name]**
**[●]**
Sandisk Corporation

Table of Contents

**Information contained herein is subject to completion or amendment. A Registration Statement on Form 10 relating to these securities has been filed with the U.S. Securities and Exchange Commission under the U.S. Securities Exchange Act of 1934, as amended.**

**PRELIMINARY INFORMATION STATEMENT AND SUBJECT TO COMPLETION, DATED NOVEMBER 25, 2024**

## INFORMATION STATEMENT

# Sandisk Corporation

### Common Stock
### (par value $0.01 per share)

---

This information statement is being furnished in connection with the distribution by Western Digital Corporation ("WDC") to its stockholders of Sandisk Corporation ("Spinco" or the "Company"), a wholly owned subsidiary of WDC. Prior to such distribution, WDC, Spinco and their applicable affiliates will consummate a series of transactions to separate WDC and Spinco, resulting in WDC continuing to own WDC's hard disk drive business and Spinco owning WDC's flash business, as more fully described in this information statement (the separation and distribution transactions together, the "spin-off"). WDC will effect the distribution by distributing 80.1% of the outstanding shares of Spinco common stock owned by WDC on a pro rata basis to existing stockholders of WDC. The distribution is subject to certain conditions, as set forth in this information statement.

For each share of WDC common stock held of record by you as of [●] Pacific Time on [●], the record date for the distribution, you will receive one-third (1/3) of one share of Spinco common stock. You will receive cash in lieu of any fractional shares which you would have received after the application of the above ratio. We expect our common stock will be distributed by WDC to you on or about [●], the distribution date. As discussed under the section of this information statement entitled "The Separation and Distribution—Trading Between the Record Date and the Distribution Date," if you sell your shares of WDC common stock in the "regular-way" market after the record date for the distribution and before the distribution date, you also will be selling your right to receive shares of Spinco common stock in connection with the spin-off.

**We are not asking you for a proxy and you are not requested to send WDC a proxy. No vote of WDC's stockholders is required in connection with the spin-off.** You will not be required to pay any consideration or to exchange or surrender your existing shares of WDC or take any other action to receive the shares of Spinco on the distribution date to which you are entitled.

The distribution is intended to be tax-free to our stockholders (except with respect to any cash received in lieu of fractional shares) for U.S. federal income tax purposes. You should consult your tax advisor as to the particular consequences of the distribution to you, including the applicability and effect of any U.S. federal, state and local and any foreign, tax laws.

There is no current trading market for our common stock, although we expect that a limited market, commonly known as a "when-issued" trading market, will develop shortly before the distribution date, and we expect "regular-way" trading of our common stock to begin on the first trading day following the completion of the distribution. We intend to apply to list our common stock on the Nasdaq Stock Market LLC ("Nasdaq") under the symbol "SNDK."

---

This information statement is being furnished solely to provide information to WDC stockholders who are entitled to receive shares of our common stock in the distribution. The information statement is not, and is not to be construed as, an inducement or encouragement to buy, hold or sell any of our securities or securities of WDC. We believe that the information in this information statement is accurate as of the date set forth on the cover. Changes to the information contained in this information statement may occur after that date, and none of us, WDC, the Spinco board of directors or the WDC board of directors undertake any obligation to update such information, except in the normal course of our and WDC's public disclosure obligations and practices and as required by applicable federal securities laws.

At the time our registration statement, of which this information statement is a part, is declared effective by the United States Securities and Exchange Commission (the "SEC"), Spinco will become subject to the information and reporting requirements of the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder (the "Exchange Act"), and, in accordance with the Exchange Act, we will file periodic reports (including Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q and Current Reports on Form 8-K), proxy statements, and other information with the SEC. The SEC maintains a website, www.sec.gov, that contains periodic reports, proxy statements and information statements and other information regarding issuers, like us, that file electronically with the SEC. We encourage you to review our periodic reports, proxy statements and information statements, and any other information we file with the SEC when they are made available, as they will contain important information about Spinco, in particular for periods after the date of this information statement.

---

**In reviewing the information statement, you should carefully consider the matters described under the caption " *Risk Factors* " beginning on page 30.**

**Neither the SEC nor any state securities commission has approved or disapproved of these securities or determined if this information statement is truthful or complete. Any representation to the contrary is a criminal offense.**

**This information statement does not constitute an offer to sell or the solicitation of an offer to buy any securities.**

This information statement is first being made available to WDC stockholders on or about [●], 2024, and a Notice of Internet Availability of Information Statement Materials containing instructions describing how to access this information statement was first mailed to WDC stockholders on or about [●], 2024. This information statement will be mailed to WDC stockholders who previously elected to receive a paper copy of WDC's materials.

---

**The date of this information statement is [●], 2024.**

## TABLE OF CONTENTS

## PRESENTATION OF INFORMATION

Unless the context otherwise requires, references in this information statement to "Spinco," the "Company," "we," "us," "our" and "our company" refer to Sandisk Corporation and its subsidiaries. References in this information statement to "WDC" or "Western Digital" refer to Western Digital Corporation and its consolidated subsidiaries (other than Spinco and its consolidated subsidiaries), unless the context otherwise requires or as otherwise specified herein.

Unless the context otherwise requires, the information included in this information statement about Spinco assumes the completion of all of the transactions referred to in this information statement in connection with the spin-off. This information statement describes the business to be transferred to Spinco by WDC in the separation as if the transferred business was our business for all historical periods described. References in this information statement to our historical assets, liabilities, products, businesses or activities of our business are generally intended to refer to the historical assets, liabilities, products, businesses or activities of the transferred business as the business was conducted as part of WDC and its subsidiaries prior to the completion of all the transactions referred to in this information statement in connection with the spin-off.

This information statement is being furnished solely to provide information to WDC stockholders who will receive shares of Spinco common stock in the distribution. It is not and is not to be construed as an inducement or encouragement to buy or sell any of Spinco's securities or any securities of WDC. This information statement describes Spinco's business, Spinco's relationship with WDC and how the spin-off affects WDC and its stockholders and provides other information to assist you in evaluating the benefits and risks of holding or disposing of Spinco common stock that you will receive in the distribution. You should be aware of certain risks relating to the spin-off, Spinco's business and ownership of Spinco common stock, which are described under the section of this information statement entitled "*Risk Factors.*"

## FINANCIAL STATEMENT INFORMATION

This information statement includes certain historical combined financial and other data for Spinco (referred to as the Flash Business of Western Digital Corporation or the Business in the historical combined financial statements and related notes thereto). In connection with the spin-off, Spinco will become the holder of the assets and liabilities of all of WDC's Flash Business (as defined herein). Spinco is the registrant under the registration statement of which this information statement forms a part and will be the financial reporting entity following the completion of the spin-off. WDC is presently, and will continue to be, a financial reporting entity following the spin-off. This information statement also includes summary unaudited pro forma condensed combined balance sheet data as of September 27, 2024, and summary unaudited pro forma condensed combined statement of operations data for the three months ended September 27, 2024 and the fiscal year ended June 28, 2024, which present our combined financial position and results of operations after giving effect to the separation and distribution, and the other transactions described under "Unaudited Pro Forma Condensed Combined Financial Information." The unaudited pro forma condensed combined financial information is presented for illustrative purposes only and is not necessarily indicative of the operating results or financial position that would have occurred if the relevant transactions had been consummated on the date indicated, nor is it indicative of future operating results. You should read the section of this information statement entitled "Unaudited Pro Forma Condensed Combined Financial Information" and "Notes to Unaudited Pro Forma Condensed Combined Financial Information," which are qualified in their entirety by reference to our combined financial statements and related notes thereto, the consolidated financial statements of WDC and related notes thereto and the financial and other information, including in the sections of this information statement entitled "Risk Factors," "Capitalization" and "Management's Discussion and Analysis of Financial Condition and Results of Operations."

## NON-GAAP FINANCIAL INFORMATION

This information statement also contains certain financial measures, including Adjusted EBITDA,Non-GAAP Net income (loss), Free cash flow and Adjusted free cash flow, that are not required by, or prepared in accordance with, accounting principles generally accepted in the United States ("GAAP"). We refer to these measures as "non-GAAP" financial measures. See "Management's Discussion and Analysis of Financial Condition and Results of Operations—Non-GAAP Financial Measures and Use of Certain Terms" for our definitions ofthese non-GAAP measures, information about how and why we use these non-GAAP measures and a reconciliation of each of these non-GAAP measures to its most directly comparable financial measure calculated in accordance with GAAP.

## MARKET, INDUSTRY AND OTHER DATA

Unless otherwise indicated, information contained in this information statement concerning our industry and the markets in which we operate, including our general expectations and market position, market opportunity and market share, is based on information from third-party sources, our own analysis of data received from these third-party sources, our own internal data, market research that we commission and management estimates. Our management estimates are derived from publicly available information, our knowledge of our industry and assumptions based on such information and knowledge, which we believe to be reasonable. Assumptions and estimates of our and our industry's future performance are necessarily subject to a high degree of uncertainty and risk due to a variety of factors, including those described under the section of this information statement entitled "*Risk Factors.*" These and other factors could cause future performance to differ materially from our assumptions and estimates. For additional information, see the sections of this information statement entitled "*Risk Factors*" and "*Forward-Looking Statements*."

## TRADEMARKS AND TRADE NAMES

This information statement may contain trade names, trademarks or service marks belonging to other companies. Such trade names, trademarks or service marks are the property of their respective owners, and we do not intend any use or display of other parties' trademarks, trade names or service marks to imply a relationship with, or endorsement or sponsorship of us by, these other parties.

## INFORMATION STATEMENT SUMMARY

*This summary highlights some of the information in this information statement relating to Spinco, our separation from WDC and the distribution of our common stock by WDC to its stockholders. For a more complete understanding of our business and the separation and distribution, you should read carefully the more detailed information set forth under the sections of this information statement entitled "Risk Factors," "Management's Discussion and Analysis of Financial Condition and Results of Operations," "Business" and "The Separation and Distribution" and the other information included in this information statement.*

### Sandisk Corporation

Spinco is a leading developer, manufacturer and provider of data storage devices and solutions based on NAND flash technology and has significant consumer brands and franchises globally, with market leading name brand recognition. On October 30, 2023, WDC announced its plan to separate its businesses into two distinct, publicly traded companies through a distribution of Spinco shares to WDC stockholders. Spinco will operate WDC's Flash Business, and WDC will continue to operate its hard disk drives business unit.

### Business Overview

**General**

With a differentiated innovation engine driving advancements in storage and semiconductor technologies, Spinco delivers a broad and ever-expanding portfolio of powerful flash storage solutions for everyone from students, gamers and home offices, to the largest enterprises and public clouds to capture, preserve, access and transform an ever-increasing diversity of data. Our solutions include a broad range of solid state drives (or SSDs) embedded products, removable cards, universal serial bus (or USB) drives, and wafers and components. Our broad portfolio of technology and products addresses multiple end markets of "Cloud," "Client" and "Consumer."

Through the Client end market, we provide our original equipment manufacturer (or OEM) and channel customers a broad array of high-performance flash solutions across personal computer, mobile, gaming, automotive, virtual reality headsets, at-home entertainment and industrial spaces. The Consumer end market is highlighted by our broad range of retail and other end-user products, which capitalizes on the strength of our product brand recognition and vast points of presence around the world. Cloud is comprised primarily of products for public or private cloud environments and end customers.

We have valuable patent portfolios containing approximately 9,200 granted patents and approximately 2,900 pending patent applications worldwide. We have a rich heritage of innovation and operational excellence, a wide range of intellectual property assets, broad research and development capabilities, and large-scale, efficient manufacturing supply chains. The strong growth in the amount, value and use of data continues, creating a global need for larger, faster and more capable storage solutions.

We are a customer-focused organization that has developed deep relationships with industry leaders to continue to deliver innovative solutions to help users capture, store and, transform data across a boundless range of applications. We help original equipment manufacturers address storage opportunities and solutions to capture and transform data in a myriad of devices and edge technologies. We have also built strong consumer brands with tools to manage vast libraries of personal content and to push the limits of what's possible for storage. At Spinco, we continue to transform ourselves to address the growth in data by providing what we believe to be the broadest range of storage technologies in the industry with a comprehensive product portfolio and global reach.

**Industry**

We operate in the data storage industry. The ability to access, store and share data from anywhere on any device is increasingly important to our customers and end users. From the intelligent edge to the cloud, data storage is a fundamental component underpinning the global technology architecture. Our strengths in innovation and cost leadership, diversified flash product portfolio and broad routes to market provide a foundation upon which we are solidifying our position as an essential building block of the digital economy. There is tremendous market opportunity flowing from the rapid global adoption of the technology architecture built with cloud infrastructure tied to intelligent endpoints all connected by high-performance networks. The value and urgency of data storage at every point across this architecture have never been clearer.

The increase in computing complexity and advancements in artificial intelligence, along with growth in cloud computing applications, connected mobile devices and Internet-connected products and edge devices is driving unabated growth in the volume of digital content to be stored and used. We believe our expertise and innovation in flash technology enable us to bring powerful solutions to a broader range of applications. We continuously monitor the full array of flash-based storage technologies, including reviewing these technologies with our customers, to ensure we are appropriately resourced to meet our customers' storage needs.

**Flash Technology**

Flash products provide non-volatile data storage based on flash technology. We develop and manufacture solid state storage products for a variety of applications including enterprise or cloud storage, client storage, automotive, mobile devices and removable memory devices. Over time, we have successfully developed and commercialized successive generations of 2- and 3-dimensional flash technology with increased numbers of storage bits per cell in an increasingly smaller form factor, further driving cost reductions. We devote significant research and development resources to the development of highly reliable, high-performance, cost-effective flash-based technology and are continually pursuing developments in next-generation flash-based technology capacities. We are leveraging our expertise, resources and strategic investments in non-volatile memories to explore a wide spectrum of persistent memory and storage class memory technologies. We have also initiated, defined and developed standards to meet new market needs and to promote wide acceptance of flash storage standards through interoperability and ease of use.

**Our Data Solutions**

Our broad portfolio of technology and products addresses multiple end markets of "Cloud," "Client" and "Consumer" and are comprised of the SanDisk® brand. Certain of our products will also be sold for a limited transitional period under the Western Digital®, WD® and other brands under license from WDC.

Cloud represents a large and growing end market comprised primarily of products for public or private cloud environments and enterprise customers. We provide the Cloud end market with an array of high-performance enterprise solid state drives. Our high-performance enterprise class solid state drives include high-performance
flash-based solid state drives and software solutions that are optimized for performance applications providing a range of capacity and performance levels primarily for use in enterprise servers and supporting high-volume online transactions, artificial intelligence-related workloads, data analysis and other enterprise applications.

Through the Client end market, we provide numerous data solutions that we incorporate into our client's devices, which consist of solid state drive desktop and notebook personal computers, gaming consoles and set top boxes, as well as flash-based embedded storage products for mobile phones, tablets, notebook personal computers and other portable and wearable devices, automotive applications, Internet of Things, industrial and connected home applications. Our solid state drives are designed for use in devices requiring high performance, reliability and capacity with various attributes such as low cost per gigabyte, quiet acoustics, low power consumption and protection against shocks.

We serve the Consumer end market with a portfolio of solid state drives and removable flash, including cards and universal serial bus flash drives, through our retail and channel routes to market. We offer client portable solid state drives with a range of capacities and performance characteristics to address a broad spectrum of the client storage market. Our removable cards are designed primarily for use in consumer devices, such as mobile phones, tablets, imaging systems, cameras and smart video systems. Our universal serial bus flash drives are used in the computing and consumer markets and are designed for high-performance and reliability.

**Competition**

Our industry is highly competitive. We believe we are well positioned with our leading flash product portfolio, premium consumer brand, differentiated semiconductor innovation engine and leadership in driving cost efficiency. Nevertheless, we face strong competition from other manufacturers of flash in the Cloud, Client and Consumer end markets. We compete with vertically integrated suppliers such as Kioxia Corporation ("Kioxia"), Micron Technology, Inc., Samsung Electronics Co., Ltd., SK Hynix, Inc., Yangtze Memory Technologies Co., Ltd. and numerous smaller companies that assemble flash into products.

**Business Strategy**

Our overall strategy is to leverage our innovation, technology and execution capabilities to be an industry-leading and broad-based developer, manufacturer and provider of storage devices and solutions that support the infrastructure that has enabled the unabated proliferation of data. We strive to successfully execute our strategy through the following foundational elements in order to create long-term value for our customers, partners, investors and employees:

- *Innovation and Cost Leadership:* We continue to innovate and develop advanced technologies across platforms to deliver timely new products and solutions to meet growing demands for scale, performance and cost efficiency in the market.
- *Broad Product Portfolio:* We leverage our capabilities in firmware, software and systems to deliver compelling and differentiated integrated storage solutions to our customers that offer the best combinations of performance, cost, power consumption, form factor, quality and reliability, while creating new use cases for our solutions in emerging markets.
- *Operational Excellence:* We are focused on delivering the best value for our customers in Cloud, Client and Consumer end markets through a relentless focus on appropriately scaling our operations to efficiently support business growth; achieving best in class cost, quality and cycle-time; maintaining industry leading manufacturing capabilities; and having a competitive advantage in supply-chain management.

Our strategy provides the following benefits, which distinguish us in the dynamic and competitive data storage industry:

- a varied product portfolio that establishes us as a leading developer and manufacturer of integrated products and solutions, making us a strategic supply partner to our customers;
- efficient and flexible manufacturing capabilities, allowing us to leverage our flash research and development and capital expenditures to deliver innovative and cost-effective storage solutions to multiple markets;
- deep relationships with industry leaders across the data ecosystems that give us the broadest routes to market; and
- industry leading consumer brand awareness and global retail distribution presence.

**Operations**

Our flash consists of flash-based memory, controllers and firmware and other components. Substantially all of our flash-based memory is obtained from our joint ventures with Kioxia, which provide us with leading-edge, high-quality and low-cost flash memory wafers. While substantially all of our flash memory supply utilized for our products is purchased from these ventures, from time to time, we also purchase flash memory from other flash manufacturers. Controllers are primarily designed in-house and manufactured by third-party foundries or acquired from third-party suppliers. Our assembly and test operations comprise in-house assembly and test facilities located in Penang, Malaysia and other contract manufacturers, and the assembly and test facility owned and operated by the venture established by the recently completed equity purchase agreement with JCET Management Co., Ltd. in Shanghai, China. We believe the use of our in-house assembly and test facilities and manufacturing partners provides flexibility and gives us access to increased production capacity.

We and Kioxia currently operate three business ventures, Flash Partners Ltd., Flash Alliance Ltd. and Flash Forward Ltd. (collectively, "Flash Ventures") across seven flash-based manufacturing facilities in Japan, six of which are located in Yokkaichi, Japan and one of which is located in Kitakami, Japan. Flash Ventures will begin flash-based manufacturing operations at an eighth facility in Japan in calendar year 2025. Through Flash Ventures, we and Kioxia collaborate in the development and manufacture of flash-based memory wafers using semiconductor manufacturing equipment owned or leased by each of the Flash Ventures entities. We co-develop flash technologies (including process technology and memory design) with Kioxia for Flash Ventures' use. We and Kioxia jointly own these co-developed flash technologies. We and Kioxia also contribute to the collaboration and license to each other technologies that are independently developed and owned by each of us and are reasonably necessary to our joint development or manufacture of flash-based memory. We hold a 49.9% ownership position in each of the Flash Ventures entities. We jointly control with Kioxia the operations of Flash Ventures, and we believe our participation in Flash Ventures helps us reduce product costs, increases our ability to control to the quality of our products and speeds delivery of our products to our customers.

Kioxia owns the facilities and provides wafer manufacturing services to Flash Ventures at cost using manufacturing equipment owned or leased by Flash Ventures and process technologies co-owned or contributed by us and Kioxia. Flash Ventures accounts for approximately 80% of the total manufacturing capacity in the facilities owned by Kioxia. We and Kioxia are entitled to purchase a share of Flash Ventures' output, which generally equals 50% each. The price for which we and Kioxia pay Flash Ventures for flash memory wafers is cost plus a small markup. We are obligated to pay for variable costs incurred in producing our share of Flash Ventures' flash-based memory wafer supply, based on a rolling forecast. In addition, we are obligated to pay for half of Flash Ventures' fixed costs regardless of the output we choose to purchase.

While Flash Ventures is operating, we and Kioxia are restricted from working with third parties to manufacture flash-based memory or from fabricating flash-based memory beyond the capacity specified in our agreements with Kioxia. In addition, we may not manufacture flash-based memory ourselves except to the extent that we acquire the manufacturing capacity of a Flash Ventures entity as a result of such entity's dissolution or termination of its joint venture agreements or upon our acquisition of all the ownership interests in such entity.

The agreements governing the operations of the Flash Ventures entities also set out a framework for any investment by the joint venture partners in flash manufacturing capacity. We have jointly invested, and intend to continue to jointly invest, with Kioxia in the manufacturing equipment needed to support Flash Ventures' flash manufacturing operations. In addition, we are obligated to fund 49.9% to 50.0% of capital investments that a Flash Ventures entity decided to make to the extent that the Flash Ventures entity's operating cash flow is insufficient to fund these investments.

Each Flash Ventures entity operates for a set amount of time as agreed between us and Kioxia. Since the start of Flash Ventures, we and Kioxia have extended the term for all three of the Flash Ventures entities. Absent further

extensions as mutually agreed between us and Kioxia, Flash Partners Ltd. and Flash Alliance Ltd. are currently set to expire on December 31, 2029, and Flash Forward Ltd. is currently set to expire on December 31, 2034. Each Flash Ventures entity's joint venture agreements may also earlier terminate upon the occurrence of certain specified events, including earlier dissolution by agreement of the parties or an event of default or bankruptcy. Upon the expiration of a Flash Ventures entity's joint venture agreements, whenever that may occur, the applicable Flash Ventures entity will commence a wind-up process and be dissolved. Net proceeds from the dissolution will be distributed in kind or cash to us and Kioxia on a pro rata basis based on our respective ownership positions. The applicable Flash Venture entity will continue to operate during the period of winding up.

WDC also has a joint venture with Unisplendour Corporation Limited and Unissoft (Wuxi) Group Co. Ltd. ("Unis"), referred to as the "Unis Venture", to market and sell our products in China and to develop data storage systems for the Chinese market in the future. Pursuant to the separation and distribution agreement, it is expected that the Unis Venture will be minority owned by Spinco and majority owned by Unis following the separation. The Unis Venture has not historically been managed as a component of Spinco and as such the related equity method investment is not reflected within our historical combined financial statements. In addition, SanDisk China Limited, a wholly owned indirect subsidiary of WDC and an expected wholly owned subsidiary of Spinco following the separation, has recently established a venture with JCET Management Co., Ltd. ("JCET"), referred to as the "SDSS Venture", regarding the ownership and operations of our assembly and test facility in Shanghai, China. The SDSS Venture is 20% owned by Spinco and 80% owned by JCET.

**Summary of Risk Factors**

An investment in Spinco's common stock is subject to a number of risks, including market, financial, regulatory and operational risks related to our business, our separation from WDC and our common stock. Set forth below are some, but not all, of these risks.

***Risks Related to Our Flash Business***

- We are dependent on a limited number of qualified suppliers who provide critical services, materials or components, and a disruption in our supply chain could negatively affect our business;
- Our operations, and those of certain of our suppliers and customers, are subject to substantial risk of damage or disruption;
- The loss of our key management, staff and skilled employees; the inability to hire and develop new employees; or decisions to realign our business could negatively impact our business prospects;
- We are subject to risks related to product defects, which could result in product recalls or epidemic failures and could subject us to warranty claims in excess of our warranty provisions or which are greater than anticipated, litigation or indemnification claims;
- We rely substantially on strategic relationships with various partners, including Kioxia, which subjects us to risks and uncertainties that could harm our business;
- If we do not properly manage technology transitions and product development and introduction, our competitiveness and operating results may be negatively affected;
- Loss of revenue from a key customer, or consolidation among our customer base, could harm our operating results;
- Sales in the distribution channel and to the retail market are important to our business, and if we fail to respond to demand changes within these markets, or maintain and grow our applicable market share, our business could suffer;

- Our level of debt may negatively impact our liquidity, restrict our operations and ability to respond to business opportunities and increase our vulnerability to adverse economic and industry conditions;
- We are subject to laws, rules and regulations relating to the collection, use, sharing and security of data, including personal data, and our failure to comply with these laws, rules and regulations could subject us to proceedings by governmental entities or others and cause us to incur penalties, significant legal liability, or loss of customers, loss of revenue and reputational harm;
- We and certain of our officers may at times be involved in litigation, investigations and governmental proceedings, which may be costly, may divert the efforts of our key personnel and could result in adverse court rulings, fines or penalties, which could materially harm our business;
- The compromise, damage or interruption of our technology infrastructure, systems or products by cyber incidents, data security breaches, other security problems, design defects or system failures could have a material negative impact on our business; and
- The nature of our industry and its reliance on intellectual property and other proprietary information subjects us and our suppliers, customers and partners to the risk of significant litigation.

***Risks Related to the Spin-Off***

- We may not achieve some or all of the expected benefits of thespin-off, and the spin-off may adversely impact our business;
- Our historical and pro forma financial information is not necessarily representative of the results that we would have achieved as a separate, publicly traded company and therefore may not be a reliable indicator of our future results;
- In connection with our spin-off from WDC, WDC will indemnify us for certain liabilities. However, there can be no assurance that the indemnity will be sufficient to protect us against the full amount of such liabilities, or that WDC's ability to satisfy its indemnification obligation will not be impaired in the future;
- In connection with our separation, we will assume, and indemnify WDC for, certain liabilities. If we are required to make payments pursuant to these indemnities to WDC, we would need to meet those obligations and our financial results could be adversely impacted;
- If the distribution of shares of Spinco, together with certain related transactions, does not qualify as a reorganization within the meaning of sections 368(a)(1)(D), 361 and 355 of the Internal Revenue Code of 1986 (the "Code") that is generally tax-free for U.S. federal income tax purposes, you and WDC could be subject to significant U.S. federal income tax liability and, in certain circumstances, Spinco could be required to indemnify WDC for material taxes pursuant to indemnification obligations under the anticipated tax matters agreement;
- To preserve the tax-free treatment to WDC and its stockholders of the distribution and certain related transactions, under the tax matters agreement that Spinco is anticipated to enter into with WDC, Spinco will be restricted from taking certain actions after the distribution that could adversely impact the intended U.S. federal income tax treatment of the distribution and such related transactions;
- The spin-off and related internal restructuring transactions may expose us to potential liabilities arising out of state and federal fraudulent conveyance laws and legal dividend requirements; and
- Following the spin-off, the value of your common stock in WDC and Spinco may collectively trade at an aggregate price less than what WDC's common stock might have traded at had the spin-off not occurred.

***Risks Related to Our Common Stock***

- We cannot be certain that an active trading market for our common stock will develop or be sustained after the spin-off and, following the spin-off, our stock price may fluctuate significantly;
- Any sales of substantial amounts of shares of our common stock in the public market, or the perception that such sales might occur, in connection with the distribution or otherwise, may cause the market price of our common stock to decline;
- Provisions of Delaware law, our certificate of incorporation and our bylaws, may prevent or delay an acquisition of our company, which could decrease the market price of our common stock;
- The price of WDC's common stock historically has been volatile, and the price of Spinco's common stock may continue to be volatile. This volatility may affect the price at which you could sell your common stock, and the sale of substantial amounts of our common stock could adversely affect the price of our common stock; and
- Tax matters may materially affect our financial position and results of operations.

These and other risks relating to our business, our industry, the spin-off and our common stock are discussed in greater detail under the section of this information statement entitled "Risk Factors." You should read and consider all of these risks carefully.

## SUMMARY OF THE SEPARATION AND DISTRIBUTION

The following provides a summary of the terms of the separation and distribution. For a more detailed description of the matters described below, see the section of this information statement entitled "The Separation and Distribution."

**Distributing Company**

Western Digital Corporation, a Delaware corporation. Following the spin-off, WDC will own 19.9% of our common stock for a period of up to 12 months following the distribution.

**Distributed Company**

Sandisk Corporation, a Delaware corporation and, prior to the spin-off, a wholly owned subsidiary of WDC. WDC formed Spinco as a corporation in Delaware on February 5, 2024, for the purpose of effectuating the planned spin-off. Spinco has engaged in no business activities to date and it has no material assets or liabilities of any kind, other than those incident to its formation and those incurred in connection with the spin-off. Pursuant to a reorganization, prior to the spin-off, we will receive the legal entities containing the flash business of WDC and its subsidiaries, including the business of marketing, offering, selling, licensing, providing, distributing, developing, manufacturing, importing or exporting flash business products (the "Flash Business"). Spinco will pay WDC cash in exchange for the transfer, directly or indirectly, of the flash assets from WDC to Spinco and the assumption of the flash liabilities by Spinco in connection with the spin-off (the "Spinco Dividend"). After completion of the separation and distribution, we will be an independent, publicly traded company.

**Distribution Ratio**

Each holder of WDC common stock will receive for each share of WDC common stock held at [●] Pacific time on [●], the record date for the distribution, one-third (1/3) of one share of Spinco common stock (the "distribution ratio"). Cash will be distributed in lieu of fractional shares, as described in the section of this information statement entitled "The Separation and Distribution—General Treatment of Fractional Shares of Common Stock." Please note that if you sell your shares of WDC common stock on or before the distribution date, then the buyer of those shares may, in certain circumstances, be entitled to receive the shares of our common stock distributed on the distribution date.

**Distributed Securities**

WDC will distribute 80.1% of Spinco common stock owned by WDC, which will be 80.1% of Spinco's common stock outstanding immediately prior to the distribution. Based on the approximately 346 million shares of WDC common stock outstanding on September 27, 2024, and applying the distribution ratio for each share of WDC common stock, WDC will distribute an aggregate of approximately 115 million shares of Spinco common stock to WDC stockholders who hold WDC common stock as of the record date for the distribution. The number of shares that WDC will distribute to its stockholders will be reduced to the extent that cash payments are to be made in lieu of the issuance of fractional shares of Spinco common stock, as described below. Following the distribution, WDC will dispose of all of the Spinco common stock that it retains after the distribution through one or more subsequent exchanges of Spinco common stock for WDC debt held by WDC creditors and/or through distributions of Spinco common stock to WDC stockholders as dividends or in exchange for outstanding shares of WDC common stock, in each case during the 12-month period following the distribution.

**Record Date**

The record date for the distribution is expected to be [●] Pacific time on [●] (the "record date for the distribution").

**Distribution Date**

The distribution date is expected to be on or about [●].

**Distribution**

On the distribution date, WDC, with the assistance of [●], the distribution agent, will electronically distribute shares of Spinco common stock to your bank or brokerage firm on your behalf or through the systems of The Depository Trust Company ("DTC") (if you hold your WDC shares through a bank or brokerage firm that uses DTC) or to you in book-entry form (if you hold your WDC shares in book-entry form). You will not be required to make any payment or surrender or exchange your shares of WDC common stock or take any other action to receive your shares of Spinco on the distribution date. Your bank or brokerage firm will credit your account for the shares of Spinco common stock or the distribution agent or the transfer agent will mail you a book-entry account statement that reflects your shares of Spinco. Please note that if you sell your shares of WDC common stock on or before the distribution date, then the buyer of those shares may, in certain circumstances, be entitled to receive the shares of our common stock distributed on the distribution date. For more information, see the section of this information statement entitled "The Separation and Distribution—Trading Between the Record Date and the Distribution Date."

**Distribution Agent**

The distribution agent, transfer agent and registrar for Spinco common stock will be [●].

**Reasons for the Spin-Off**

WDC has made significant strides in creating a leading digital storage solutions business while continuing to strengthen and grow the Flash Business, and, to accelerate the pace of transformation, the board of directors of WDC (the "WDC Board of Directors") approved a plan to separate WDC and Spinco into two independent, publicly traded companies. The spin-off will create two strong, stand-alone businesses, each of which will have leading positions in the markets they serve and will be better positioned to deliver long-term growth and sustainable value creation for all shareholders:

- WDC will focus on the remaining hard disk drive business of WDC and its subsidiaries (the "HDD Business"); and
- Spinco will hold the Flash Business.

The WDC Board of Directors believes that separating the Flash Business from the remainder of WDC and distributing Spinco shares to WDC stockholders is in the best interests of WDC and its stockholders for a number of reasons, including:

- *Tailored Capital Allocation Strategies Align with Distinct Business Strategies and Industry Specific Dynamics* Without the need to make capital allocation decisions based on WDC's overall pre-spin-off business portfolio, the spin-off will permit each company to implement a capital structure and flexible capital deployment policy that is optimized for its strategy and business needs, and that is aligned with each company's target investor base. Each company will also have direct access to the debt and equity capital markets to fund its growth strategies, and the ability to concentrate its financial resources solely on its own operations.
- *Simplified Investment Profile and Potential Ability to Enhance Marketability.* The business which will constitute Spinco differs significantly in several respects from the remaining business of WDC, including the nature of the business, growth profile, cyclical trends and business cycles and secular growth drivers. The spin-off will simplify how investors evaluate each business, streamline the investment profiles of both businesses, permit investors to better evaluate the individual merits, performance and future prospects of each company's business, and provide investors the ability to

invest in each company separately based on those distinct characteristics, all of which may enhance each company's marketability. The spin-off may also attract new investors that either chose not to invest in, or assess the merits of, pre-spin-off WDC given its complexity and its exposure to disparate markets and trends.

- *Improved Operational and Strategic Flexibility and Separate Acquisition Currency.* The spin-off will permit each business to pursue its own business interests, operating priorities and strategies more effectively without having to consider the impact on the business of the other company or on the balance and composition of pre-spin-off WDC's overall portfolio and will enhance operational flexibility for both businesses. The spin-off will also provide each of WDC and Spinco with its own distinct equity currency that relates solely to its business to use in pursuing strategic opportunities. For example, each of WDC and Spinco will be able to pursue strategic acquisitions in which potential sellers would prefer equity or to raise cash by issuing equity to public or private investors.
- *Improved Alignment of Equity Incentives.* The spin-off is expected to increase the effectiveness of stock-based incentive compensation by providing management and employees with incentives that more directly align with the operating and financial performances of the business in which they serve. WDC believes that improved alignment of equity incentives will enhance the ability of each of WDC and Spinco to attract, retain and incentivize qualified personnel.
- *Facilitate Potential Mergers and Acquisitions and Resulting Synergies*. While Spinco will have significant restrictions on participating in merger and acquisition activity for two years following the spin-off pursuant to the tax matters agreement, ultimately, the separation may facilitate merger and acquisition activity that may generate significant benefits for Spinco, its customers and its stockholders.

The WDC Board of Directors also considered potentially negative factors in evaluating the spin-off, including:

- The potential for increased aggregate ongoing administrative costs for the two companies operating on a stand-alone basis post-spin-off, such as expenses associated with reporting and compliance as public companies and separate management and incentive fees, working capital requirements, overhead, insurance, financing and other operating costs, as well the potentially higher cost of capital as separate companies.
- Spinco and WDC currently take advantage of pre-spin-off WDC's size and purchasing power in procuring certain goods and services. After the spin-off, as standalone companies, Spinco and/or WDC may be unable to obtain these goods and services at prices or on terms as favorable as those currently obtained by pre-spin-off WDC.
- One-time costs we expect to incur related to the spin-off and in connection with the transition to becoming a stand-alone public company that are likely to include, among others, professional services costs, tax expense, recruiting and other costs associated with hiring for two stand-alone corporate structures and costs to separate IT systems and create two separate stand-alone IT structures.
- The potential for execution risks related to the spin-off, including disruption to the business as a result of the spin-off and the possibility that Spinco and/or WDC do not achieve the expected benefits of the spin-off for a variety of reasons.
- The spin-off may divert management's time and attention, which could have a material adverse effect on the business, results of operations, financial condition and cash flows of Spinco and/or WDC.
- Following the spin-off, Spinco and/or WDC may be more susceptible to market fluctuations and other events particular to one or more of their products than they currently are as pre-spin-off WDC.
- The potential that reduced business diversification, with each post-spin-off company operating with a smaller product portfolio than pre-spin-off WDC, could increase the volatility of earnings and cash flow.

- Certain costs and liabilities that were otherwise less significant topre-spin-off WDC could be more significant to WDC and/or Spinco after the spin-off as smaller, stand-alone companies.
- WDC's and Spinco's common stock could experience selling pressure after thespin-off as certain pre-spin-off stockholders may not be interested in holding an investment in one of the two post-spin-off companies.
- A lack of comparable public companies to Spinco may limit investors' ability to appropriately value Spinco's common stock.
- WDC investors who have an investment strategy of tracking an index fund, such as the S&P 500 index, may sell the shares of Spinco common stock that they receive in the distribution if Spinco is not listed on the same index. As a result, the price of Spinco common stock may decline or experience volatility as Spinco's stockholder base changes.
- There may be, or there may be the appearance of, conflicts of interest or differences in strategy in Spinco's relationship with WDC. We expect that, to the extent matters come before the WDC Board of Directors and/or the board of directors of Spinco (the "Spinco Board of Directors") as to which there is a conflict between the two companies, that the companies would take appropriate steps so that decisions with respect to such matters are made by disinterested and independent directors. Actual, potential or perceived conflicts could give rise to investor dissatisfaction, settlements with stockholders, litigation or regulatory inquiries or enforcement actions.

The WDC Board of Directors concluded that the potential benefits ofthe spin-off outweighed these factors and risks. The WDC Board of Directors also considered these potential benefits and potentially negative factors in light of the risk that the spin-off is abandoned or otherwise not completed, resulting in WDC not separating into two independent, publicly traded companies.

The anticipated benefits of the spin-off are based on a number of assumptions, and there can be no assurance that such benefits will materialize to the extent anticipated, or at all. In the event the spin-off does not result in such benefits, the costs associated withthe spin-off could have an adverse effect on each company individually and in the aggregate. For more information, see the sections of this information statement entitled "The Separation and Distribution—General—Reasons for the Spin-Off" and "Risk Factors."

**Reasons for WDC's Retention of 19.9% of Spinco Common Stock**

WDC's plan to transfer less than all of the Spinco common stock to its stockholders in the distribution is motivated by its desire to establish, in an efficient and non-taxable, cost-effective manner, an appropriate capital structure for each of WDC and Spinco, including by reducing, directly or indirectly, WDC's indebtedness during the 12-month period following the distribution. WDC will dispose of all of the Spinco common stock that it retains after the distribution through one or more subsequent exchanges of Spinco common stock for WDC debt held by WDC creditors and/or through distributions of Spinco common stock to WDC stockholders as dividends or in exchange for outstanding shares of WDC common stock, in each case during the 12-month period following the distribution.

**Conditions to the Distribution**

The distribution of our common stock by WDC is subject to the satisfaction or waiver of the following conditions, among others:

- The SEC will have declared effective the registration statement of which this information statement forms a part, with no stop order relating to the registration statement in effect, and no proceedings for such purpose will be pending before, or threatened by, the SEC.

- Nasdaq will have approved the listing of Spinco common stock, subject to official notice of issuance.
- WDC will have received a tax opinion (the "Tax Opinion") of Skadden, Arps, Slate, Meagher & Flom LLP ("Skadden"), tax counsel to WDC, substantially to the effect that, among other things, the distribution, together with certain related transactions, will qualify as a reorganization within the meaning of sections 368(a)(1)(D), 361 and 355 of the Code (the "Intended Tax Treatment"). See the section of this information statement entitled "United States Federal Income Tax Consequences of the Distribution."
- All actions and filings necessary or appropriate under applicable securities laws or "blue sky" laws and the rules and regulations thereunder will have been taken.
- No preliminary or permanent injunction or other order, decree or ruling issued by a governmental authority, and no statute, rule, regulation or executive order promulgated or enacted by any governmental authority shall be in effect preventing the consummation of, or materially limiting the benefits of, the transactions contemplated by the separation and distribution agreement.
- Those reorganization transactions with respect to the HDD Business and Flash Business to be completed prior to the distribution will have been effectuated in all material respects.
- The WDC Board of Directors shall have declared the distribution and finally approved all related transactions (and such declaration or approval shall not have been withdrawn).
- No event or development shall have occurred or failed to occur that, in the judgment of the WDC Board of Directors, in its sole discretion, prevents the consummation of, or makes it inadvisable to effect the separation, the distribution or the other related transactions.
- Any required governmental approvals necessary to consummate the distribution and the transactions contemplated by the separation and distribution agreement and the ancillary agreements shall have been obtained and be in full force and effect.
- The mailing of this information statement (or notice of internet availability thereof) to record holders of WDC common stock as of [●], the record date for the distribution.
- Each of the separation and distribution agreement, the transition services agreement, the tax matters agreement, the intellectual property cross-license agreement, the transitional trademark license agreement, the employee matters agreement, the stockholder and registration rights agreement and the other agreements to be entered into to effectuate, or in connection with, the spin-off (other than the separation and distribution agreement, such agreements, collectively, the "ancillary agreements") shall have been executed and delivered by each party thereto.
- An independent appraisal firm shall have delivered (A) opinions, dated as of (x) the date of the declaration of the distribution by the WDC Board of Directors and (y) the distribution date (or, with respect to clause (y), a bringdown of such opinion as of the distribution date), to the WDC Board of Directors that (1) after giving effect to the consummation of the transactions, (a) the assets of each of WDC and Spinco, at a fair valuation, exceed its respective debts (including contingent liabilities), (b) each of WDC and Spinco will be able to pay its respective debts (including contingent liabilities) as they become due and (c) neither WDC nor Spinco will have an unreasonably small amount of either assets or capital for the operations of the business in which it is engaged or in which management has indicated it intends to engage and (2) immediately prior to giving effect to the distribution and pursuant to Section 170 of the General Corporation Law of the State of Delaware (the "DGCL"), the surplus of WDC exceeds the net amount of the distribution less the Spinco Dividend and (B) opinions, dated as of (x) the date of the declaration of the Spinco Dividend by the Spinco Board of Directors and (y) the distribution date (or, with respect to clause (y), a bringdown of such opinion as of the distribution date), to the Spinco Board of Directors that (1) after giving effect to the consummation of the transactions, (a) the assets of Spinco, at a fair valuation, exceed its debts (including contingent liabilities), (b) Spinco

will be able to pay its debts (including contingent liabilities) as they become due and (c) Spinco will not have an unreasonably small amount of either assets or capital for the operations of the business in which it is engaged or in which management has indicated it intends to engage and (B) immediately prior to giving effect to the Spinco Dividend and pursuant to Section 170 of the DGCL, the surplus of Spinco exceeds the amount of the Spinco Dividend (the opinions to be delivered pursuant to clause (A) and clause (B), collectively, the "Solvency Opinions"); and such Solvency Opinions shall be reasonably acceptable to WDC in form and substance; and such Solvency Opinions shall not have been withdrawn or rescinded or modified in any respect adverse to WDC.

- WDC shall have either:
  - refinanced the obligations under its existing credit agreement; or
  - obtained a waiver from the requisite lenders under its existing credit agreement, in each case, in a manner and to the extent necessary (as determined by WDC in good faith) to permit the transactions.
- Spinco shall have consummated the necessary debt financing transactions (as determined by Spinco in good faith).

WDC and Spinco cannot assure you that any or all of these conditions will be met, and the WDC Board of Directors may also waive conditions to the distribution in its sole discretion. If the spin-off is completed and the WDC Board of Directors waives any such condition, such waiver could have a material adverse effect on WDC's and Spinco's respective business, financial condition or results of operations, including, without limitation, as a result of illiquid trading due to the failure of Spinco common stock to be accepted for listing, litigation relating to any preliminary or permanent injunctions that sought to prevent the consummation of the spin-off, or the failure of WDC and Spinco to obtain any required regulatory approvals. As of the date hereof, the WDC Board of Directors does not intend to waive any of the conditions described herein. WDC does not intend to notify its stockholders of any modifications to the terms of the spin-off, including the waiver of any conditions to the distribution, that, in the judgment of the WDC Board of Directors, are not material. However, the WDC Board of Directors would likely consider material such matters as significant changes to the distribution ratio, or significant changes to the assets to be contributed or the liabilities to be assumed in the separation, as well as the waiver of the condition that the WDC Board of Directors receives the Tax Opinion with respect to the spin-off. To the extent that the WDC Board of Directors determines that any modification by WDC materially changes the material terms of the spin-off, including through the waiver of a condition to the distribution, WDC will notify its stockholders in a manner reasonably calculated to inform them about the modification as may be required by law, by, for example, publishing a press release, filing a current report on Form 8-K or circulating a supplement to this information statement.

The fulfillment of the above conditions will not create any obligation on behalf of WDC to effect the spin-off, and WDC may at any time decline to go forward with the spin-off. Until the spin-off has occurred, WDC has the right not to complete the spin-off, even if all the conditions have been satisfied, if, at any time prior to the distribution, the WDC Board of Directors determines, in its sole discretion, that the spin-off is not in the best interests of WDC or its stockholders, that a sale or other alternative is in the best interests of WDC or its stockholders, or that market conditions or other circumstances are such that it is not advisable at that time to separate the Flash Business from WDC. For a more detailed description, see the section of this information statement entitled "The Separation and Distribution—General—Conditions to the Distribution."

**Stock Exchange Listing**

We intend to apply to list our common stock on Nasdaq under the symbol "SNDK."

**Tax Considerations**

It is a condition to the completion of the distribution that WDC receives the Tax Opinion, substantially to the effect that, among other things, the distribution, together with certain related transactions, will qualify for the Intended Tax Treatment, although this condition may be waived by WDC in its sole discretion.

Accordingly, and so long as the distribution, together with certain related transactions, qualifies for the Intended Tax Treatment, no gain or loss will be recognized by you for U.S. federal income tax purposes, and no amount will be included in your income, for U.S. federal income tax purposes, upon the receipt of shares of Spinco common stock pursuant to the distribution. You will, however, recognize gain or loss for U.S. federal income tax purposes with respect to cash received in lieu of a fractional share of Spinco common stock.

For more information regarding the potential U.S. federal income tax consequences to Spinco, WDC and to you of the spin-off, see the section of this information statement entitled "United States Federal Income Tax Consequences of the Distribution."

You should consult your tax advisor as to the particular consequences of the spin-off to you, including the applicability and effect of any U.S. federal, state and local and any foreign, tax laws.

**Relationship between WDC and Spinco Following the Spin-Off**

Following the completion of the spin-off, WDC and Spinco will be independent companies. WDC will own 19.9% of our common stock for a period of up to 12 months following the distribution, and we expect that the relationship between WDC and Spinco will be governed by the ancillary agreements. These agreements will provide for the allocation between Spinco and WDC of WDC and Spinco's assets, employees, liabilities and obligations (including employee benefits and tax-related assets and liabilities) attributable to periods prior to, at and after Spinco's spin-off from WDC. For additional information regarding these agreements, see the sections of this information statement entitled "Risk Factors—Risks Related to the Spin-Off" and "Certain Relationships and Related Transactions."

**Principal Executive Office**

As part of the spin-off, Spinco was incorporated as a corporation in Delaware on February 5, 2024. Our principal executive offices are currently located at 951 Sandisk Drive, Milpitas, California 95035, and our telephone number is currently (408) 801-1000. We maintain a website at www.sandisk.com. The information contained on our website or that can be accessed through our website neither constitutes part of this information statement nor is incorporated by reference herein, and investors should not rely on any such information in deciding whether to invest in our common stock.

**Reasons for Furnishing This Information Statement; Changes in the Terms of the Spin-Off**

This information statement is being furnished solely to provide information to stockholders of WDC who will receive shares of Spinco common stock in the distribution. It is not, and is not to be construed as, an inducement or encouragement to buy or sell any of our securities. We believe the information contained in this information statement to be accurate as of the date set forth on the cover of this information statement. Changes may occur after that date, and none of us, WDC, the WDC Board of Directors or the Spinco Board of Directors undertake any obligation to update such information except in the normal course of our respective disclosure obligations and practices, or as required by applicable law.

WDC does not intend to notify its stockholders of any modifications to the terms of the spin-off, including the waiver of any conditions to the distribution, that, in the judgment of its board of directors, are not material.

However, the WDC Board of Directors would likely consider material matters such as significant changes to the distribution ratio, or significant changes to the assets to be contributed or the liabilities to be assumed in the separation, as well as the waiver of the condition that the WDC Board of Directors receives the Tax Opinion with respect to the spin-off. To the extent that the WDC Board of Directors determines that any modification by WDC materially changes the material terms of the spin-off, including through the waiver of a condition to the distribution, WDC will notify WDC stockholders in a manner reasonably calculated to inform them about the modification as may be required by law, by, for example, publishing a press release, filing a current report on Form 8-K or making available a supplement to this information statement. As of the date hereof, the WDC Board of Directors does not intend to waive any of the conditions described herein.

## SUMMARY OF HISTORICAL AND UNAUDITED PRO FORMA CONDENSED COMBINED FINANCIAL DATA

The following tables set forth certain select combined financial data as of September 27, 2024, June 28, 2024, and June 30, 2023, the three months ended September 27, 2024 and September 29, 2023, and the fiscal years ended June 28, 2024, June 30, 2023, and July 1, 2022, and have been derived from our Unaudited Pro Forma Condensed Combined Financial Information, unaudited Condensed Combined Financial Statements and Combined Financial Statements and notes thereto included elsewhere in this information statement. The unaudited pro forma adjustments to the Combined Statements of Operations assume that the spin-off and related transactions occurred as of July 1, 2023, which was the first day of the 2024 fiscal year. The unaudited pro forma Condensed Combined Balance Sheet gives effect to the spin-off and related transactions as if they had occurred on September 27, 2024, our latest balance sheet date. The unaudited Condensed Combined Financial Statements and Combined Financial Statements include the assets, liabilities, revenues and expenses that management has determined are specifically or primarily identifiable to Spinco as well as direct and indirect costs that are attributable to our operations.

The certain select combined financial data below is only a summary and should be read in conjunction with the sections of this information statement titled "Unaudited Pro Forma Condensed Combined Financial Information," "Capitalization" and "Management's Discussion and Analysis of Financial Condition and Results of Operations" as well as our Combined Financial Statements and the notes thereto included elsewhere in this information statement.

The certain select combined financial data is based upon available information and assumptions that we believe are reasonable and supportable and may not necessarily reflect what our financial condition, results of operations or cash flows would have been had we been a standalone company during the periods presented, including changes that will occur in our operations and capital structure as a result of the spin-off, such as changes in financing, operations, cost structure and personnel needs of our business. The certain select combined financial data constitutes forward-looking information and is subject to certain risks and uncertainties that could cause actual results to differ materially from those anticipated. See the section of this information statement entitled "Forward-Looking Statements."

A final determination regarding our capital structure has not yet been made, and the ancillary agreements have not been finalized. As such, the Unaudited Pro Forma Condensed Combined Financial Information may be revised in future amendments to reflect the impact on our capital structure and the final form of those agreements, to the extent any such revisions would be deemed material.

**Sandisk Corporation**
**Summary Select Combined Financial Data**

| | Pro Forma | | Historical | | | | |
|---|---|---|---|---|---|---|---|
| | Three months ended | Year ended | Three months ended | | Years ended | | |
| (In millions, except per share amounts) | September 27, 2024 | June 28, 2024 | September 27, 2024 | September 29, 2023 | June 28, 2024 | June 30, 2023 | July 1, 2022 |
| Revenue, net | $ 1,883 | $ 6,663 | $ 1,883 | $ 1,533 | $ 6,663 | $ 6,086 | $9,754 |
| Cost of revenue | 1,155 | 5,576 | 1,157 | 1,721 | 5,591 | 5,656 | 6,510 |
| **Gross profit** | **728** | **1,087** | **726** | **(188)** | **1,072** | **430** | **3,244** |
| **Operating expenses:** | | | | | | | |
| Research and development | 285 | 1,061 | 283 | 240 | 1,061 | 1,167 | 1,362 |
| Selling, general and administrative | 134 | 496 | 130 | 118 | 455 | 558 | 666 |

| (In millions, except per share amounts) | Pro Forma Three months ended September 27, 2024 | Pro Forma Year ended June 28, 2024 | Historical Three months ended September 27, 2024 | Historical Three months ended September 29, 2023 | Historical Years ended June 28, 2024 | Historical Years ended June 30, 2023 | Historical Years ended July 1, 2022 |
|---|---|---|---|---|---|---|---|
| Employee termination, asset impairment and other | 2 | (40) | 2 | (59) | (40) | 69 | 16 |
| Business separation costs | 20 | 111 | 20 | — | 64 | — | — |
| Goodwill impairment | — | — | — | — | — | 671 | — |
| **Total operating expenses** | **441** | **1,628** | **435** | **299** | **1,540** | **2,465** | **2,044** |
| **Operating income (loss)** | **287** | **(541)** | **291** | **(487)** | **(468)** | **(2,035)** | **1,200** |
| **Interest and other income (expense):** | | | | | | | |
| Interest income | 2 | 6 | 3 | 3 | 12 | 21 | 6 |
| Interest expense | (39) | (155) | (2) | (11) | (40) | (31) | (15) |
| Other income (expense), net | (24) | (4) | (25) | 1 | (7) | 43 | 43 |
| **Total interest and other income (expense), net** | **(61)** | **(153)** | **(24)** | **(7)** | **(35)** | **33** | **34** |
| **Income (loss) before taxes** | **226** | **(694)** | **267** | **(494)** | **(503)** | **(2,002)** | **1,234** |
| Income tax expense | 48 | 127 | 56 | 24 | 169 | 141 | 170 |
| **Net income (loss)** | **$ 178** | **$ (821)** | **$ 211** | **$ (518)** | **$ (672)** | **$(2,143)** | **$1,064** |
| Earnings (loss) per share: | | | | | | | |
| Basic | $ 1.24 | $ (5.70) | | | | | |
| Diluted | $ 1.24 | $ (5.70) | | | | | |
| Weighted-average number of common shares outstanding: | | | | | | | |
| Basic | 144 | 144 | | | | | |
| Diluted | 144 | 144 | | | | | |

**Summary Historical Combined Balance Sheets**

| (In millions) | Pro Forma As of September 27, 2024 | Historical As of September 27, 2024 | Historical As of June 28, 2024 | Historical As of June 30, 2023 |
|---|---|---|---|---|
| **Assets** | | | | |
| Cash and cash equivalents | $ 1,000 | $ 322 | $ 328 | $ 292 |
| **Total assets** | **$ 14,832** | **$ 13,890** | **$13,506** | **$13,820** |
| **Liabilities and equity** | | | | |
| Total liabilities | $ 3,747 | $ 1,764 | $ 2,424 | $ 2,381 |
| Parent company net investment | — | 12,369 | 11,534 | 11,782 |
| Additional paid-in capital | 11,332 | — | — | — |
| **Total liabilities and equity** | **$ 14,832** | **$ 13,890** | **$13,506** | **$13,820** |

In addition to our operating results, as calculated in accordance with accounting principles generally accepted in the United States ("GAAP"), we use, and plan to continue using non-GAAP financial measures when monitoring and evaluating operating performance and liquidity.
The non-GAAP financial measures presented in this information statement are supplemental measures of our performance and our liquidity that we believe help

investors understand our financial condition and operating results and assess our future prospects. For more information about our non-GAAP financial measures see "Management's Discussion and Analysis of Financial Condition and Results of Operations—Non-GAAP Financial Measures and Use of Certain Terms."

**Adjusted EBITDA**

| | Pro Forma | | Historical | | | | |
|---|---|---|---|---|---|---|---|
| | Three months ended | Year ended | Three months ended | | Years ended | | |
| (In millions) | September 27, 2024 | June 28, 2024 | September 27, 2024 | September 29, 2023 | June 28, 2024 | June 30, 2023 | July 1, 2022 |
| **Net Income (Loss) (GAAP)** | $ 178 | $ (821) | $ 211 | $ (518) | $ (672) | $ (2,143) | $1,064 |
| Income tax expense | 48 | 127 | 56 | 24 | 169 | 141 | 170 |
| Interest and other income (expense), net | 61 | 153 | 24 | 7 | 35 | (33) | (34) |
| Depreciation and amortization | 54 | 224 | 54 | 57 | 224 | 448 | 525 |
| **EBITDA (10)** | **341** | **(317)** | **345** | **(430)** | **(244)** | **(1,587)** | **1,725** |
| Stock-based compensation expense (1) | 41 | 149 | 41 | 40 | 149 | 165 | 171 |
| Contamination related charges (2) | — | — | — | — | — | — | 207 |
| Recoveries from a power outage incident (3) | — | — | — | — | — | — | (7) |
| Recoveries of contamination related charges (4) | — | (36) | — | — | (36) | — | — |
| Employee termination, asset impairment and other (5) | 2 | (40) | 2 | (59) | (40) | 69 | 16 |
| Goodwill impairment (6) | — | — | — | — | — | 671 | — |
| Strategic review (7) | — | 20 | — | 10 | 20 | 20 | — |
| Business separation costs (8) | 20 | 111 | 20 | — | 64 | — | — |
| Other (9) | — | — | — | 1 | — | 1 | 3 |
| **Adjusted EBITDA (non-GAAP) (11)** | **$ 404** | **$ (113)** | **$ 408** | **$ (438)** | **$ (87)** | **$ (661)** | **$2,115** |

**Footnotes:**

(1) Because of the variety of equity awards used by companies, the varying methodologies for determining stock-based compensation expense, the subjective assumptions involved in those determinations and the volatility in valuations that can be driven by market conditions outside Spinco's control, Spinco believes excluding stock-based compensation expense enhances the ability of management and investors to understand and assess the underlying performance of its business over time and compare it against Spinco's peers, a majority of whom also exclude stock-based compensation expense from their non-GAAP results.

(2) Represents scrapped inventory and rework costs, decontamination and other costs needed to restore the facilities to normal capacity and under-absorbed overhead costs, which were expensed as incurred.

(3) Represents recoveries received for the losses associated with the repair of damaged tools and the write-off of damaged inventory and unabsorbed manufacturing overhead costs due to the power outage incident in 2019.

(4) Represents recoveries received for the losses which primarily consisted of scrapped inventory and rework costs, decontamination and other costs needed to restore the facilities to normal capacity and under absorption of overhead costs due to contamination incident in 2022.

(5) Represents employee terminations and/or restructuring of operations in order to realign Spinco's operations with anticipated market demand or to achieve cost synergies from the integration of acquisitions, and charges from the impairment of intangible assets and other long-lived assets. In addition, Spinco records credits related to gains upon sale of property due to restructuring or reversals of charges recorded in prior

periods and has taken actions to reduce the amount of capital invested in facilities, including the sale-leaseback of facilities. These charges or credits are inconsistent in amount and frequency, and Spinco believes they are not indicative of the underlying performance of its business.

(6) Represents goodwill impairment charges due to changes in industry and macroeconomic conditions in the fiscal year ended June 30, 2023.

(7) Represents third-party spending for consulting, accounting, tax and legal advisor expenses associated with Spinco's review of potential strategic alternatives aimed at further optimizing the long-term value for stockholders. Spinco believes these charges do not reflect Spinco's operating results and that they are not indicative of the underlying performance of its business.

(8) Represents tax stamp duties and third-party spending for consulting, accounting, tax and legal advisor expenses associated with the operational separation of Spinco from WDC to create an independent public company including legal entity restructuring and administrative fees to establish the new legal structure of Spinco. Spinco believes these charges do not reflect Spinco's operating results and that they are not indicative of the underlying performance of the business.

(9) Represents charges or gains that Spinco believes are not a part of the ongoing operation of its business. The resulting expense or benefit is inconsistent in amount and frequency.

(10) EBITDA is defined as net income before income tax expense, interest and other income (expense), net, and depreciation and amortization.

(11) Adjusted EBITDA is defined as EBITDA (as defined above), adjusted to exclude certain expenses, gains and losses that Spinco believes are not indicative of its core operating results or because these exclusions are consistent with the financial models and estimates published by many analysts who follow Spinco and its peers.

**Free Cash Flow**

| | Historical | | | | |
|---|---|---|---|---|---|
| | Three months ended | | Years ended | | |
| (In millions) | September 27, 2024 | September 29, 2023 | June 28, 2024 | June 30, 2023 | July 1, 2022 |
| **Cash Flows** | | | | | |
| Cash flow provided by (used in) operating activities | $ (131) | $ (169) | $ (309) | $ (713) | $1,151 |
| Purchases of property, plant and equipment, net | (67) | 110 | (29) | (219) | (410) |
| **Free cash flow** | (198) | (59) | (338) | (932) | 741 |
| Activity related to Flash Ventures, net | 48 | 13 | 239 | 14 | (91) |
| **Adjusted free cash flow** | **$ (150)** | **$ (46)** | **$ (99)** | **$ (918)** | **$ 650** |

**Revenue by End Market**

| | Historical | | | | |
|---|---|---|---|---|---|
| | Three months ended | | Years ended | | |
| (In millions) | September 27, 2024 | September 29, 2023 | June 28, 2024 | June 30, 2023 | July 1, 2022 |
| **Revenue by end market** | | | | | |
| Cloud | $ 300 | $ 18 | $ 325 | $ 500 | $1,264 |
| Client | 1,069 | 997 | 4,069 | 3,637 | 6,038 |
| Consumer | 514 | 518 | 2,269 | 1,949 | 2,452 |
| **Total revenue** | **$ 1,883** | **$ 1,533** | **$ 6,663** | **$ 6,086** | **$9,754** |

**QUESTIONS AND ANSWERS ABOUT THE SEPARATION AND DISTRIBUTION**

| | |
|---|---|
| *What is Spinco and why is WDC separating Spinco's business and distributing Spinco's stock?* | Spinco currently is a wholly owned subsidiary of WDC that was formed to hold assets and liabilities related to the Flash Business. The separation of Spinco from WDC and the distribution of Spinco common stock are intended to provide you with equity investments in two separate companies, each of which will be able to focus on their respective businesses. WDC and Spinco believe that the spin-off will result in enhanced long-term performance of each business for the reasons discussed in the section of this information statement entitled "The Separation and Distribution—General—Reasons for the Spin-Off." |
| *Why am I receiving this document?* | WDC is making this document available to you because you are a holder of WDC common stock. If you are a holder of WDC common stock as of [●] Pacific time on [●], the record date for the distribution, you will be entitled to receive a number of shares of Spinco common stock equal to the distribution ratio for each share of WDC common stock that you hold at such time. This document will help you understand how the separation and distribution will affect your investment in WDC and your investment in Spinco after the spin-off. |
| *How will the spin-off of Spinco from WDC work?* | To effect the spin-off, WDC will undertake a series of internal reorganization transactions pursuant to which, among other transactions, Spinco will hold the Flash Business and WDC will distribute 80.1% of the outstanding shares of common stock of Spinco as of the distribution date to WDC's stockholders on a pro rata basis as a distribution. Following the completion of the spin-off, Spinco, holding the Flash Business, will be an independent, publicly traded company. |
| *What business will Spinco engage in after thespin-off?* | Spinco will continue to focus on the Flash Business. For additional details regarding Spinco's business, see the section of this information statement entitled "Business." |
| *Why is the spin-off of Spinco structured as a distribution?* | WDC believes that a distribution, together with certain related transactions, of Spinco shares to WDC stockholders, which WDC intends to be tax-free for U.S. federal income tax purposes (except with respect to any cash received in lieu of fractional shares), is an efficient way to separate the Flash Business in a manner that is expected to create long-term benefits and value for WDC, Spinco and their respective stockholders. WDC will retain 19.9% of our common stock for a period of up to 12 months following the spin-off. |
| *What will be distributed in the distribution?* | As a holder of WDC common stock, you will receive a dividend of a number of shares of Spinco common stock equal to the distribution |

| | |
|---|---|
| | ratio for each share of WDC common stock you hold as of [●] Pacific time on [●], the record date for the distribution. Your proportionate interest in WDC will not change as a result of the distribution. For a more detailed description, see the section of this information statement entitled "The Separation and Distribution." |
| *What is the record date for the distribution?* | The record date for the distribution is [●] Pacific time on [●]. |
| *When will the distribution occur?* | It is expected that 80.1% of the shares of Spinco common stock held by WDC will be distributed by WDC on or about [●], to holders of record of WDC common stock as of [●] Pacific time on [●], the record date for the distribution. However, no assurance can be provided as to the timing of the distribution or that all conditions to the distribution will be met. |
| *What will the spin-off cost?* | Spinco estimates that it will incur costs of approximately $47 million in connection with the spin-off between the latest balance sheet date presented and completion of the separation. |
| *Is a stockholder vote required to approve the spin-off?* | No stockholder vote is required to approve the spin-off. |
| *What do stockholders need to do to participate in the distribution?* | Stockholders of WDC entitled to receive shares in the distribution will not be required to take any action to receive Spinco common stock in the distribution, but you are urged to read this entire information statement carefully. No stockholder approval of the distribution is required. You are not being asked for a proxy. You do not need to pay any consideration or exchange or surrender your existing WDC common stock or take any other action to receive your shares of Spinco common stock. |
| *What will govern my rights as a Spinco stockholder?* | Your rights as a Spinco stockholder will be governed by Delaware law, as well as our amended and restated certificate of incorporation and our amended and restated bylaws. There are no material changes in stockholder rights between the stockholder rights at WDC and Spinco. For additional details regarding Spinco common stock and Spinco stockholder rights, see the section of this information statement entitled "Description of Capital Stock." |
| *Will I receive physical certificates representing shares of Spinco common stock following the spin-off?* | No. Following the spin-off, Spinco will not issue physical certificates representing shares of Spinco common stock, even if requested. If you own WDC common stock as of the record date for the distribution, WDC, with the assistance of the distribution agent, will electronically distribute shares of Spinco common stock to you or to your brokerage firm on your behalf by way of direct registration form. "Direct registration form" refers to a method of recording share ownership when no physical share certificates are issued to stockholders, as is the case in this distribution. The distribution agent or the transfer agent will mail you a book-entry account statement that |

| | |
|---|---|
| | reflects your shares of Spinco common stock, or your bank or brokerage firm will credit your account for the shares.<br><br>Following the spin-off, stockholders whose shares are held in book-entry form may request that their shares of Spinco common stock held in book-entry form be transferred to a brokerage or other account at any time. |
| *How many shares of Spinco common stock will I receive in the distribution?* | WDC will distribute to you a number of shares of Spinco common stock equal to the distribution ratio for each share of WDC common stock held by you as of the record date for the distribution. Based on approximately 346 million shares of WDC common stock outstanding as of September 27, 2024, an aggregate of approximately 115 million shares of Spinco common stock will be distributed. For additional information on the distribution, see the section of this information statement entitled "The Separation and Distribution." |
| *Will Spinco issue fractional shares of its common stock in the distribution?* | No. Spinco will not issue fractional shares of its common stock in the distribution. Fractional shares that WDC stockholders would otherwise have been entitled to receive will be aggregated and sold in the public market by the distribution agent. The aggregate net cash proceeds of these sales will be distributed pro rata (based on the fractional share such holder would otherwise be entitled to receive) to those stockholders who would otherwise have been entitled to receive fractional shares. Recipients of cash in lieu of fractional shares will not be entitled to any interest on the amounts of payment made in lieu of fractional shares. The receipt of cash in lieu of fractional shares will generally be taxable to the recipient stockholders for U.S. federal income tax purposes as described in the section of this information statement entitled "United States Federal Income Tax Consequences of the Distribution." |
| *What are the conditions to the distribution?* | The distribution of our common stock by WDC is subject to the satisfaction or waiver of the following conditions, among others:<br><br>• The SEC will have declared effective the registration statement of which this information statement forms a part, with no stop order relating to the registration statement in effect, and no proceedings for such purpose will be pending before, or threatened by, the SEC.<br><br>• Nasdaq will have approved the listing of Spinco common stock, subject to official notice of issuance.<br><br>• WDC will have received the Tax Opinion from its tax counsel, Skadden, substantially to the effect that, among other things, the distribution, together with certain related transactions, will qualify for the Intended Tax Treatment. See the section of this information statement entitled "United States Federal Income Tax Consequences of the Distribution." |

- All actions and filings necessary or appropriate under applicable securities laws or "blue sky" laws and the rules and regulations thereunder will have been taken.
- No preliminary or permanent injunction or other order, decree or ruling issued by a governmental authority, and no statute, rule, regulation or executive order promulgated or enacted by any governmental authority shall be in effect preventing the consummation of, or materially limiting the benefits of, the transactions contemplated by the separation and distribution agreement.
- Those reorganization transactions with respect to the HDD Business and Flash Business to be completed prior to the distribution will have been effectuated in all material respects.
- The WDC Board of Directors shall have declared the distribution and finally approved all related transactions (and such declaration or approval shall not have been withdrawn).
- No event or development shall have occurred or failed to occur that, in the judgment of the WDC Board of Directors, in its sole discretion, prevents the consummation of, or makes it inadvisable to effect the separation, the distribution or the other related transactions.
- Any required governmental approvals necessary to consummate the distribution and the transactions contemplated by the separation and distribution agreement and the ancillary agreements shall have been obtained and be in full force and effect.
- The mailing of this information statement (or notice of internet availability thereof) to record holders of WDC common stock as of [●], the record date for the distribution.
- Each of the ancillary agreements shall have been executed and delivered by each party thereto.
- An independent appraisal firm shall have delivered the Solvency Opinions; and such Solvency Opinions shall be reasonably acceptable to WDC in form and substance; and such Solvency Opinions shall not have been withdrawn or rescinded or modified in any respect adverse to WDC.
- Spinco shall have consummated the debt financing transactions.

WDC and Spinco cannot assure you that any or all of these conditions will be met, and the WDC Board of Directors may also waive conditions to the distribution in its sole discretion. WDC may decline at any time to go forward with the distribution, whether or not the conditions are satisfied, and the spin-off would then not occur. For a more detailed description, see the section of this information statement entitled "The Separation and Distribution—General—Conditions to the Distribution."

| | |
|---|---|
| *What is the expected date of completion of the spin-off?* | The completion and timing of the spin-off are dependent upon a number of conditions. It is expected that the shares of Spinco common stock will be distributed by WDC on or about [●] to the holders of record of WDC common stock as of the record date for the distribution. However, no assurance can be provided as to the timing of the spin-off or that all conditions to the spin-off will be met. |
| *Can WDC decide to cancel the spin-off even if all the conditions have been met?* | Yes. The spin-off will not be effective until the distribution is complete. The distribution is subject to the satisfaction or waiver by WDC of certain conditions. See "The Separation and Distribution—General—Conditions to the Distribution." The fulfillment of such conditions will not create any obligation on behalf of WDC to effect the spin-off, and WDC may at any time decline to go forward with the spin-off. Until the spin-off has occurred, WDC has the right not to complete the distribution, even if all the conditions have been satisfied, if, at any time prior to the distribution, the WDC Board of Directors determines, in its sole discretion, that the spin-off is not in the best interests of WDC or its stockholders, that a sale or other alternative is in the best interests of WDC or its stockholders, or that market conditions or other circumstances are such that it is not advisable at that time to separate the Flash Business from WDC. |
| *What if I want to sell my WDC common stock or my Spinco common stock?* | You should consult with your financial advisors, such as your stockbroker, bank or tax advisor. |
| *What is "regular-way" and "ex-distribution" trading?* | Beginning on or shortly before the record date for the distribution and continuing up to and through the distribution date, it is expected that there will be two markets in WDC common stock: a "regular-way" market and an "ex-distribution" market. Shares of WDC common stock that trade in the "regular-way" market will trade with an entitlement to shares of Spinco common stock distributed pursuant to the distribution. Shares that trade in the "ex-distribution" market will trade without an entitlement to shares of Spinco common stock distributed pursuant to the distribution. Each stockholder trading in WDC shares would make any decision as to whether to trade one or more of such stockholder's shares in WDC in the "regular-way" market or the "ex-distribution" market.<br><br>If you decide to sell any shares of your WDC common stock after the record date for the distribution and before the distribution date, you should make sure your stockbroker, bank or other nominee understands whether you want to sell your WDC common stock with or without your entitlement to Spinco common stock pursuant to the distribution. |

| | |
|---|---|
| *Where will I be able to trade shares of Spinco common stock?* | Spinco intends to apply to list its common stock on Nasdaq under the symbol "SNDK." Spinco expects that trading in shares of its common stock will begin on a "when-issued" basis shortly before the distribution date and will continue up to and through the distribution date and that "regular-way" trading in Spinco common stock will begin on the first trading day following the distribution date. "When-issued" trading refers to a sale or purchase made conditionally because the security has been authorized but not yet issued. If trading begins on a "when-issued" basis, you may purchase or sell Spinco common stock up to and through the distribution date, but your transaction will not settle until after the distribution date. Spinco cannot predict the trading prices for its common stock before, on or after the distribution date. |
| *What will happen to the listing of WDC common stock?* | Prior to the completion of the spin-off, WDC will continue to trade on Nasdaq under the symbol "WDC." Any changes to WDC's name or ticker symbol will be announced separately by WDC. |
| *Will the number of shares of WDC common stock that I own change as a result of the distribution?* | No. The number of shares of WDC common stock that you own will not change as a result of the distribution. |
| *What are the U.S. federal income tax consequences of the separation and distribution?* | It is a condition to the completion of the distribution that WDC receives the Tax Opinion, substantially to the effect that, among other things, the distribution, together with certain related transactions, will qualify for the Intended Tax Treatment, although this condition may be waived by WDC in its sole discretion.<br><br>Accordingly, and so long as the distribution, together with certain related transactions, qualifies for the Intended Tax Treatment, no gain or loss will be recognized by you for U.S. federal income tax purposes, and no amount will be included in your income, for U.S. federal income tax purposes, upon the receipt of shares of Spinco common stock pursuant to the distribution. You will, however, recognize gain or loss for U.S. federal income tax purposes with respect to cash received in lieu of a fractional share of Spinco common stock.<br><br>For more information regarding the potential U.S. federal income tax consequences of the spin-off to Spinco, WDC and to you, see the section of this information statement entitled "United States Federal Income Tax Consequences of the Distribution."<br><br>You should consult your tax advisor as to the particular consequences of the spin-off to you, including the applicability and effect of any U.S. federal, state and local and any foreign, tax laws. |

| | |
|---|---|
| *How will I determine my tax basis in the Spinco shares I receive in the distribution?* | Assuming that the distribution is tax-free to WDC stockholders (except with respect to any cash received in lieu of fractional shares) for U.S. federal income tax purposes, your aggregate tax basis in your shares of WDC common stock held by you immediately prior to the distribution will be allocated between your shares of WDC common stock and the shares of Spinco common stock that you receive in the distribution (including any fractional share interest in Spinco common stock for which cash is received) in proportion to the relative fair market values of each immediately following the distribution. WDC will provide its stockholders with information to enable them to compute their tax basis in both WDC and Spinco shares. This information will be posted on WDC's website following the distribution date.<br><br>You should consult your tax advisor about the particular consequences of the spin-off to you, including a situation where you have purchased WDC shares at different times or for different amounts and the application of state, local and foreign tax laws.<br><br>For a more detailed description, see the section of this information statement entitled "United States Federal Income Tax Consequences of the Distribution." |
| *How will the spin-off impact the rights, preferences, privileges and voting power of the holders of WDC's Series A Convertible Perpetual Preferred Stock?* | In connection with the spin-off, holders of WDC's Series A Convertible Perpetual Preferred Stock (the "WDC preferred stock") are expected to retain their shares of WDC preferred stock, and therefore the rights, preferences, privileges and voting power of the holders of WDC preferred stock are expected to remain the same. |
| *What will Spinco's relationship be with WDC following the spin-off?* | Following the completion of the spin-off, WDC and Spinco will be independent companies. WDC will retain 19.9% of our common stock for a period of up to 12 months following the distribution, and we expect that the relationship between WDC and Spinco will be governed by the ancillary agreements. These agreements will provide for the allocation between Spinco and WDC of WDC's and Spinco's assets, employees, liabilities and obligations (including employee benefits and tax-related assets and liabilities) attributable to periods prior to, at and after Spinco's spin-off from WDC. For additional information regarding these agreements, see the sections of this information statement entitled "Risk Factors—Risks Related to the Spin-Off" and "Certain Relationships and Related Transactions." |
| *How will WDC vote any shares of Spinco common stock it retains?* | WDC is expected to agree to vote any shares of Spinco common stock that it retains in proportion to the votes cast by Spinco's other stockholders and is expected to grant Spinco a proxy with respect to |

| | |
|---|---|
| | such retained shares. For additional information on these voting arrangements, see "Certain Relationships and Related Person Transactions." |
| *What does WDC intend to do with any shares of Spinco common stock it retains?* | WDC plans to dispose of all of the Spinco common stock that it retains after the distribution through one or more subsequent exchanges of Spinco common stock for WDC debt held by one or more WDC creditors and/or through distributions of Spinco common stock to WDC stockholders as dividends or in exchange for outstanding shares of WDC common stock, within the 12-month period following the distribution. |
| *Will I have appraisal rights in connection with the distribution?* | No. Holders of WDC common stock are not entitled to appraisal rights in connection with the distribution. |
| *Are there risks associated with owning Spinco common stock?* | Yes. Ownership of Spinco common stock is subject to both general and specific risks relating to Spinco's business, the industry in which it operates, its ongoing contractual relationships with WDC and its status as a separate, publicly traded company. Ownership of Spinco common stock is also subject to risks relating to the spin-off, including that following the spin-off, Spinco's business will be less diversified than WDC's business prior to thespin-off. These risks are described in the section of this information statement entitled "Risk Factors." You are encouraged to read that section carefully. |
| *Who will manage Spinco after the spin-off?* | Following the spin-off, Spinco will be led by David V. Goeckeler, who will be Spinco's Chief Executive Officer.<br><br>For more information regarding Spinco's expected named executive officers and other members of its management team, see the section of this information statement entitled "Management." |
| *What will Spinco's dividend policy be after the spin-off?* | We do not currently intend to pay any cash dividends in the foreseeable future. We currently intend to retain all available funds and future earnings, if any, for the operation of our business and to strengthen our financial position and flexibility. The payment of cash dividends in the future will be dependent upon our revenue and earnings, capital requirements and general financial condition and results of operations, as well as applicable law, regulatory constraints, industry practice and other business considerations determined by our board of directors to be relevant. The payment of any cash dividends will be within the discretion of the Spinco Board of Directors. In addition, the terms governing our current or future debt may also limit or prohibit dividend payments. Accordingly, we cannot guarantee that we will ever pay dividends in the future or that we would continue to pay any dividends that we may commence in the future. For more |

| | |
|---|---|
| | information regarding Spinco's dividend policy, see the section of this information statement entitled "Dividend Policy." |
| *What will happen to WDC equity awards in connection with the spin-off?* | Any equity awards relating to shares of WDC's common stock that are outstanding at the time of distribution will be adjusted to reflect the impact of the separation. Generally, (1) each unvested WDC equity award held by an employee who will continue at WDC after the spin-off will be adjusted and become a post-separation WDC award relating to shares of WDC common stock, (2) each unvested WDC equity award held by an employee transitioning to Spinco below the level of vice president will be converted to a Spinco award relating to shares of Spinco common stock, and (3) each unvested WDC restricted stock unit ("RSU") award held by a Spinco employee at the level of vice president and above (other than any such Spinco employee who resides in China, Israel, Malaysia, the Philippines or Thailand immediately prior to the separation) will convert to both a WDC award and a Spinco award.<br>• The number of shares of WDC common stock or Spinco common stock, as applicable, subject to each converted award held by WDC employees and Spinco employees below the level of vice president will be determined in a manner intended to preserve the aggregate value of the original WDC equity award by adjusting the number of shares subject to such awards based on a ratio that takes into account the pre-separation per share closing trading price of WDC common stock on the trading day prior to the separation and the average of either the post-separation per share closing trading price of WDC common stock or the post-separation per share closing trading price of Spinco common stock, as applicable, over 5 trading days following the separation.<br>• The terms of all converted equity awards, such as vesting conditions, settlement dates and method of settlement, will generally continue unchanged. However, for each unvested WDC performance stock unit ("PSU") held by a continuing WDC employee, such PSUs will remain in place as WDC PSUs, with the performance measures with respect to fiscal year 2025 deemed achieved at target performance to avoid distortions associated with the separation and with performance measures applicable for subsequent performance years to be determined in normal course.<br>• Further, for each unvested WDC PSU held by a Spinco employee, the performance measure achievement will be determined based on actual performance for completed fiscal years and based on target performance for fiscal years not yet completed as of the spin-off date and such PSUs will be converted into WDC and Spinco equity awards subject to only time-based vesting following the spin-off.<br>• The number of shares of WDC common stock subject to each converted WDC RSU or PSU award held by a Spinco employee at the level of vice president and above (other than any such Spinco employee who resides in China, Israel, Malaysia, the Philippines or |

| | |
|---|---|
| | Thailand immediately prior to the separation) will be equal to the number of shares subject to the pre-separation award, and the number of shares of Spinco common stock subject to each converted Spinco award held by any such Spinco employee will be equal to the number of shares of Spinco common stock an individual holder of WDC common stock will receive in the distribution calculated based on the number of WDC shares of common stock subject to the pre-separation award. |
| *Will the distribution of Spinco common stock affect the market price of WDC common stock?* | As a result of the distribution, we expect the trading price of shares of WDC common stock to be different from the trading price of WDC common stock immediately prior to the distribution because the trading price will no longer reflect the combined value of the businesses. Furthermore, until the market has fully analyzed the value of WDC without the business comprising Spinco, the price of shares of WDC common stock may fluctuate. There can be no assurance that, following the spin-off, the combined value of WDC common stock and Spinco common stock will equal or exceed what the value of WDC common stock would have been as of the same time and date in the absence of the distribution. |
| *Will Spinco incur any debt prior to or at the time of the distribution?* | Spinco expects to enter into certain financing arrangements prior to or substantially concurrent with the spin-off. |
| *Who will be the distribution agent, transfer agent and registrar for Spinco common stock?* | The distribution agent, transfer agent and registrar for Spinco common stock will be [●]. For questions relating to the transfer or mechanics of the stock distribution, you should contact [●]'s toll free number at [●]. |
| *Where can I find more information about WDC and Spinco?* | If you have any questions relating to WDC, you should contact:<br><br>Western Digital Investor Relations<br>5601 Great Oaks Parkway<br>San Jose, California 95119<br>Phone: 800-695-6399<br>Email: investor@wdc.com<br>Website: https://investor.wdc.com/<br><br>After the distribution, Spinco stockholders who have any questions relating to Spinco should contact Spinco through any means set forth below, or at the phone numbers or email addresses posted on our website, www.sandisk.com.<br><br>Sandisk Investor Relations<br>951 Sandisk Drive<br>Milpitas, California 95035<br>Phone: (408) 801-1000<br>Email: investor@sandisk.com<br>Website: https://investor.sandisk.com |

## RISK FACTORS

*The risks and uncertainties described below could materially and adversely impact our business, financial condition, results of operations, could cause actual results to differ materially from our expectations and projections, and could cause the market value of our stock to decline. You should consider these risk factors when evaluating us and our common stock and when reading the rest of this information statement, including the sections entitled "Business" and "Management's Discussion and Analysis of Financial Condition and Results of Operations" and our financial statements and related notes included elsewhere in this document. These risk factors may not include all of the important factors that could affect our business or our industry or that could cause our future financial results to differ materially from historic or expected results or cause the market price of our common stock to fluctuate or decline. Additional risks and uncertainties not currently known to us or that we currently believe are immaterial also may impair our business, including our results of operations, liquidity and financial condition.*

### Risks Related to Our Flash Business

#### OPERATIONAL RISKS

***Adverse global or regional conditions could harm our business.***

A large portion of our revenue is derived from our international operations, and substantially all of our products are produced overseas. As a result, our business depends significantly on global and regional conditions. Adverse changes in global or regional economic conditions, including, but not limited to, volatility in the financial markets, tighter credit, recession, inflation, rising interest rates, slower growth in certain geographic regions, political uncertainty, geopolitical tensions or conflicts, other macroeconomic factors, changes to social conditions and regulations, could significantly harm demand for our products, increase credit and collectability risks, result in revenue reductions, reduce profitability as a result of underutilization of our assets, cause us to change our business practices, increase manufacturing and operating costs or result in impairment charges or other expenses.

Our revenue growth is significantly dependent on the growth of international markets, and we may face challenges in international sales markets. We are subject to risks associated with our global manufacturing operations and global sales efforts, as well as risks associated with our utilization of contract manufacturers, including:

- obtaining governmental approvals and compliance with evolving foreign regulations;
- the need to comply with regulations on international business, including the Foreign Corrupt Practices Act, the United Kingdom Bribery Act 2010, the anti-bribery laws of other countries and rules regarding conflict minerals;
- exchange, currency and tax controls and reallocations;
- weaker protection of intellectual property rights;
- policies and financial incentives by governments in China, the United States and countries in Europe and Asia designed to reduce dependence on foreign semiconductor manufacturing capabilities;
- trade restrictions, such as export controls, export bans, import restrictions, embargoes, sanctions, license and certification requirements (including semiconductor, encryption and other technology), tariffs and complex customs regulations; and
- difficulties in managing international operations, including appropriate internal controls.

As a result of these risks, our business could be harmed.

***We are dependent on a limited number of qualified suppliers who provide critical services, materials or components, and a disruption in our supply chain could negatively affect our business.***

We depend on an external supply base for technologies, software (including firmware), controllers, dynamic random-access memory, components, equipment and materials for use in our product design and manufacturing. We also depend on suppliers for a portion of our wafer testing, chip assembly, product assembly and product testing, and on service suppliers for providing technical support for our products. In addition, we use logistics partners to manage our worldwide just-in-time hubs and distribution centers and to meet our freight needs. Many of the components and much of the equipment we acquire must be specifically designed for use in our products or for developing and manufacturing our products, and are only available from a limited number of suppliers, some of whom are our sole-source suppliers. We therefore depend on these suppliers to meet our business needs including dedicating adequate engineering resources to develop components that can be successfully integrated into our products.

Our suppliers have in the past been, and may in the future be, unable or unwilling to meet our requirements, including as a result of events outside of their control such as trade restrictions (including tariffs, quotas and embargoes), geopolitical conflicts, public health emergencies or natural disasters. If we are unable to purchase sufficient quantities from our current suppliers or qualify and engage additional suppliers, or if we cannot purchase materials at a reasonable price, we may not be able to meet demand for our products. Trade restrictions, including tariffs, quotas and embargoes, demand from other high-volume industries for materials or components used in our products, disruptions in supplier relationships or shortages in other components and materials used in our customers' products could result in increased costs to us or decreased demand for our products, which could negatively impact our business. Delays, shortages or cost increases experienced by our suppliers in developing or sourcing materials and components for use in our products or incompatibility or quality issues relating to our products, could also harm our business.

We do not have long-term contracts with some of our existing suppliers, nor do we always have guaranteed manufacturing capacity with our suppliers, so we cannot guarantee that they will devote sufficient resources or capacity to manufacturing our products. Any significant problems that occur at our suppliers could lead to product shortages or quality assurance problems. When we do have contractual commitments with suppliers in an effort to stabilize the supply of our components, those commitments may require us to buy a substantial number of components or make significant cash advances to the supplier and may not result in a satisfactory supply of our components. We may cancel or defer outstanding purchase commitments with certain suppliers due to changes in actual and forecasted demand, which may result in fees, penalties and other associated charges. Such cancellations or deferments may also negatively impact our relationships with certain suppliers or lead to a decline in the financial performance of certain suppliers, each of which could result in even more limited availability of components needed for our products.

In addition, our supply base has experienced industry consolidation. Our suppliers may be acquired by our competitors, decide to exit the industry or redirect their investments and increase costs to us. In addition, some of our suppliers have experienced a decline in financial performance, including as a result of canceled or deferred purchase commitments. Where we rely on a limited number of suppliers or a single supplier, the risk of supplier loss due to industry consolidation or a decline in financial performance is increased. Some of our suppliers may also be competitors in other areas of our or their business, which could lead to difficulties in price negotiations or meeting our supply requirements.

***Our operations, and those of certain of our suppliers and customers, are subject to substantial risk of damage or disruption.***

We conduct our operations at large, high-volume, purpose-built facilities in Japan, Malaysia and throughout Asia. The facilities of many of our customers, our suppliers and our customers' suppliers are also concentrated in certain geographic locations throughout Asia and elsewhere. If a fire (including a climate change-related fire),

flood, earthquake, tsunami or other natural disaster, condition or event such as a power outage, contamination event, terrorist attack, cybersecurity incident, physical security breach, political instability, civil unrest, localized labor unrest or other employment issues, or a health epidemic negatively affects any of these facilities, it would significantly affect our ability to manufacture or sell our products and source components and would harm our business. Possible impacts include work and equipment stoppages and damage to or closure of our facilities, or those of our suppliers or customers, for an indefinite period of time. Climate change has in the past and is expected to continue to increase the incidence and severity of certain natural disasters, including wildfires and adverse weather events. In addition, the geographic concentration of our manufacturing sites could exacerbate the negative impacts resulting from any of these problems.

We may incur losses beyond the limits of, or outside the scope of, the coverage of our insurance policies. There can be no assurance that in the future we will be able to maintain existing insurance coverage or that premiums will not increase substantially. Due to market availability, pricing or other reasons, we may elect not to purchase insurance coverage or to purchase only limited coverage. We maintain limited insurance coverage and, in some cases, no coverage at all, for natural disasters and damage to our facilities, as these types of insurance are sometimes not available or available only at a prohibitive cost. Climate change may reduce the availability or increase the cost of certain types of insurance by contributing to an increase in the incidence and severity of certain natural disasters. We depend upon Kioxia to obtain and maintain sufficient property, business interruption and other insurance for Flash Ventures. If Kioxia fails to do so, we could suffer significant unreimbursable losses, and such failure could also cause Flash Ventures to breach various financing covenants.

***Public health crises have had, and could in the future have, a negative effect on our business.***

Public health crises may negatively impact our workforce and operations, as well as those of our strategic partners, customers, suppliers and logistics providers. Impacts of public health crises may include, without limitation, closures of our manufacturing facilities; under-absorbed overhead; increased logistics, component and other costs; decreased demand for our products; and manufacturing challenges.

The effects of public health crises are uncertain and difficult to predict, but may also include:

- Disruptions to our supply chain, our operations or those of our strategic partners, customers or suppliers caused by employees or others contracting infectious diseases, or by governmental orders to contain the spread of infectious disease, such as travel restrictions, quarantines, shelter in place orders, trade controls and business shutdowns;
- Deterioration of worldwide credit markets that may limit our ability or increase our cost to obtain external financing to fund our operations and capital expenditures and result in a higher rate of losses on our accounts receivables due to customer credit defaults;
- Extreme volatility in financial markets, which may harm our ability to access the financial markets on acceptable terms;
- Increased data security and technology risk as some employees work from home, including possible outages to systems and technologies critical to remote work and increased data privacy risk with cybercriminals attempting to take advantage of the disruption; and
- Reduced productivity or other disruptions of our operations if workers in Flash Ventures' factories or our other worksites are exposed to or spread infectious diseases to other employees.

The degree to which any public health crises ultimately impact our business will depend on many factors beyond our control, which are highly uncertain and cannot be predicted at this time.

***The loss of our key management, staff and skilled employees; the inability to hire and develop new employees; or decisions to realign our business could negatively impact our business prospects.***

Our success depends upon the continued contributions of our talent. Changes in our key management team, including the allocation of key employees between the two companies, may result in loss of continuity, loss of accumulated knowledge, departure of other key employees, disruptions to our operations and inefficiency during transitional periods. Global competition for skilled employees in the technology industry is intense, and our business success is increasingly dependent on our ability to attract, develop and retain top talent; implement succession plans for key management and staff and replace aging skilled employees. We will put retention arrangements in place for key employees to address the uncertainty about our business separation. When these retention payments are made we may suffer further attrition. Changes in immigration policies may also impair our ability to recruit and hire technical and professional talent.

Our ability to hire and retain employees also depends on our ability to build and maintain a diverse and inclusive workplace culture and to fund competitive compensation and benefits, each of which contribute to being viewed as an employer of choice. Additionally, because a substantial portion of our key employees' compensation is linked to the performance of our business, we may be at a competitive disadvantage for hiring and retaining talent when our operating results are negatively impacted. If we are unable to hire and retain key talent, our operating results would likely be harmed.

***We are subject to risks related to product defects, which could result in product recalls or epidemic failures and could subject us to warranty claims in excess of our warranty provisions or which are greater than anticipated, litigation or indemnification claims.***

We warrant the majority of our products for periods of one to five years. We test our products in our manufacturing facilities through a variety of means. However, our testing may fail to reveal defects in our products that may not become apparent until after the products have been sold into the market. In addition, our products may be used in a manner that is not intended or anticipated by us, resulting in potential liability. Accordingly, there is a risk that product defects will occur, including as a result of third-party components or applications that we incorporate in our products, which could require a product recall. Product recalls can be expensive to implement. As part of a product recall, we may be required or choose to replace the defective product. Moreover, there is a risk that product defects may trigger an epidemic failure clause in a customer agreement. If an epidemic failure occurs, we may be required to replace or refund the value of the defective product and to cover certain other costs associated with the consequences of the epidemic failure. In addition, product defects, product recalls or epidemic failures may cause damage to our reputation or customer relationships, lost revenue, indemnification for a recall of our customers' products, warranty claims, litigation or loss of market share with our customers, including our original equipment manufacturer and original design manufacturer customers. Our business liability insurance may be inadequate or future coverage may be unavailable on acceptable terms, which could negatively impact our operating results and financial condition.

Our standard warranties contain limits on damages and exclusions of liability for consequential damages and for misuse, improper installation, alteration, accident or mishandling while in the possession of someone other than us. We record an accrual for estimated warranty costs at the time revenue is recognized. We may incur additional expenses if our warranty provisions do not reflect the actual cost of resolving issues related to defects in our products, whether as a result of a product recall, epidemic failure or otherwise. If these additional expenses are significant, they could harm our business.

***The compromise, damage or interruption of our technology infrastructure, systems or products by cyber incidents, data security breaches, other security problems, design defects or system failures could have a material negative impact on our business.***

We experience cyber incidents of varying degrees on our technology infrastructure and systems and, as a result, unauthorized parties may obtain access to our computer systems and networks, including cloud-based platforms.

For example, an unauthorized third-party gained access to a number of WDC's systems in March 2023, which caused disruption to parts of WDC's business operations and resulted in various investigation, recovery and remediation expenses. In addition, the technology infrastructure and systems of some of our suppliers, vendors, service providers, cloud solution providers and partners have in the past experienced, and may in the future experience, such incidents. Cyber incidents can be caused by ransomware, computer denial-of-service attacks, worms and other malicious software programs or other attacks, including the covert introduction of malware to computers and networks, and the use of techniques or processes that change frequently, may be disguised or difficult to detect, or are designed to remain dormant until a triggering event, and may continue undetected for an extended period of time. Cyber incidents may result from, social engineering or impersonation of authorized users, and may also result from efforts to discover and exploit any design flaws, bugs, security vulnerabilities or security weaknesses, intentional or unintentional acts by employees or other insiders with access privileges, intentional acts of vandalism or fraud by third parties and sabotage. In some instances, efforts to correct vulnerabilities or prevent incidents may reduce the functionality or performance of our computer systems and networks, which could negatively impact our business. We believe malicious cyber acts are increasing in number and that cyber threat actors are increasingly organized and well-financed or supported by state actors, and are developing increasingly sophisticated systems and means to not only infiltrate systems, but also to evade detection or to obscure their activities. Geopolitical tensions or conflicts may create heightened risk of cyber incidents.

Our products are also targets for malicious cyber acts, including those products utilized in cloud-based environments. While some of our products contain encryption or security algorithms to protect third-party content or user-generated data stored on our products, these products could still be hacked or the encryption schemes could be compromised, breached or circumvented by motivated and sophisticated attackers, which could harm our business by exposing us to litigation and indemnification claims and hurting our reputation. If efforts to breach our infrastructure, systems or products are successful or we are unable to protect against these risks, we could suffer interruptions, delays or cessation of operations of our systems, and loss or misuse of proprietary or confidential information, IP or sensitive or personal information. For example, as a result of a network security incident in March 2023, an unauthorized party obtained a copy of a WDC database used for WDC's online store that contained some personal information of our online store customers. Compromises of our infrastructure, systems or products could also cause our customers and other affected third parties to suffer loss or misuse of proprietary or confidential information, IP or sensitive or personal information, and could harm our relationships with customers and other third parties and subject us to liability. As a result of actual or perceived breaches, we may experience additional costs, notification requirements, civil and administrative fines and penalties, indemnification claims, litigation or damage to our brand and reputation. All of these consequences could harm our reputation and our business and materially and negatively impact our operating results and financial condition.

**BUSINESS AND STRATEGIC RISKS**

***We rely substantially on strategic relationships with various partners, including Kioxia, which subjects us to risks and uncertainties that could harm our business.***

We have entered into and expect to continue to enter into strategic relationships with various partners for product development, manufacturing, sales growth and the supply of technologies, components, equipment and materials for use in our product design and manufacturing, including our business ventures with Kioxia. We depend on Flash Ventures for the development and manufacture of flash-based memory. Our strategic relationships, including Flash Ventures, are subject to various risks that could harm the value of our investments, our revenue and costs, our future rate of spending, our technology plans and our future growth opportunities.

The terms of our agreements with Kioxia with respect to the Flash Ventures requires that substantially all of our flash-based memory be obtained from Flash Ventures, which limits our ability to respond to market demand and supply changes and makes our financial results particularly susceptible to variations from our forecasts and expectations. For example, we are contractually obligated to pay for 50% of the fixed costs of Flash Ventures

regardless of whether we order any flash-based memory, and our orders placed with Flash Ventures on a rolling basis are binding. As a result, a failure to accurately forecast supply and demand could cause us to over-invest or under-invest in inventory, technology transitions or the expansion of Flash Ventures' capacity. Over-investment by us or our competitors can result in excess supply and lead to significant decreases in our product prices, significant excess, obsolete inventory or inventory write-downs or underutilization charges, and the potential impairment of our investments in Flash Ventures. For example, in 2023, we incurred $296 million in charges for unabsorbed manufacturing overhead costs as a result of reduced utilization of our manufacturing capacity and $108 million in charges to write down our inventory as a result of decreases in market pricing. These charges were attributable to a significant imbalance of supply and demand and our actions taken in response thereto. On the other hand, if we under-invest in Flash Ventures, or otherwise grow or transition Flash Ventures' capacity too slowly, we may not have enough supply of flash-based memory, or the right type of flash-based memory, to meet demand on a timely and cost effective basis, and we may lose opportunities for revenue, gross margin and market share as a result. If our supply is limited, we might make strategic decisions with respect to the allocation of our supply among our products and customers, which could result in less favorable gross margins or damage customer relationships. In addition, while Flash Ventures is operating, our agreements with Kioxia preclude us from working with third parties to manufacture flash-based memory or from fabricating flash-based memory beyond the capacity specified in the agreements, or from manufacturing flash-based memory ourselves except to the extent that we acquire any manufacturing capacity of a Flash Ventures entity as a result of that entity's dissolution, termination of its joint venture agreements or acquisition by us. This could also impair our ability to consolidate with other industry participants who manufacture flash-based memory.

Our control over the operations of our business ventures may be limited, and our interests could diverge from our strategic partners' interests regarding ongoing and future activities. For example, each Flash Ventures entity operates for a defined period of time agreed upon between the joint venture partners. Absent further extensions as mutually agreed between us and Kioxia, Flash Partners Ltd. and Flash Alliance Ltd. are currently set to expire on December 31, 2029, and Flash Forward Ltd. is currently set to expire on December 31, 2034. Each Flash Ventures entity's joint venture agreements may also earlier terminate upon the occurrence of certain specified events, including earlier dissolution by agreement of the parties or an event of default or bankruptcy. Upon the expiration of a Flash Ventures entity's joint venture agreements, whenever that may occur, the applicable Flash Ventures entity will commence a wind-up process and be dissolved. Net proceeds from the dissolution will be distributed in kind or cash to us and Kioxia on a pro rata basis based on our respective ownership positions. The applicable Flash Venture entity will continue to operate during the period of winding up. Although we and Kioxia have agreed to extend the operating period for each Flash Ventures entity since the start of Flash Ventures, there is a risk that we and Kioxia will be unable to agree on a further extension of one or more of the Flash Ventures entities. Additionally, under the Flash Ventures agreements, we cannot unilaterally direct most of Flash Ventures' activities, and we have limited ability to source or fabricate flash outside of Flash Ventures. Flash Ventures requires significant investments by both Kioxia and us for technology transitions and capacity expansions, and our business could be harmed if our technology roadmap and investment plans are not sufficiently aligned with Kioxia's. Lack of alignment with Kioxia with respect to Flash Ventures could negatively impact our ability to react quickly to changes in the market, or to stay at the forefront of technological advancement. Misalignment could arise due to changes in Kioxia's strategic priorities, management, ownership or access to capital, which have changed in recent years and could continue to change. Kioxia's stakeholders may include, or have included in the past, competitors, customers, a private equity firm, government entities or public stockholders. Kioxia's management changes, ownership and capital structure could lead to delays in decision-making, disputes or changes in strategic direction that could negatively impact the strategic partnership, and therefore us. There may exist conflicts of interest between Kioxia's stakeholders and Flash Ventures or us with respect to, among other things, protecting and growing Flash Ventures' business, intellectual property and competitively sensitive confidential information.

Together with Kioxia, we fund a portion of the investments required for Flash Ventures through lease financings. Continued availability of lease financings for Flash Ventures is not guaranteed and could be limited by several factors, including investor capacity and risk allocation policies, our or Kioxia's financial performance and

changes to our or Kioxia's business, ownership or corporate structure. To the extent that lease financings are not accessible on favorable terms or at all, more cash would be required to fund investments.

Our strategic relationships are subject to additional risks that could harm our business, including, but not limited to, the following:

- failure by our strategic partners to comply with applicable laws or employ effective internal controls;
- difficulties and delays in product and technology development at, ramping production at and transferring technology to, our strategic partners;
- declining financial performance of our strategic partners, including failure by our strategic partners to timely fund capital investments with us or otherwise meet their commitments, including paying amounts owed to us or third parties when due;
- we may lose the rights to, or ability to independently manufacture, certain technology or products being developed or manufactured by strategic partners, including if any of them is acquired by another company, files for bankruptcy or experiences financial or other losses;
- a bankruptcy event involving a strategic partner could result in structural changes to or termination of the strategic partnership; and
- changes in tax or regulatory requirements may necessitate changes to the agreements governing our strategic partnerships.

***We participate in a highly competitive industry that is subject to declining average selling prices, volatile demand, rapid technological change and industry consolidation, as well as lengthy product qualifications, all of which can negatively impact our business.***

Demand for our devices, software and solutions, which we refer to in this "Risk Factors" section as our "products," depends in large part on the demand for systems manufactured by our customers and on storage upgrades to existing systems. The demand for systems has been volatile in the past and often has had an exaggerated effect on the demand for our products in any given period. Demand for and prices of our products are influenced by, among other factors, actual and projected data growth, the balance between supply and demand in the storage market, including the effects of new fab capacity, macroeconomic factors, business conditions, technology transitions and other actions taken by us or our competitors. The storage market has recently experienced, and may continue to experience, periods of excess capacity leading to liquidation of excess inventories, inventory write-downs, significant reductions in average selling prices and negative impacts on our revenue and gross margins, and volatile product life cycles that harm our ability to recover the cost of product development.

Further, our average selling prices and gross margins tend to decline when there is a shift in the mix of product sales to lower priced products. We have faced declining gross margins relating to the flash business in the past, and may face potential gross margin pressures in the future, resulting from our average selling prices declining more rapidly than our cost of revenue. Rapid technological changes often reduce the volume and profitability of sales of existing products and increase the risk of inventory obsolescence and write-downs. Finally, the data storage industry has experienced consolidation over the past several years, which could enhance the resources and lower the cost structure of some competitors. These factors could result in a substantial decrease in our market share and harm our business.

As we compete in new product areas, the overall complexity of our business may increase and may result in increases in research and development expenses and substantial investments in manufacturing capability, technology enhancements and go-to-market capability. We must also qualify our products with customers through potentially lengthy testing processes with uncertain results. Some of our competitors offer products that we do not offer, which may allow them to win sales from us, and some of our customers may be developing storage solutions internally, which may reduce their demand for our products. We expect that competition will continue to be intense, and our competitors may be able to gain a product offering or cost structure advantage

over us, which would harm our business. Further, our competitors may utilize pricing strategies, including offering products at prices at or below cost, that we may be unable to competitively match. We may also have difficulty effectively competing with manufacturers benefiting from governmental investments and may be subject to increased complexity and reduced efficiency in our supply chain as a result of governmental efforts to promote domestic semiconductor industries in various jurisdictions.

***If we do not properly manage technology transitions and product development and introduction, our competitiveness and operating results may be negatively affected.***

The markets for our products continuously undergo technology transitions that may impact our product roadmaps and that we must anticipate in order to adapt our existing products or develop new products effectively. If we fail to adapt to or implement new technologies or develop new products desired by our customers quickly and cost-effectively, or if technology transitions negatively impact our existing product roadmaps, our business may be harmed.

In addition, the success of our technology transitions and product development depends on a number of other factors, including:

- research and development expenses and results;
- difficulties faced in manufacturing ramp;
- market acceptance/qualification;
- effective management of inventory levels in line with anticipated product demand;
- the vertical integration of some of our products, which may result in more capital expenditures and greater fixed costs than if we were not vertically integrated;
- our ability to cost effectively respond to customer requests for new products or features (including requests for more efficient and efficiently produced products with reduced environmental impacts) and software associated with our products;
- our ability to increase our software development capability; and
- the effectiveness of our go-to-market capability in selling new products.

Moving to new technologies and products may require us to align to, and build, a new supply base. Our success in new product areas may depend on our ability to enter into favorable supply agreements. In addition, if our customers choose to delay transition to new technologies, if demand for the products that we develop is lower than expected or if the supporting technologies to implement these new technologies are not available, we may be unable to achieve the cost structure required to support our profit objectives or may be unable to grow or maintain our market position.

Additionally, new technologies could impact demand for our products in unforeseen or unexpected ways and new products could substitute for our current products and make them obsolete, each of which would harm our business. We also develop products to meet certain industry and technical standards, which may change and cause us to incur substantial costs as we adapt to new standards or invest in different manufacturing processes to remain competitive.

***We experience sales seasonality and cyclicality, which could cause our operating results to fluctuate. In addition, accurately forecasting demand has become more difficult, which could harm our business.***

Sales of many of our products tend to be seasonal and subject to supply-demand cycles. Changes in seasonal and cyclical supply and demand patterns have made it, and could continue to make it, more difficult for us to forecast demand. Changes in the product or channel mix of our business may also impact seasonal and cyclical patterns. For example, we often ship a high percentage of our total quarterly sales in the third month of the quarter, which makes it difficult for us to forecast our financial results before the end of each quarter. As a result of the above or other factors, our forecast of financial results for a given quarter may differ materially from our actual financial results.

The variety and volume of products we manufacture are based in part on accurately forecasting market and customer demand for our products. Accurately forecasting demand has become increasingly difficult for us, our customers and our suppliers due to volatility in global economic conditions, end market dynamics and industry consolidation, resulting in less availability of historical market data for certain product segments. Further, for many of our original equipment manufacturer customers utilizing just-in-time inventory, we do not generally require firm order commitments and instead receive a periodic forecast of requirements, which may prove to be inaccurate. In addition, because our products are designed to be largely interchangeable with competitors' products, our demand forecasts may be impacted significantly by the strategic actions of our competitors. As forecasting demand becomes more difficult, the risk that our forecasts are not in line with demand increases. This has caused, and may in the future cause, our forecasts to exceed actual market demand, resulting in periods of product oversupply, excess inventory, underutilization of manufacturing capacity and price decreases, which has impacted and could further impact our sales, average selling prices and gross margin or require us to incur additional inventory write-downs or additional charges for unabsorbed manufacturing overhead, thereby negatively affecting our operating results and our financial condition. For example, in 2023, we incurred $296 million in charges for unabsorbed manufacturing overhead costs as a result of reduced utilization of our manufacturing capacity and $108 million in charges to write down our inventory as a result of decreases in market pricing. These charges were attributable to a significant imbalance of supply and demand and our actions taken in response thereto. If market demand increases significantly beyond our forecasts or beyond our ability to add manufacturing capacity, then we may not be able to satisfy customer product needs, possibly resulting in a loss of market share if our competitors are able to meet customer demands. In addition, some of our components have long lead-times, requiring us to place orders several months in advance of anticipated demand. Such long lead-times increase the risk of excess inventory, potentially resulting in inventory write-downs or loss of sales in the event our forecasts vary substantially from actual demand.

***Failure to successfully execute on strategic initiatives including acquisitions, divestitures or cost saving measures may negatively impact our future results.***

We may make acquisitions and divestitures and engage in cost saving measures. In order to successfully execute on strategic initiatives, we must successfully complete attractive transactions, some of which may be large and complex, and manage post-closing issues such as integration of the acquired company or employees and integration of processes and systems. We may not be able to identify or complete appealing acquisition or investment opportunities given the intense competition for these transactions. Even if we identify and complete suitable corporate transactions, we may not be able to successfully address any integration challenges in a timely manner, or at all. There may be difficulties with implementing new systems and processes or with integrating systems and processes of companies with complex operations, which may result in inconsistencies in standards, controls, procedures and policies and may increase the risk that our internal controls are found to be ineffective.

Failing to successfully integrate or realign our business to take advantage of efficiencies or reduce redundancies of an acquisition may result in not realizing all or any of the anticipated benefits of the acquisition. In addition, failing to achieve the financial model projections for an acquisition or changes in technology development and related roadmaps following an acquisition may result in the incurrence of impairment charges (including goodwill impairments or other asset write-downs) and other expenses, both of which could negatively impact our results of operations or financial condition. Acquisitions and investments may also result in the issuance of equity securities that may be dilutive to our stockholders as well as earn-out or other contingent consideration payments and the issuance of additional indebtedness that would put additional pressure on liquidity. Furthermore, we may agree to provide continuing service obligations or enter into other agreements in order to obtain certain regulatory approvals of our corporate transactions, and failure to satisfy these additional obligations could result in our failing to obtain regulatory approvals or the imposition of additional obligations on us, any of which could negatively affect our business. In addition, new legislation or additional regulations may affect or impair our ability to invest with or in certain other countries or require us to obtain regulatory approvals to do so, including investments in joint ventures, minority investments and outbound technology transfers to certain countries.

Cost saving measures, restructurings and divestitures may result in workforce reduction and consolidation of our manufacturing or other facilities. As a result of these actions, we may experience a loss of continuity, loss of accumulated knowledge, disruptions to our operations and inefficiency during transitional periods. These actions could also impact employee retention. In addition, we cannot be sure that these actions will be as successful in reducing our overall expenses as we expect, that additional costs will not offset any such reductions or consolidations or that we do not forgo future business opportunities as a result of these actions.

Acquisitions and alliance activities inherently involve other risks as well. Additional risks we may encounter include those associated with:

- disruption to our business and the continued successful execution of our company strategy, goals and responsibilities;
- increased capital and research and development expenses and resource allocation;
- assimilation and integration of different business operations, corporate cultures, personnel, infrastructures and technologies or solutions acquired or licensed, while maintaining quality, and designing and implementing appropriate risk management measures;
- the incurrence of significant transaction fees and costs;
- the potential for unknown liabilities within the acquired or combined business that we may not become aware of until after the completion of the acquisition; and
- the possibility of conflict with joint venture or alliance partners regarding strategic direction, prioritization of objectives and goals, governance matters or operations.

***Loss of revenue from a key customer, or consolidation among our customer base, could harm our operating results.***

For 2024, 2023 and 2022, 41%, 47% and 47%, respectively, of our total revenue came from sales to our top ten customers. These customers have a variety of suppliers to choose from and therefore can make substantial demands on us, including demands on product pricing, contractual terms and the environmental impact and attributes of our products, often resulting in the allocation of risk or increased costs to us as the supplier. Our ability to maintain strong relationships with our principal customers is essential to our future performance. We may experience events such as the loss of a key customer, prohibition or restriction of sales to a key customer by law, regulation or other government action, reductions in sales to or orders by a key customer, customer requirements to reduce our prices before we are able to reduce costs or the acquisition of a key customer by one of our competitors. These events may impact, our operating results and financial condition. Further, government authorities may implement laws or regulations or take other actions that could result in significant changes to the business or operating models of our customers. Such changes could negatively impact our operating results.

Additionally, if there is consolidation among our customer base, our customers may be able to command increased leverage in negotiating prices and other terms of sale, which could negatively impact our profitability. Consolidation among our customer base may also lead to reduced demand for our products, increased customer pressure on our prices, replacement of our products by the combined entity with those of our competitors and cancellations of orders, each of which could harm our operating results.

Also, the storage ecosystem is constantly evolving, and our traditional customer base is changing. Fewer companies now hold greater market share for certain applications and services, such as cloud storage and computing platforms, mobile, social media, shopping and streaming media. As a result, the competitive landscape is changing, giving these companies increased leverage in negotiating prices and other terms of sale, which could negatively impact our profitability. In addition, the changes in our evolving customer base create new selling and distribution patterns to which we must adapt. To remain competitive, we must respond to these changes by ensuring we have proper scale in this evolving market, as well as offer products that meet the technological requirements of this customer base at competitive pricing points. To the extent we are not successful in adequately responding to these changes, our operating results and financial condition could be harmed.

***Sales in the distribution channel and to the retail market are important to our business, and if we fail to respond to demand changes within these markets, or maintain and grow our applicable market share, our business could suffer.***

Our distribution customers typically sell to small computer manufacturers, dealers, systems integrators and other resellers. We face significant competition in this channel as a result of limited product qualification programs and a significant focus on price and availability of product. As a result of the shift to mobile devices, more computing devices are being delivered to the market as complete systems, which could weaken the distribution market. If we fail to respond to changes in demand in the distribution market, our business could suffer. Additionally, if the distribution market weakens as a result of technology transitions or a significant change in consumer buying preference, or if we experience significant price declines due to demand changes in the distribution channel, our operating results would be negatively impacted. Negative changes in the creditworthiness or the ability to access credit, or the bankruptcy or shutdown of any of our significant retail or distribution partners would harm our revenue and our ability to collect outstanding receivable balances.

A significant portion of our sales is also made through retailers. Our success in the retail market depends in large part on our ability to maintain our brand image and corporate reputation and to expand into and gain market acceptance of our products in multiple retail market channels. Particularly in the retail market, negative publicity, whether or not justified, or allegations of product or service quality issues, even if false or unfounded, could damage our reputation and cause our customers to choose products offered by our competitors. Further, changes to the retail environment, such as store closures caused by macroeconomic conditions or changing customer preferences, may reduce the demand for our products. If customers no longer maintain a preference for our product brands or if our retailers are not successful in selling our products, our operating results may be negatively impacted.

**FINANCIAL RISKS**

***Our level of debt may negatively impact our liquidity, restrict our operations and ability to respond to business opportunities and increase our vulnerability to adverse economic and industry conditions.***

In connection with the separation, we expect to incur and utilize debt financing in our capital structure, and in the future, we may incur additional debt. The amount of debt may be substantial and may be on terms less favorable to us than those historically provided to WDC. Our anticipated level of debt could have significant consequences, which may include, but are not limited to, the following:

- limiting our ability to obtain additional financing for working capital, capital expenditures, acquisitions, capital contributions to Flash Ventures or other general corporate purposes;
- requiring a substantial portion of our cash flows to be dedicated to debt service payments instead of other purposes;
- imposing financial and other restrictive covenants on our operations, including minimum liquidity and free cash flow requirements and limitations on our ability to (i) declare or pay dividends or repurchase shares of our common stock; (ii) purchase assets, make investments, complete acquisitions, consolidate or merge with or into, or sell all or substantially all of our assets to, another person; (iii) enter into sale/leaseback transactions or certain transactions with affiliates; (iv) incur additional indebtedness and (v) incur liens; and
- making us more vulnerable to economic downturns and limiting our ability to withstand competitive pressures or take advantage of new opportunities to grow our business.

Our ability to meet our anticipated debt service obligations, comply with our anticipated debt covenants and deleverage will depend on our cash flows and financial performance, which will be affected by financial, business, economic and other factors. The rate at which we will be able to or choose to deleverage is uncertain. Failure to meet our anticipated debt service obligations or comply with our anticipated debt covenants could

result in an event of default under the applicable indebtedness. We may be unable to cure, or obtain a waiver of, an event of default or otherwise amend our debt agreements to prevent an event of default thereunder on terms acceptable to us or at all. In that event, the debt holders could accelerate the related debt, which may result in the cross-acceleration or cross-default of other debt, leases or other obligations. If we do not have sufficient funds available to repay indebtedness when due, whether at maturity or by acceleration, we may be required to sell important strategic assets; refinance such debt; incur additional debt or issue common stock or other equity securities, which we may not be able to do on terms acceptable to us, in amounts sufficient to meet our needs or at all. Our inability to service our anticipated debt obligations or refinance our anticipated debt could harm our business. Further, if we are unable to repay, refinance or restructure any of our anticipated indebtedness that is secured, the holder of such debt could proceed against the collateral securing the indebtedness. Refinancing our anticipated indebtedness may also require us to expense previous debt issuance costs or to incur new debt issuance costs.

Our anticipated financing arrangements may include bank debt containing a variable interest rate component based on our corporate credit ratings, and a decline in our ratings could result in increased interest rates and debt service obligations. In addition, our ratings will impact the cost and availability of future borrowings and, accordingly, our cost of capital. Our ratings will reflect the opinions of the ratings agencies as to our financial strength, operating performance and ability to meet our debt obligations. There can be no assurance that we will achieve a particular rating or maintain a particular rating in the future.

We also guarantee a significant amount of lease obligations of Flash Ventures owed to third parties. Flash Ventures sells to and leases back a portion of its equipment from a consortium of financial institutions. Most of the lease obligations are guaranteed 50% by us and 50% by Kioxia. Some of the lease obligations are guaranteed in full by us. The leases are subject to customary covenants and cancellation events that relate to Flash Ventures and each of the guarantors. If a cancellation event were to occur, Flash Ventures would be required to negotiate a resolution with the other parties to the lease transactions to avoid cancellation and acceleration of the lease obligations. Such resolution could include, among other things, supplementary security to be supplied by us, increased interest rates or waiver fees. If a resolution is not reached, we may be required to pay all of the outstanding lease obligations covered by our guarantees, which would significantly reduce our cash position and may force us to seek additional financing, which may not be available on terms acceptable to us, if at all.

We may from time to time seek to further refinance our anticipated indebtedness by issuing additional shares of common stock or other securities that are convertible into common stock or grant the holder the right to purchase common stock, each of which may dilute our existing stockholders, reduce the value of our common stock, or both.

***Fluctuations in currency exchange rates as a result of our international operations may negatively affect our operating results.***

Because we manufacture and sell our products abroad, our revenue, cost of revenue, margins, operating costs and cash flows are impacted by fluctuations in foreign currency exchange rates. If the U.S. dollar exhibits sustained weakness against most foreign currencies, the U.S. dollar equivalents of unhedged manufacturing costs could increase because a significant portion of our production costs are foreign-currency denominated. Conversely, there would not be an offsetting impact to revenues since revenues are substantially U.S. dollar denominated. Additionally, we negotiate and procure some of our component requirements in U.S. dollars from non-U.S. based vendors. If the U.S. dollar weakens against other foreign currencies, some of our component suppliers may increase the price they charge for their components in order to maintain an equivalent profit margin. In addition, our purchases of flash-based memory from Flash Ventures and our investment in Flash Ventures are denominated in Japanese yen. If the Japanese yen appreciates against the U.S. dollar, our cost of purchasing flash-based memory wafers and the cost to us of future capital funding of Flash Ventures would increase. When such events occur, they have had, and may in the future have, a negative impact on our business.

Prices for our products are substantially U.S. dollar denominated, even when sold to customers that are located outside the U.S. Therefore, as a substantial portion of our sales are from countries outside the U.S., fluctuations in currency exchanges rates, most notably the strengthening of the U.S. dollar against other foreign currencies, contribute to variations in sales of products in impacted jurisdictions and could negatively impact demand and revenue growth. In addition, currency variations may adversely affect margins on sales of our products in countries outside the U.S.

We attempt to manage the impact of foreign currency exchange rate changes by, among other things, entering into short-term foreign exchange contracts. However, these contracts may not cover our full exposure and can be canceled by the counterparty if currency controls are put in place. Thus, our decisions and hedging strategy with respect to currency risks may not be successful and may actually harm our operating results. Further, the ability to enter into foreign exchange contracts with financial institutions is based upon our available credit from such institutions and compliance with covenants and other restrictions. Operating losses, third-party downgrades of our credit rating or instability in the worldwide financial markets could impact our ability to effectively manage our foreign currency exchange rate risk. Hedging also exposes us to the credit risk of our counterparty financial institutions.

***Increases in our customers' credit risk could result in credit losses and term extensions under existing contracts with customers with credit losses could result in an increase in our operating costs.***

Some of our original equipment manufacturer customers have adopted a subcontractor model that requires us to contract directly with companies, such as original design manufacturers, that provide manufacturing and fulfillment services to our original equipment manufacturer customers. Because these subcontractors are generally not as well capitalized as our direct original equipment manufacturer customers, this subcontractor model exposes us to increased credit risks. Our agreements with our original equipment manufacturer customers may not permit us to increase our product prices to alleviate this increased credit risk. Additionally, as we attempt to expand our original equipment manufacturer and distribution channel sales into emerging economies, the customers with the most success in these regions may have relatively short operating histories, making it more difficult for us to accurately assess the associated credit risks. Our customers' credit risk may also be exacerbated by an economic downturn or other adverse global or regional economic conditions. Any credit losses we may suffer as a result of these increased risks, or as a result of credit losses from any significant customer, especially in situations where there are term extensions under existing contracts with such customers, would increase our operating costs, which may negatively impact our operating results.

## LEGAL AND COMPLIANCE RISKS

***We are subject to laws, rules and regulations relating to the collection, use, sharing and security of data, including personal data, and our failure to comply with these laws, rules and regulations could subject us to proceedings by governmental entities or others and cause us to incur penalties, significant legal liability, or loss of customers, loss of revenue and reputational harm.***

We are subject to laws, rules and regulations relating to the collection, use, security and privacy of third-party data, including data that relates to or identifies an individual person. We are also subject to the terms of our privacy policies and obligations to third parties related to privacy, data protection and cybersecurity. In many cases, these requirements apply not only to third-party transactions, but also to transfers of information between us and our subsidiaries, and among us, our subsidiaries and other parties with which we have commercial relations. Our possession and use of third-party data, including personal data and employee data in conducting our business, subjects us to legal and regulatory burdens that require us to notify vendors, customers or employees or other parties with which we have commercial relations of a data security breach and to respond to regulatory inquiries and to enforcement proceedings. Laws and regulations relating to the collection, use, security and privacy of third-party data change over time and new laws and regulations become effective from time to time. We are subject to notice and privacy policy requirements, as well as obligations to respond to requests to

know and access personal information, correct personal information, delete personal information and say no to the sale of personal information. Global privacy and data protection legislation, enforcement and policy activity in this area are rapidly expanding and evolving and may be inconsistent from jurisdiction to jurisdiction. We may also be subject to restrictions on cross-border data transfers and requirements for localized storage of data that could increase our compliance costs and risks and affect the ability of our global operations to coordinate activities and respond to customers. Compliance requirements or even our inadvertent failure to comply with applicable laws may cause us to incur substantial costs, subject us to proceedings by governmental entities or others, and cause us to incur penalties or other significant legal liability or lead us to change our business practices.

***We are or may in the future be subject to state, federal and international legal and regulatory requirements, such as environmental, labor, health and safety, trade and public-company reporting and disclosure regulations, customers' standards of corporate citizenship and industry and coalition standards, such as those established by the Responsible Business Alliance ("RBA"), and compliance with those regulations and requirements could cause an increase in our operating costs and failure to comply may harm our business.***

We are subject to, and may become subject to additional, state, federal and international laws and regulations governing our environmental, labor, trade, health and safety practices and public-company reporting and disclosures requirements. These laws and regulations, particularly those applicable to our international operations, are or may be complex, extensive and subject to change. We will need to ensure that we and our suppliers, customers and partners timely comply with such laws and regulations, which may result in an increase in our operating costs. Legislation has been, and may in the future be, enacted in locations where we manufacture or sell our products, which could impair our ability to conduct business in certain jurisdictions or with certain customers and harm our operating results. In addition, climate change and financial reform legislation is a significant topic of discussion and has generated and may continue to generate federal, international or other regulatory responses in the near future, which could substantially increase the complexity of our public-company reporting and disclosure requirements and our compliance and operating costs. If we or our suppliers, customers or partners fail to timely comply with applicable legislation, certain customers may refuse to purchase our products or we may face increased operating costs as a result of taxes, fines or penalties, or legal liability and reputational damage, which could harm our business.

In connection with our compliance with environmental laws and regulations, as well as our compliance with industry and coalition environmental initiatives, such as those established by the RBA, the standards of business conduct required by some of our customers, and our commitment to sound corporate citizenship in all aspects of our business, we could incur substantial compliance and operating costs and be subject to disruptions to our operations and logistics. In addition, if we or our suppliers, customers or partners were found to be in violation of these laws or noncompliant with these initiatives or standards of conduct, we could be subject to governmental fines, liability to our customers and damage to our reputation and corporate brand, which could cause our financial condition and operating results to suffer.

***Our aspirations, disclosures and actions related to environmental, social and governance matters expose us to risks that could adversely affect our reputation and performance.***

There is an increased focus from investors, customers, associates, business partners and other stakeholders concerning environmental, social and governance matters, and we may announce initiatives and goals related to environmental, social and governance matters from time to time, including renewable energy and net zero emissions commitments. These statements reflect our current plans and aspirations and are not guarantees that we will be able to achieve them. Our ability to achieve any environmental, social and governance objective is subject to numerous risks, many of which are outside of our control, including the availability and cost of alternative energy sources; the evolving regulatory and reporting requirements affecting environmental, social and governance practices and disclosures; the locations and usage of our products and the implications on their greenhouse gas emissions; and the successful execution of our strategy. Our failure to accomplish or accurately

track and report on these goals on a timely basis, or at all, and the potential added costs involved, could adversely affect our reputation; financial performance and growth; our ability to attract or retain talent; and our attractiveness as a business partner or supplier, and could expose us to increased litigation risk, as well as increased scrutiny from the investment community and enforcement authorities.

***We and certain of our officers may at times be involved in litigation, investigations and governmental proceedings, which may be costly, may divert the efforts of our key personnel and could result in adverse court rulings, fines or penalties, which could materially harm our business.***

From time to time, we may be involved in litigation, including antitrust and commercial matters, putative securities class action suits and other actions. We may be the plaintiff in some of these actions and the defendant in others. Some of the actions may seek injunctive relief, including injunctions against the sale of our products, and substantial monetary damages, which if granted or awarded, could materially harm our business. From time to time, we may also be the subject of inquiries, requests for information, investigations and actions by government and regulatory agencies regarding our business. Any such matters could result in material adverse consequences to our results of operations, financial condition or ability to conduct our business, including fines, penalties or restrictions on our business activities.

Litigation is subject to inherent risks and uncertainties that may cause actual results to differ materially from our expectations. In the event of an adverse outcome in any litigation, investigation or governmental proceeding, we could be required to pay substantial damages, fines or penalties and cease certain practices or activities, including the manufacture, use and sale of products. With or without merit, such matters may be complex, may extend for a protracted period of time, may be very expensive and the expense may be unpredictable. Litigation initiated by us could also result in counter-claims against us, which could increase the costs associated with the litigation and result in our payment of damages or other judgments against us. In addition, litigation, investigations or governmental proceedings and any related publicity may divert the efforts and attention of some of our key personnel, affect demand for our products and harm the market prices of our securities.

We may be obligated to indemnify our current or former directors or employees, or former directors or employees of companies that we have acquired, in connection with litigation, investigations or governmental proceedings. These liabilities could be substantial and may include, among other things: the costs of defending lawsuits against these individuals; the cost of defending shareholder derivative suits; the cost of governmental, law enforcement or regulatory investigations or proceedings; civil or criminal fines and penalties; legal and other expenses; and expenses associated with the remedial measures, if any, which may be imposed.

***The nature of our industry and its reliance on intellectual property and other proprietary information subjects us and our suppliers, customers and partners to the risk of significant litigation.***

The data storage industry has been characterized by significant litigation. This includes litigation relating to patent and other intellectual property rights, product liability claims and other types of litigation. We have historically been involved in frequent disputes regarding patent and other intellectual property rights, and we and our customers have in the past received, and we and our customers may in the future receive, communications from third parties asserting that certain of our products, processes or technologies infringe upon their patent rights, copyrights, trademark rights or other intellectual property rights. Even if we believe that such claims are without merit, they may be time-consuming and costly to defend against and may divert management's attention and resources away from our business. We may also receive claims of potential infringement if we attempt to license intellectual property to others. Intellectual property risks increase when we enter into new markets where we have little or no intellectual property protection as a deterrent against litigation. The complexity of the technology involved and the uncertainty of intellectual property litigation increase the intellectual property risks we face. Litigation may be expensive, lengthy and disruptive to normal business operations. Moreover, the results of litigation are inherently uncertain and may result in adverse rulings or decisions. We may be subject to injunctions, enter into settlements or be subject to judgments that may harm our business.

If we incorporate third-party technology into our products or if claims or actions are asserted against us for alleged infringement of the intellectual property of others, we may be required to obtain a license or cross-license, modify our existing technology or design a new non-infringing technology. Such licenses or design modifications may be extremely costly. We evaluate notices of alleged patent infringement and notices of patents from patent holders that we receive from time to time. We may decide to settle a claim or action against us, which settlement could be costly. We may also be liable for past infringement. If there is an adverse ruling against us in an infringement lawsuit, an injunction could be issued barring production or sale of any infringing product. It could also result in a damage award equal to a reasonable royalty or lost profits or, if there is a finding of willful infringement, treble damages. Any of these results would increase our costs and harm our operating results. In addition, our suppliers, customers and partners are subject to similar risks of litigation, and a material, adverse ruling against a supplier, customer or partner could negatively impact our business.

Moreover, from time to time, we agree to indemnify certain of our suppliers and customers for alleged intellectual property infringement. The scope of such indemnity varies but may include indemnification for direct and consequential damages and expenses, including attorneys' fees. We may be engaged in litigation as a result of these indemnification obligations. Third-party claims for patent infringement are excluded from coverage under our insurance policies. A future obligation to indemnify our customers or suppliers may harm our business.

***Our reliance on intellectual property and other proprietary information subjects us to the risk that these key components of our business could be copied by competitors.***

Our success depends, in significant part, on the proprietary nature of our technology, includingnon-patentable intellectual property such as our process technology. If we fail to protect our technology, intellectual property or contract rights, our customers and others may seek to use our technology and intellectual property without the payment of license fees and royalties, which could weaken our competitive position, reduce our operating results and increase the likelihood of costly litigation. We primarily rely on patent, copyright, trademark and trade secret laws, as well as non-disclosure agreements and other methods, to protect our proprietary technologies and processes. There can be no assurance that our existing patents will continue to be held valid, if challenged, or that they will have sufficient scope or strength to protect us. It is also possible that competitors or other unauthorized third parties may obtain, copy, use or disclose, illegally or otherwise, our proprietary technologies and processes, despite our efforts to protect our proprietary technologies and processes. If a competitor is able to reproduce or otherwise capitalize on our technology despite the safeguards we have in place, it may be difficult, expensive or impossible for us to obtain necessary legal protection. There are entities whom we believe may infringe our IP. Enforcement of our rights often requires litigation. If we bring a patent infringement action and are not successful, our competitors may be able to use similar technology to compete with us. Moreover, the defendant in such an action may successfully countersue us for infringement of their patents or assert a counterclaim that our patents are invalid or unenforceable. Also, the laws of some foreign countries may not protect our intellectual property to the same extent as do U.S. laws. In addition to patent protection of intellectual property rights, we consider elements of our product designs and processes to be proprietary and confidential. We rely upon employee, consultant and vendor non-disclosure agreements and contractual provisions and a system of internal safeguards to protect our proprietary information. However, we cannot be certain that these contracts and safeguards have not been and will not be breached, that we will be able to timely detect unauthorized use or transfer of our technology and intellectual property, that we will have adequate remedies for any breach, or that our trade secrets will not otherwise become known or be independently discovered by competitors. Any of our registered or unregistered intellectual property rights may be challenged or exploited by others in the industry, which could harm our operating results.

Maintaining and strengthening our brands are important to maintaining and expanding our business, as well as to our ability to enter into new markets for our technologies, products and services. The success of our brands depends in part on the positive image that consumers have of our brands. We believe the popularity of our brands makes them a target of counterfeiting or imitation, with third parties attempting to pass off counterfeit products as our products. Any occurrence of counterfeiting, imitation or confusion with our brands could negatively affect

our reputation and impair the value of our brands, which in turn could negatively impact sales of our branded products, our share and our gross margin, as well as increase our administrative costs related to brand protection and counterfeit detection and prosecution. Additionally, our ability to prevent unauthorized uses of our brands and technologies would be negatively impacted if our trademark registrations were successfully challenged or overturned in the jurisdictions where we do business. We also have trademark applications pending in a number of jurisdictions that may not ultimately be granted, or if granted, may be challenged or invalidated, in which case we would be unable to prevent unauthorized use of our brands and logos in such jurisdictions. We have not filed trademark registrations in all jurisdictions where our brands or logos may be used.

## Risks Related to the Spin-Off

***We may not achieve some or all of the expected benefits of thespin-off, and the spin-off may adversely impact our business.***

We may not realize any strategic, financial, operational or other benefits from thespin-off. We cannot predict with certainty if or when anticipated benefits will occur or the extent to which they will be achieved. Following the completion of the spin-off, our operational and financial profile will change and we will face new risks. Following the completion of the spin-off, we will be a smaller and less-diversified company compared to WDC prior to thespin-off, and may be more vulnerable to changing market conditions. While we believe that the spin-off will position each company to better unlock its full standalone long-term potential, we cannot assure you that following the spin-off we will be successful. Further, there can be no assurance that the combined value of the shares of the two resulting companies will be equal to or greater than what the value of our common stock would have been had the spin-off not occurred. After the spin-off, WDC or we may offer products or engage in businesses that compete with the other company's products or businesses. Under the separation and distribution agreement between WDC and Spinco, WDC will be subject to certain limited noncompetition obligations for a specified period of time after the separation but otherwise will not be restricted in its ability to compete with Spinco.

***We may incur material costs and expenses as a result of thespin-off.***

We may incur costs and expenses greater than those we currently expect to incur as a result of thespin-off. These increased costs and expenses may arise from various factors, including financial reporting and costs associated with complying with federal securities laws (including compliance with the Sarbanes-Oxley Act). We will also incur ongoing costs and dis-synergies in connection with, or as a result of, the separation and related restructuring transactions, including costs of operating as independent, publicly traded companies that the two businesses will no longer be able to share. We cannot assure you that these costs will not be material to our business.

***If, following the spin-off, we are unable to satisfy the requirements of Section 404 of the Sarbanes-Oxley Act, or our internal control over financial reporting is not effective, the reliability of our financial statements may be questioned, and our stock price may suffer.***

Section 404 of the Sarbanes-Oxley Act requires any company subject to the reporting requirements of the U.S. securities laws to do a comprehensive evaluation of its and its consolidated subsidiaries' internal control over financial reporting. Our independent registered public accounting firm will not be required to formally attest to the effectiveness of our internal control over financial reporting until the year following the first annual report required to be filed with the SEC. To comply with this statute, we will be required to document and test our internal control procedures, our management will be required to assess and issue a report concerning our internal control over financial reporting and our independent auditors will be required to issue an opinion on our internal control over financial reporting. The rules governing the standards that must be met for management to assess our internal control over financial reporting are complex and require significant documentation, testing and

possible remediation to meet the detailed standards under the rules. During the course of our testing, our management may identify material weaknesses or deficiencies which may not be remedied in time to meet the deadline imposed by the Sarbanes-Oxley Act. If our management concludes that our internal control over financial reporting is not effective, or we identify material weaknesses in our internal controls, investor confidence in our financial results may weaken, and our stock price may suffer.

***We are being spun-off from our parent company, WDC, and our historical and pro forma financial information is not necessarily representative of the results that we would have achieved as a separate, publicly traded company and therefore may not be a reliable indicator of our future results.***

We are being spun-off from WDC, our parent company, and have no operating history as an independent, publicly traded company. The historical information about us in this information statement refers to our business as part of pre-spin-off WDC. Our historical and pro forma financial information included in this information statement is derived from the combined financial statements and accounting records of WDC. Accordingly, the historical and pro forma financial information included in this information statement does not necessarily reflect the financial condition, results of operations or cash flows that we would have achieved as a separate, publicly traded company during the periods presented or those that we will achieve in the future primarily as a result of the factors described below:

- we may need to make significant investments to replicate or outsource certain systems, infrastructure and functional expertise after our spin-off from WDC. These initiatives to develop our independent ability to operate will be costly to implement. We may not be able to operate our business as efficiently or at comparable costs, and our profitability may decline;
- how we finance our working capital or other cash requirements may differ from how we financed those requirements as part of pre-spin-off WDC. After the spin-off, our access to and cost of debt financing will be different from the historical access to and cost of debt financing under pre-spin-off WDC. Differences in access to and cost of debt financing are likely to result in differences in interest rates charged to us on financings, the amounts of indebtedness, types of financing structures and debt markets that may be available to us, which may have an adverse effect on our business, financial condition, results of operations and cash flows; and
- in preparing our financial statements, pre-spin-off WDC made allocations of costs and corporate expenses deemed to be attributable to our business. However, these costs and expenses reflect the costs and expenses attributable to our business operated as part of a larger organization and do not necessarily reflect costs and expenses that would be incurred by us had we been operating independently. As a result, our historical financial information may not be a reliable indicator of future results.

For additional information about the past financial performance of our business and the basis of presentation of the historical combined financial statements and the unaudited pro forma combined financial statements of our business, see the sections of this information statement entitled “Unaudited Pro Forma Condensed Combined Financial Information,” “Notes to Unaudited Pro Forma Condensed Combined Financial Information,” “Summary of Historical and Unaudited Pro Forma Combined Financial Data” and “Management’s Discussion and Analysis of Financial Condition and Results of Operations” as well as the combined financial statements and accompanying notes, included elsewhere in this information statement.

***WDC may fail to perform under various transaction agreements that will be executed as part of thespin-off, or we may fail to have necessary systems and services in place when WDC is no longer obligated to provide services under the various agreements.***

We and WDC will enter into certain agreements, such as the separation and distribution agreement, a transition services agreement, a tax matters agreement, an employee matters agreement, a stockholder and registration rights agreement, a transitional trademark license agreement and an intellectual property cross-license agreement, as discussed in greater detail in the section of this information statement entitled “Certain Relationships and

Related Transactions—Material Agreements with WDC," which may provide for the performance by each company for the benefit of the other for a period of time after the spin-off. If WDC is unable to satisfy its obligations under these agreements, including its indemnification obligations in favor of us, we could incur operational difficulties or losses.

If we do not have in place our own systems and services, and do not have agreements with other providers of these services when the transitional or other agreements terminate, or if we do not implement the new systems or replace WDC's services successfully, we may not be able to operate our business effectively, which could disrupt our business and have a material adverse effect on our business, financial condition and results of operations. These systems and services may also be more expensive to install, implement and operate, or less efficient than the systems and services WDC is expected to provide during the transition period.

***In connection with our spin-off from WDC, WDC will indemnify us for certain liabilities. However, there can be no assurance that the indemnity will be sufficient to protect us against the full amount of such liabilities, or that WDC's ability to satisfy its indemnification obligation will not be impaired in the future.***

WDC will agree to indemnify us for certain liabilities as discussed further in the section of this information statement entitled "Certain Relationships and Related Transactions—Material Agreements with WDC." However, third parties could also seek to hold us responsible for liabilities that WDC has agreed to retain, and there can be no assurance that the indemnity from WDC will be sufficient to protect us against the full amount of such liabilities, or that WDC will be able to fully satisfy its indemnification obligations. In addition, WDC's insurers may attempt to deny coverage to us for liabilities associated with certain occurrences of indemnified liabilities prior to the spin-off.

***In connection with our separation, we will assume, and indemnify WDC for, certain liabilities. If we are required to make payments pursuant to these indemnities to WDC, we would need to meet those obligations and our financial results could be adversely impacted.***

We will agree to assume, and indemnify WDC for, certain liabilities as discussed further in the section of this information statement entitled "Certain Relationships and Related Transactions—Material Agreements with WDC." Payments pursuant to these indemnities may be significant and could adversely impact our business, financial condition, results of operations and cash flows, particularly indemnities relating to our actions that could impact the tax-free nature of the distribution.

***If the distribution of our shares, together with certain related transactions, does not qualify for the Intended Tax Treatment, you and WDC could be subject to significant U.S. federal income tax liability and, in certain circumstances, we could be required to indemnify WDC for material taxes pursuant to indemnification obligations under the anticipated tax matters agreement.***

It is a condition to the completion of the distribution that WDC receives the Tax Opinion, substantially to the effect that, among other things, the distribution, together with certain related transactions, will qualify for the Intended Tax Treatment, although this condition may be waived by WDC in its sole discretion. The Tax Opinion will rely on certain facts, assumptions, representations and undertakings from WDC and us, including those regarding the past and future conduct of the companies' respective businesses and other matters. Nevertheless, an opinion of counsel neither binds the IRS nor precludes the IRS or the courts from adopting a contrary position. Therefore, notwithstanding the Tax Opinion, the IRS could determine that the distribution or any such related transaction is taxable if it determines that any of these facts, assumptions, representations or undertakings are not correct or have been violated, or that the distribution should be taxable for other reasons, including if the IRS were to disagree with the conclusions in the Tax Opinion. For more information regarding the Tax Opinion, see the section of this information statement entitled "United States Federal Income Tax Consequences of the Distribution."

If the distribution or any of the above referenced related transactions is determined to be taxable for U.S. federal income tax purposes, a stockholder of WDC that has received shares of our stock in the distribution and WDC could each incur significant U.S. federal income tax liabilities. In addition, WDC and we could incur significant U.S. federal income tax obligations, whether under applicable law or under the tax matters agreement that we intend to enter into with WDC. For a discussion of the tax consequences of the distribution, together with certain related transactions, please refer to the section entitled "United States Federal Income Tax Consequences of the Distribution."

***To preserve the tax-free treatment to WDC and its stockholders of the distribution and certain related transactions, under the tax matters agreement that we anticipate entering into with WDC, we will be restricted from taking certain actions after the distribution that could adversely impact the intended U.S. federal income tax treatment of the distribution and such related transactions.***

To preserve the tax-free treatment to WDC and its stockholders of the distribution and certain related transactions, under the tax matters agreement that we anticipate entering into with WDC, we may be restricted from taking certain actions after the distribution that could adversely impact the intended U.S. federal income tax treatment of the distribution, together with certain related transactions. Failure to adhere to any such restrictions, including in certain circumstances that may be outside of our control, could result in tax being imposed on WDC for which we could bear responsibility and for which we could be obligated to indemnify WDC. In addition, even if we are not responsible for tax liabilities of WDC under the anticipated tax matters agreement, we nonetheless could potentially be liable under applicable tax law for such liabilities if WDC were to fail to pay such taxes.

The terms of the anticipated tax matters agreement may, furthermore, restrict us from taking certain actions, particularly for the two years following the spin-off, including (among other things) the ability to freely issue stock, to merge or agree to merge with a third party, to be acquired or agree to be acquired by certain parties and to raise additional equity capital. Any such restrictions could impair our ability to implement strategic initiatives. Also, any indemnity obligation to WDC might discourage, delay or prevent a change of control that we or our stockholders may otherwise consider favorable. These restrictions may limit our ability to enter into certain strategic transactions or other transactions that we may believe to be in the best interests of our stockholders or that might increase the value of our business. In addition, under the anticipated tax matters agreement, we may be required to indemnify WDC against certain tax liabilities as a result of the acquisition of our stock or assets, even if we did not participate in or otherwise facilitate the acquisition. For a discussion of the tax matters agreement, see the section of this information statement entitled "Certain Relationships and Related Transactions—Agreements with WDC —Tax Matters Agreement."

***The spin-off and related internal restructuring transactions may expose us to potential liabilities arising out of state and federal fraudulent conveyance laws and legal dividend requirements.***

The spin-off could be challenged under various state and federal fraudulent conveyance laws. Fraudulent conveyances or transfers are generally defined to include (a) transfers made or obligations incurred with the actual intent to hinder, delay or defraud current or future creditors or (b) transfers made or obligations incurred for less than reasonably equivalent value when the debtor was insolvent, or that rendered the debtor insolvent, inadequately capitalized or unable to pay its debts as they become due. A creditor or an entity acting on behalf of a creditor (including, without limitation, a trustee or debtor-in-possession in a bankruptcy by us or WDC or any of our or its respective subsidiaries) may bring a lawsuit alleging that thespin-off or any of the related transactions constituted a fraudulent conveyance. If a court accepts these allegations, it could impose a number of remedies, including, without limitation, voiding the distribution and returning our assets or shares and subjecting WDC and/or us to liability.

The distribution of our common stock is also subject to state corporate distribution statutes. Under applicable Delaware law, including the DGCL, a corporation may only pay a distribution of common stock to its

stockholders if (1) after giving effect to the consummation of the transaction (a) the assets of each company, at a fair valuation, exceed its respective debts (including contingent liabilities), (b) each company will be able to pay its respective debts (including contingent liabilities) as they become due and (c) neither company will have an unreasonably small amount of either assets or capital for the operations of the businesses in which it is engaged or in which management has indicated it intends to engage and (2) immediately prior to giving effect to the distribution and pursuant to Section 170 of the DGCL, the surplus of the company declaring the distribution exceeds the net amount of the distribution less any dividend paid to the company declaring the distribution. Although WDC intends to make the distribution of our common stock entirely out of surplus and we and WDC intend to obtain the Solvency Opinions, we and WDC cannot ensure that a court would reach the same conclusion in determining the availability of surplus for the separation and the distribution to WDC's stockholders.

***After the spin-off, certain of our executive officers and directors may have actual or potential conflicts of interest because of their previous positions at WDC.***

Because of their current or former positions with WDC, certain of our expected executive officers and directors own equity interests in WDC. Following the spin-off, even though our board of directors will consist of a majority of directors who are independent, and any of our expected executive officers who are currently employees of WDC will cease to be employees of WDC upon the spin-off, some of our executive officers and directors will continue to have a financial interest in shares of WDC common stock and equity awards. Specifically, each outstanding WDC equity award held by our employees at the level of vice president and above will be converted into both a post-separation WDC award relating to shares of WDC common stock and a Spinco award relating to shares of Spinco common stock at the time of separation. Continuing ownership of shares of WDC common stock and equity awards could create, or appear to create, potential conflicts of interest if we and WDC pursue the same corporate opportunities or face decisions that could have different implications for us and WDC.

***We may have received better terms from unaffiliated third parties than the terms we will receive in our agreements with WDC.***

The agreements we will enter into with WDC in connection with the spin-off, including the ancillary agreements, were prepared in the context of our spin-off from WDC while we were still a wholly owned subsidiary of WDC. Accordingly, during the period in which the terms of those agreements were prepared, we did not have a board of directors or management team that was independent of WDC. While the parties believe the terms reflect arm's-length terms, there can be no assurance that we would not have received better terms from unaffiliated third parties than the terms we will receive in our agreements with WDC. For more information, see the section of this information statement entitled "Certain Relationships and Related Transactions—Agreements with WDC."

***Some contracts and other assets which will need to be transferred or assigned from WDC or its affiliates to us in connection with our spin-off from WDC may require the consent of a third party. If such consent is not given, we may not be entitled to the benefit of such contracts and other assets in the future, which could adversely impact our financial condition and future results of operations.***

In connection with our spin-off from WDC, a number of contracts and licenses with third-parties and other assets are to be transferred or assigned from (x) WDC or its affiliates to us or our anticipated subsidiaries or (y) us or our affiliates to WDC or its subsidiaries. However, the transfer or assignment of certain of these contracts, licenses or assets may require the consent of a third party to such a transfer or assignment. Similarly, in some circumstances, we and another business unit of WDC are joint beneficiaries of contracts, and we or WDC will need to (x) enter into a new agreement with the third-party to replicate the existing contract, (y) be assigned and delegated the portion of the existing contract related to the applicable business or (z) use commercially

reasonable efforts to provide for an alternative arrangement to obtain the same or reasonably similar benefits and burdens of the applicable portion of the existing contract. It is possible that some parties may use the requirement of a consent or the fact that the spin-off is occurring to seek more favorable contractual terms from us, to terminate the contract or license or to otherwise request additional accommodations, commitments or other agreements from us. If we are unable to obtain such consents on commercially reasonable and satisfactory terms or if the contracts are terminated, we may be unable to obtain the benefits, assets and contractual commitments which are intended to be allocated to us as part of our spin-off from WDC. The failure to timely complete the assignment of existing contracts, licenses or assets, or the negotiation of new arrangements, or a termination of any of those arrangements, could have a material adverse impact on our financial condition and future results of operations. To the extent we require a specific arrangement and agree to less favorable terms in connection with obtaining any consent to retain that arrangement, the basis for that arrangement may be less favorable than currently held by us and could adversely impact our financial conditions and future results of operations. In addition, where we do not intend to obtain consent from third-party counterparties based on our belief that no consent is required, the third-party counterparties may challenge a transfer of assets on the basis that the terms of the applicable commercial arrangements require the third-party counterparties' consent. We may incur substantial litigation and other costs in connection with any such claims and, if we do not prevail, our ability to use these assets could be materially and adversely impacted.

***If our cash flow from operations is less than we anticipate, or if our cash requirements are more than we expect, we may require additional access to capital and may need to incur additional debt or raise additional funds.***

If our cash flow from operations is less than we anticipate, or if our cash requirements are more than we expect, we may require additional access to capital and may need to incur additional debt or raise additional funds. However, debt or equity financing may not be available to us on terms acceptable or favorable to us, if at all, and will depend on a number of factors, many of which are beyond our control, such as the state of the credit and financial markets and other economic, financial and geopolitical factors. If we incur additional debt or raise capital through the issuance of preferred stock, the terms of the debt or preferred stock issued may give the holders thereof rights, preferences and privileges senior to those of holders of our common stock, particularly in the event of liquidation. The terms of such debt may also impose additional and more stringent restrictions on our operations than we are currently subject to. If we raise funds through the issuance of additional equity, your percentage ownership in us would be diluted. If we are unable to raise additional capital when needed, it could affect our financial condition, which could adversely impact your investment in us.

***Following the spin-off, the value of your common stock in WDC and Spinco may collectively trade at an aggregate price less than what WDC's common stock might have traded at had the spin-off not occurred.***

The common stock of WDC and Spinco that you may hold following thespin-off may collectively trade (taking into account the distribution ratio) at a value less than the price at which WDC's common stock might have traded had the spin-off not occurred or as it was trading prior to thespin-off. Reasons for this potential difference include the future performance of either WDC or Spinco as separate, independent companies, and the future stockholder base and market for WDC's common stock and those of Spinco and the prices at which these shares individually trade.

***Until the distribution occurs, WDC has the sole discretion to change the terms of the spin-off in ways which may be unfavorable to us.***

Completion of the distribution will be contingent upon the satisfaction or waiver of customary conditions, including, among other things, the effectiveness of appropriate filings with the SEC. For a more detailed description of these conditions, see the section of this information statement entitled "The Separation and Distribution—General—Conditions to the Distribution." Until the distribution occurs, WDC will have the sole and absolute discretion to determine and change the terms of the spin-off, including the allocation of assets and

liabilities, the establishment of the record date for the distribution and distribution date, the conditions to the distribution and all other terms. These changes could be unfavorable to us. In addition, until the spin-off has occurred, WDC has the right not to complete the spin-off, even if all the conditions have been satisfied, if, at any time prior to the distribution, the WDC Board of Directors determines, in its sole discretion, that the spin-off is not in the best interests of WDC or its stockholders, that a sale or other alternative is in the best interests of WDC or its stockholders, or that market conditions or other circumstances are such that it is not advisable at that time to separate the Flash Business from WDC. We cannot provide any assurances that the distribution will be completed.

***Certain entities or assets that are part of our separation from WDC may not be transferred to us or may not be transferred to WDC, as applicable, prior to the distribution or at all.***

Certain entities and assets that are part of our separation from WDC may not be transferred prior to the distribution because the entities or assets, as applicable, are subject to governmental or third-party approvals that we may not receive prior to the distribution. It is currently anticipated that all material transfers will occur without material delays beyond the distribution, but we cannot offer any assurance that such transfers will ultimately occur or not be delayed for an extended period of time. To the extent such transfers do not occur prior to the distribution, under the separation and distribution agreement, the benefits and burdens of owning such assets and/or entities will, to the extent reasonably possible and permitted by applicable law, be provided to the applicable party.

In the event such transfers do not occur or are significantly delayed because we do not receive the required approvals, we may not realize all of the anticipated benefits of our separation from WDC and we may be dependent on WDC for transition services for a longer period of time than would otherwise be the case.

***The separation could give rise to disputes or other unfavorable effects, which could materially and adversely affect our business, financial position or results of operations.***

The separation may lead to increased operating and other expenses, of both a nonrecurring and a recurring nature, and to changes to certain operations, which expenses or changes could arise pursuant to arrangements made between WDC and us or could trigger contractual rights of, and obligations to, third parties. Disputes with third parties could also arise out of these transactions, and we could experience unfavorable reactions to the separation from employees, lenders, ratings agencies, regulators or other interested parties. These increased expenses, changes to operations, disputes with third parties or other effects could materially and adversely affect our business, financial position or results of operations. In addition, following the separation, disputes with WDC could arise in connection with one or more of the ancillary agreements or certain other agreements.

***We will share certain directors with WDC, which overlap may give rise to conflicts.***

Following the distribution, there will be an overlap between certain of our directors and directors of WDC. Shared directors may have actual or apparent conflicts of interest with respect to matters involving or affecting each of WDC or Spinco. For example, there will be the potential for a conflict of interest when we on the one hand, and WDC and its respective subsidiaries and successors on the other hand, are party to commercial transactions concerning the same or adjacent investments. In addition, after the distribution, certain of our directors will continue to own shares or equity awards of WDC. These ownership interests could create actual, apparent or potential conflicts of interest when these individuals are faced with decisions that could have different implications for our company and WDC. See “Certain Relationships and Related Party Transactions—Procedures for Approval of Related Person Transactions” for a discussion of certain procedures we will institute to help ameliorate such potential conflicts that may arise.

***The separation may result in disruptions to relationships with customers, suppliers and other business partners.***

While we intend to manage our operations to minimize any disruptions to our customers, suppliers and business partners, uncertainty related to the separation may nevertheless lead to disruption in those relationships. These disruptions, if not managed by us, could have an adverse effect on our business, financial condition, results of operations and prospects.

***After the separation, we may be unable to make, on a timely or cost-effective basis, the changes necessary to operate as an independent company.***

At the completion of the separation, we may not have the infrastructure or personnel necessary to operate as an independent company, including with respect to the functionality and reliability of our information technology systems, without relying on WDC to provide certain transitional services. We may need additional personnel or third-party service providers to successfully operate our business. Upon the completion of the separation, we will enter into a transition services agreement with WDC pursuant to which we will provide certain services to WDC, and WDC will provide certain services to us, to allow us to continue to operate in substantially the same manner
following the separation and to benefit from the continuation of certain services for a certain amount of time post-separation and certain cost efficiencies in sharing certain resources and personnel. We cannot assure you that we will be able to successfully implement the infrastructure or retain or hire the personnel necessary to operate as a separate company or that we will not incur costs in excess of anticipated costs to establish such infrastructure and retain or hire such personnel.

***Any failure of our Flash Ventures partner, Kioxia, to provide timely or accurate financial reports to us may adversely affect the timeliness or accuracy of our financial statements.***

We will rely on Kioxia, a private Japanese company, to provide reliable and timely financial statement information so that we may include such financial results in our financial reports. Any failure of Kioxia to provide timely or accurate financial reports to us may adversely affect the timeliness or accuracy of our financial statements.

## Risks Related to Our Common Stock

***We cannot be certain that an active trading market for our common stock will develop or be sustained after thespin-off and, following the spin-off, our stock price may fluctuate significantly.***

A public market for our common stock does not currently exist. We expect that shortly before the distribution date, trading of shares of our common stock will begin on a "when-issued" basis on Nasdaq and will continue through the distribution date. However, we cannot guarantee that an active trading market will develop or be sustained for our common stock after the spin-off. Nor can we predict the prices at which shares of our common stock may trade after the spin-off.

Similarly, we cannot predict the effect of the spin-off on the trading prices of our common stock. Subject to the completion of thespin-off, we expect our common stock to be listed and traded on Nasdaq under the symbol "SNDK." The combined trading prices of WDC common stock and our common stock after the separation, as adjusted for any changes in the combined capitalization of these companies, may not be equal to or greater than the trading price of WDC common stock prior to the spin-off. Until the market has fully evaluated the business of WDC without our business, or fully evaluated us, the price at which WDC's or our common stock trades may fluctuate significantly.

The market price of our common stock may fluctuate significantly due to a number of factors, some of which may be beyond our control, including:

- our business profile, market capitalization or capital allocation policies may not fit the investment objectives ofpre-spin-off WDC stockholders, causing a shift in our investor base and our common stock may not be included in some indices in which WDC common stock is included, causing certain holders to sell their shares;
- our quarterly or annual earnings, or those of other companies in its industry;
- the failure of securities analysts to cover our common stock after thespin-off;
- actual or anticipated fluctuations in our operating results;
- changes in earnings estimates by securities analysts or our ability to meet those estimates;
- our ability to meet our forward looking guidance;
- the operating and stock price performance of other comparable companies;
- overall market fluctuations and domestic and worldwide economic conditions; and
- other factors described in these "Risk Factors" and elsewhere in this information statement.

Stock markets in general have experienced volatility that has often been unrelated to the operating performance of a particular company. Broad market and industry factors may materially harm the market price of our common stock, regardless of our operating performance. In the past, following periods of volatility in the market price of a company's securities, shareholder derivative lawsuits and/or securities class action litigation has often been instituted against such company. Such litigation, if instituted against us, could result in substantial costs and a diversion of management's attention and resources.

In addition, investors may have difficulty accurately valuing our common stock. Investors often value companies based on the stock prices and results of operations of other comparable companies. Investors may find it difficult to find comparable companies and to accurately value our common stock, which may cause the trading price of our common stock to fluctuate.

***Any sales of substantial amounts of shares of our common stock in the public market, or the perception that such sales might occur, in connection with the distribution or otherwise, may cause the market price of our common stock to decline.***

Upon completion of the distribution, we expect that we will have an aggregate of approximately 144 million shares of our common stock issued and outstanding based upon approximately 346 million shares of WDC common stock outstanding as of September 27, 2024. The shares of our common stock will be freely tradeable without restriction or further registration under the Securities Act of 1933, as amended (the "Securities Act"), unless the shares are owned by one of our "affiliates," as that term is defined in Rule 405 under the Securities Act.

We are unable to predict whether large amounts of our common stock will be sold in the open market following the spin-off. We are also unable to predict whether a sufficient number of buyers would be in the market at that time. WDC investors who have an investment strategy of tracking an index fund, such as the S&P 500 index, may sell the shares of Spinco common stock that they receive in the distribution if Spinco is not listed on the same index. As a result, the price of Spinco common stock may decline or experience volatility as Spinco's stockholder base changes. Whether related to the foregoing or otherwise, sales of substantial amounts of shares of our common stock in the public market following the spin-off, or the perception that such sales might occur, may cause the market price of our common stock to decline.

In addition, WDC is retaining 19.9% of our common stock and will have adverse tax consequences if that stake is not disposed of within 12 months of the distribution. WDC will dispose of such shares of Spinco common stock that it owns after the distribution through one or more subsequent exchanges of Spinco common stock for WDC debt held by WDC creditors and/or through distributions of Spinco common stock to WDC stockholders as dividends or in exchange for outstanding shares of WDC common stock, in each case during the 12-month period following the distribution. Any disposition by WDC, or any significant stockholder, of Spinco common stock, or the perception that such dispositions could occur, could adversely affect prevailing market prices for Spinco common stock.

***We do not intend to pay cash dividends for the foreseeable future.***

The timing, declaration, amount and payment of future dividends to stockholders falls within the discretion of our board of directors and will depend on many factors, including our financial condition, earnings, capital requirements of our business and covenants associated with debt obligations, as well as legal requirements, regulatory constraints, industry practice and other factors that our board of directors deems relevant. We do not intend to, and there can be no assurance that we will, pay any dividend in the future.

***Your percentage of ownership in us may be diluted in the future.***

Your percentage ownership in us may be diluted because of equity issuances for acquisitions, capital market transactions or otherwise, including, without limitation, equity awards that we may grant to our directors, officers and employees.

Our charter will authorize us to issue, without the approval of our stockholders, one or more classes or series of preferred stock having such designation, powers, preferences, and relative, participating, optional and other special rights, including preferences over our common stock respecting dividends and distributions, as our board of directors generally may determine. The terms of one or more classes or series of preferred stock could dilute the voting power or reduce the value of our common stock. For example, we could grant the holders of preferred stock the right to elect some number of our directors in all events or on the happening of specified events or to veto specified transactions. Similarly, the repurchase or redemption rights or liquidation preferences we could assign to holders of preferred stock could affect the residual value of our common stock. See the section entitled "Description of Capital Stock."

***Provisions of Delaware law, our certificate of incorporation and our bylaws, may prevent or delay an acquisition of our company, which could decrease the market price of our common stock.***

Delaware law contains, and our certificate of incorporation and bylaws will contain, provisions thatare intended to deter coercive takeover practices and inadequate takeover bids by making such practices or bids unacceptably expensive to the bidder and to encourage prospective acquirers to negotiate with our board of directors rather than to attempt a hostile takeover. These provisions include, among others:

- provisions regarding the election of directors, classes of directors, the term of office of directors and the filling of director vacancies;
- no cumulative voting;
- removal of directors either with or without cause, by the affirmative vote of the stockholders then entitled to vote at an election of directors having a majority of the voting power of the Company;
- our board of directors has the authority to determine designations and the powers, preferences and relative, participating, optional or other special rights, and qualifications, limitations or restrictions thereof, including, without limitation, the dividend rate, conversion rights, redemption price and liquidation preference, of any series of shares of preferred stock, and to fix the number of shares constituting any such series, and to increase or decrease the number of shares of any such series (but not below the number of shares thereof then outstanding);
- advance notice requirements applicable to stockholders for director nominations and actions to be taken at annual meetings; and
- our bylaws, may be altered, amended or repealed, and new bylaws may be adopted, (i) by our board of directors, by vote of a majority of the number of directors then in office as directors, acting at any duly called and held meeting of our board of directors, or (ii) by our stockholders; *provided* that notice of such proposed amendment, modification, repeal or adoption is given in the notice of special meeting. To the extent permitted by law, any bylaws made or altered by the stockholders may be altered or repealed by either our board of directors or the stockholders.

Public stockholders who might desire to participate in these types of transactions may not have an opportunity to do so, even if the transaction is considered favorable to stockholders. These anti-takeover provisions could substantially impede the ability of public stockholders to benefit from a change in control or a change in our management and board of directors and, as a result, may adversely affect the market price of our common stock and your ability to realize any potential change of control premium.

In addition, following the distribution, we will be subject to Section 203 of the DGCL. Section 203 of the DGCL protects publicly traded Delaware corporations, such as us following the distribution, from hostile takeovers and from actions following a hostile takeover, by prohibiting some transactions once a potential acquirer has gained a significant holding in the corporation. Subject to certain exceptions, the statute prohibits a publicly held Delaware corporation from engaging in a "business combination" with an "interested stockholder" for a period of three years after the date of the transaction in which the person became an interested stockholder, unless:

- prior to such date, the board of directors of such corporation approved either the business combination or the transaction that resulted in the stockholder becoming an interested stockholder;
- upon consummation of the transaction that resulted in the stockholder becoming an interested stockholder, the interested stockholder owned at least 85% of the voting stock of such corporation outstanding at the time the transaction commenced (excluding for purposes of determining the number of shares outstanding (but not the outstanding voting stock owned by the interested stockholder), those shares owned by (i) persons who are directors and also officers and (ii) employee stock plans in which employee participants do not have the right to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer); or

- on or after such date the business combination is approved by the board of directors of such corporation and authorized at an annual or special meeting of stockholders and not by written consent, by the affirmative vote of at least 66-2/3% of the outstanding voting stock that is not owned by the interested stockholder.

For purposes of Section 203 of the DGCL, a "business combination" includes a merger, asset sale or other transaction resulting in a financial benefit to the interested stockholder, with an "interested stockholder" being defined as a person who, together with affiliates and associates, owns (or who is an affiliate or associate of the corporation and did own within three years prior to the date of determination whether the person is an "interested stockholder") 15% or more of the corporation's voting stock.

A corporation may elect not to be governed by Section 203 of the DGCL. Neither our certificate of incorporation nor our bylaws will contain the election not to be governed by Section 203 of the DGCL. Therefore, we will be governed by Section 203 of the DGCL.

We believe these provisions will protect our stockholders from coercive or otherwise unfair takeover tactics by requiring potential acquirers to negotiate with our board of directors and by providing our board of directors with more time to assess any acquisition proposal. These provisions are not intended to make us immune from takeovers. However, these provisions will apply even if the offer may be considered beneficial by some stockholders and could delay or prevent an acquisition that our board of directors determines is not in the best interests of us and our stockholders. These provisions may also prevent or discourage attempts to remove and replace incumbent directors.

***Our certificate of incorporation will contain an exclusive forum provision that could limit a stockholder's ability to bring a claim in a judicial forum that the stockholder believes is favorable for such disputes and may discourage lawsuits against us and any of our directors, officers or other employees.***

Our certificate of incorporation will provide that, unless we consent in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware (or the federal district court in the State of Delaware if the Court of Chancery does not have subject matter jurisdiction) is the sole and exclusive forum for (i) any derivative action brought on our behalf, (ii) any action asserting a claim of breach of a fiduciary duty owed by any of our current or former director, officer or other employee or our stockholders, (iii) any action asserting a claim arising pursuant to any provision of the Delaware General Corporation Law or our certificate of incorporation or bylaws or (iv) any action asserting a claim governed by the internal affairs doctrine (the "Delaware Exclusive Forum Provision"). Our certificate of incorporation will further provide that the federal district courts of the United States of America will, to the fullest extent permitted by law, be the exclusive forum for resolving any complaint asserting a cause of action under the Securities Act of 1933, as amended (the "Federal Forum Provision").

The Delaware Exclusive Forum Provision is intended to apply to claims arising under Delaware state law and would not apply to claims brought pursuant to the Exchange Act or any other claim for which the federal courts have exclusive jurisdiction. In addition, the Federal Forum Provision is intended to apply to claims arising under the Securities Act and would not apply to claims brought pursuant to the Exchange Act. The exclusive forum provisions we will include in our certificate of incorporation will not relieve us of our duties to comply with the federal securities laws and the rules and regulations thereunder and, accordingly, actions by our stockholders to enforce any duty or liability created by the Exchange Act or the rules and regulations thereunder must be brought in federal courts. Our stockholders will not be deemed to have waived our compliance with these laws, rules and regulations.

The exclusive forum provisions we will include in our certificate of incorporation may limit a stockholder's ability to bring a claim in a judicial forum of its choosing for disputes with the company or its directors, officers or other employees, which may discourage lawsuits against us and our directors, officers and other employees. In addition, stockholders who do bring a claim in the Court of Chancery of the State of Delaware pursuant to the Delaware Exclusive Forum Provision could face additional litigation costs in pursuing any such claim,

particularly if they do not reside in or near Delaware. The court in the designated forum under our exclusive forum provisions may also reach different judgments or results than would other courts, including courts where a stockholder would otherwise choose to bring the action, and such judgments or results may be more favorable to us than to our stockholders. Further, the enforceability of similar exclusive forum provisions in other companies' organizational documents has been challenged in legal proceedings, and it is possible that a court could find any of our exclusive forum provisions to be inapplicable to, or unenforceable in respect of, one or more of the specified types of actions or proceedings. If a court were to find all or any part of our exclusive forum provisions to be inapplicable or unenforceable in an action, we might incur additional costs associated with resolving such action in other jurisdictions.

***The price of WDC's common stock historically has been volatile, and the price of our common stock may be volatile as well. This volatility may affect the price at which you could sell your common stock, and the sale of substantial amounts of our common stock could adversely affect the price of our common stock.***

The market price of WDC's common stock has been volatile, and the price of our common stock may also be volatile. This volatility may affect the price at which you could sell your common stock. Our stock price may be subject to significant price and volume fluctuations in response to market and other factors, including:

- actual or anticipated fluctuations in our operating results, including those resulting from the seasonality and cyclicality of our business;
- perceptions about our strategic relationships and joint ventures, access to supply of NAND flash memory, new technologies and technology transitions;
- announcements of technological innovations by us or our competitors, which may decrease the volume and profitability of sales of our existing products and increase the risk of inventory obsolescence;
- new products introduced by us or our competitors;
- strategic actions by us or competitors, such as acquisitions and restructurings;
- responses to the announcement of the separation;
- periods of severe pricing pressures due to oversupply or price erosion resulting from competitive pressures or industry consolidation;
- developments with respect to patents or proprietary rights, and any litigation;
- proposed or adopted regulatory changes or developments or anticipated or pending investigations, proceedings or litigation that involve or affect us or our competitors;
- conditions and trends in the flash memory, computer, mobile, data and content management, storage and communication industries;
- contraction in our operating results or growth rates that are lower than our previous high growth rate periods;
- failure to meet analysts' revenue or earnings estimates or changes in financial estimates or publication of research reports and recommendations by financial analysts relating specifically to us or the storage industry in general;
- announcements relating to dividends and share repurchases; and
- macroeconomic conditions that affect the market generally and, in particular, developments related to market conditions for our industry.

In addition, the sale of substantial amounts of shares of our common stock, or the perception that these sales may occur, could adversely affect the market price of our common stock. Further, the stock market is subject to fluctuations in the stock prices and trading volumes that affect the market prices of the stock of public companies, including us. These broad market fluctuations have adversely affected and may continue to adversely

affect the market price of shares of our common stock. For example, expectations concerning general economic conditions may cause the stock market to experience extreme price and volume fluctuations from time to time that particularly affect the stock prices of many high technology companies. These fluctuations may be unrelated to the operating performance of the companies.

Securities class action lawsuits are often brought against companies after periods of volatility in the market price of their securities, and any such lawsuits filed against us could result in substantial costs and a diversion of resources and management's attention.

***Tax matters may materially affect our financial position and results of operations.***

Changes in tax laws in the United States, the European Union and around the globe have impacted and will continue to impact our effective worldwide tax rate, which may materially affect our financial position and results of operations. Further, the majority of countries in the G20 and Organization for Economic Cooperation and Development Inclusive Framework on Base Erosion and Profit Shifting have agreed to adopt a two-pillar approach to taxation, which includes the implementation of a global corporate minimum tax rate of 15%, which when effective could materially increase our tax obligations in these countries. Due to the large scale of our U.S. and international business activities, many of these enacted and proposed changes to the taxation of our activities, including cash movements, could increase our worldwide effective tax rate and harm our business. The Tax Cuts and Jobs Act of 2017 eliminated the option to deduct research and development expenditures in the year incurred, requiring amortization in accordance with IRC Section 174. Depending on our operating results, this requirement could materially increase our effective tax rate and reduce our operating cash flows. Additionally, portions of our operations are subject to a reduced tax rate or are free of tax under various tax holidays that expire in whole or in part from time to time, or may be terminated if certain conditions are not met. Although many of these holidays may be extended when certain conditions are met, we may not be able to meet such conditions. If the tax holidays are not extended, or if we fail to satisfy the conditions of the reduced tax rate, then our effective tax rate could increase in the future. Our determination of our tax liability in the U.S. and other jurisdictions is subject to review by applicable domestic and foreign tax authorities. Although we believe our tax positions are properly supported, the final timing and resolution of any tax examinations are subject to significant uncertainty and could result in litigation or the payment of significant amounts to the applicable tax authority in order to resolve examination of our tax positions, which could result in an increase of our current estimate of unrecognized tax benefits and may harm our business.

***No vote of the WDC stockholders is required in connection with the separation and distribution. As a result, if you do not want to receive our common stock in the distribution, your sole recourse will be to divest yourself of your WDC common stock prior to or on the distribution date.***

No vote of WDC stockholders is required or being sought in connection with the separation and distribution. Accordingly, if you do not want to receive our common stock in the distribution, your only recourse will be to divest yourself of your WDC common stock prior to or on the distribution date. You may also choose to divest shares of our common stock you receive in the distribution following the distribution.

***If securities or industry analysts do not publish research or reports about our business, or if they downgrade their recommendations regarding our common stock, our stock price and trading volume could decline.***

The trading market for our common stock will be influenced by the research and reports that industry or securities analysts publish about us or our business. If any of the analysts who may cover us downgrade our common stock or publish inaccurate or unfavorable research about our business, our common stock price may decline. If analysts cease coverage of us or fail to regularly publish reports on us, we could lose visibility in the financial markets, which in turn could cause our common stock price or trading volume to decline and our common stock to be less liquid.

***Provisions in our joint venture agreements with Kioxia may deter, prevent or delay an acquisition of us, which could decrease the market price of our common stock and limit our future strategic opportunities.***

The joint venture agreements with Kioxia contain provisions that may deter, prevent or delay third parties from acquiring us. These provisions include, among others:

- Restrictions limiting our ability and the ability of any of our affiliates to manufacture or have a third-party fabricate flash memory outside of Flash Ventures' Yokkaichi and Kitakami facilities;
- Restrictions limiting our ability and the ability of any of our affiliates to fabricate flash memory beyond our share of Flash Ventures' manufacturing capacity; and
- Restrictions limiting our ability to transfer equity in the Flash Ventures entities or their assets, particularly partial transfers.

If we nevertheless wanted to pursue a transaction providing for our acquisition by a third party, the provisions in our joint venture agreements with Kioxia could deter, prevent or delay a potential acquiror from pursuing such a transaction, even if the transaction is considered favorable to our stockholders.

We may seek a waiver of applicable provisions of the joint venture agreements from Kioxia or Kioxia's consent with respect to such a transaction, but there is no guarantee that we will successfully obtain Kioxia's consent or waiver.

The provisions in our joint venture agreements with Kioxia could substantially impede the ability of public stockholders to benefit from future strategic transactions, including an acquisition of Spinco and, as a result, may adversely affect the market price of our common stock and your ability to realize any potential change of control premium.

## FORWARD-LOOKING STATEMENTS

This information statement and other materials WDC and Spinco have filed or will file with the SEC contain, or will contain, forward-looking statements within the meaning of the federal securities laws. These forward-looking statements include, but are not limited to, statements regarding Spinco's product and technology position, the anticipated benefits and timing of the proposed spin-off of WDC's Flash Business and all statements regarding Spinco's expected future position, results of operations, cash flows, dividends, financing plans, business strategy, budgets, capital expenditures, competitive positions, growth opportunities, plans and objectives of management, and statements containing the use of forward-looking words, such as "may," "will," "could," "would," "should," "project," "believe," "anticipate," "expect," "estimate," "continue," "potential," "plan," "forecast," "approximate," "intend," "upside," "target," "intend," and the like, or the use of future tense. Statements contained herein concerning the business outlook or future economic performance, anticipated profitability, revenues, expenses, dividends or other financial items, and products or services line growth of Spinco, together with other statements that are not historical facts, are forward-looking statements that are estimates reflecting the best judgment of Spinco based upon currently available information. Statements concerning current conditions may also be forward-looking if they imply a continuation of current conditions.

Such forward-looking statements are inherently uncertain, and stockholders and other potential investors must recognize that actual results may differ materially from Spinco's expectations as a result of a variety of factors, including, without limitation, those discussed below. These forward-looking statements are based upon management's current expectations and include known and unknown risks, uncertainties and other factors, many of which Spinco is unable to predict or control, that may cause actual results, performance or plans to differ materially from those expressed or implied by such forward-looking statements, including: volatility in global economic conditions; business conditions and growth in the storage ecosystem; pricing trends and fluctuations in average selling prices; the availability and cost of commodity materials and specialized product components; actions by competitors; unexpected advances in competing technologies; the development and introduction of products based on new technologies and expansion into new data storage markets; and other risks and uncertainties listed under the sections entitled "*Summary of the Separation and Distribution*," "*Risk Factors*," "*Management's Discussion and Analysis of Financial Condition and Results of Operations*," "*Business*," and "*The Separation and Distribution.*" You should not place undue reliance on these forward-looking statements, which speak only as of the date hereof, and Spinco undertakes no obligation to update these forward-looking statements to reflect new information or events.

Risks and uncertainties related to the proposed spin-off include, but are not limited to: the future operating results of the stand-alone business; value creation associated with the separation and stand-alone business; the anticipated qualification of the spin-off as a tax-free transaction for U.S. federal income tax purposes; the expected relationship of the two businesses post-separation; whether the spin-off will be completed on the expected terms and on the anticipated timeline or at all, including the possibility that the conditions to the proposed spin-off may not be satisfied, including that a governmental entity may prohibit, delay or refuse to grant a necessary approval; the expected benefits and costs of the spin-off, including that the expected benefits will not be realized within the expected time frame, in full or at all; potential adverse reactions or changes to Spinco's business relationships with their respective customers, suppliers or other partners resulting from the announcement and completion of the proposed spin-off; competitive responses to the announcement or completion of the proposed spin-off; potential adverse effects on Spinco's stock prices resulting from the announcement or completion of the proposed spin-off; unexpected costs, liabilities, charges or expenses resulting from the proposed spin-off; litigation relating to the proposed spin-off; the inability to retain key personnel of Spinco as a result of the proposed spin-off, disruption of management time from ongoing business operations due to the proposed spin-off; business impact of geopolitical conflicts; and any changes in general economic and/or industry-specific conditions. In addition to the factors set forth above, the proposed spin-off is subject to other economic, competitive, legal, governmental, technological and other factors that may affect the proposed spin-off and Spinco's plans, results or stock price and which are set forth under the sections entitled "*Summary of the Separation and Distribution*," "*Risk Factors*," "*Management's Discussion and Analysis of Financial Condition*

*and Results of Operations*," "*Business*," and "*The Separation and Distribution*." Many of these factors are beyond Spinco's control. Spinco cautions investors that any forward-looking statements made by Spinco are not guarantees of future performance. Spinco does not intend, or undertake any obligation, to publish revised forward-looking statements to reflect events or circumstances after the date of this document or to reflect the occurrence of unanticipated events.

## THE SEPARATION AND DISTRIBUTION

### General

On October 30, 2023, WDC announced its intention to separate into two standalone, publicly traded companies. WDC has determined to implement this separation through the spin-off of WDC's Flash Business to its stockholders. WDC intends to effect thespin-off pursuant to an internal reorganization followed by a pro rata distribution of 80.1% of the shares of our common stock held by WDC to holders of shares of WDC common stock, subject to certain conditions. The distribution of our common stock is expected to take place on or about [●]. On the distribution date, each holder of WDC common stock will receive for each share of WDC common stock held as of [●] Pacific time on [●], the record date for the distribution, one-third (1/3) of one share of Spinco common stock (the "distribution ratio"). Spinco will be a separate, publicly traded company. You will not be required to make any payment, surrender or exchange your WDC common stock or take any other action to receive your shares of Spinco common stock to which you are entitled on the distribution date. The number of shares you own of WDC will not change as a result of the spin-off. On the distribution date, WDC will hold 19.9% of Spinco common stock. Following the distribution, WDC will dispose of all of the Spinco common stock that it retains through one or more subsequent exchanges of Spinco common stock for WDC debt held by WDC creditors and/or through distributions of Spinco common stock to WDC stockholders as dividends or in exchange for outstanding shares of WDC common stock, in each case during the 12-month period following the distribution.

The distribution of our common stock as described in this information statement is subject to the satisfaction or waiver of certain conditions. Until the spin-off has occurred, WDC has the right not to complete thespin-off, even if all the conditions have been satisfied, if, at any time prior to the distribution, the WDC Board of Directors determines, in its sole discretion, that the spin-off is not in the best interests of WDC or its stockholders, that a sale or other alternative is in the best interests of WDC or its stockholders, or that market conditions or other circumstances are such that it is not advisable at that time to separate the Flash Business from WDC. We cannot provide any assurances that the distribution will be completed. For a more detailed description of these conditions, see the section of this information statement entitled "The Separation and Distribution—General—Conditions to the Distribution."

#### *Reasons for the Spin-Off*

WDC has made significant strides in creating a leading digital storage solution business while continuing to strengthen and grow the Flash Business, and, to accelerate the pace of transformation, the WDC Board of Directors approved a plan to separate WDC and Spinco into two independent, publicly traded companies. The spin-off will create two strong, stand-alone businesses, each of which will have leading positions in the markets they serve and will be better positioned to deliver long-term growth and sustainable value creation for all shareholders:

- WDC will focus on the HDD Business; and
- Spinco will hold the Flash Business.

The WDC Board of Directors believes that separating the Flash Business from the remainder of WDC and distributing Spinco shares to WDC stockholders is in the best interests of WDC and its stockholders for a number of reasons, including:

- **Increased Management Focus on Core Business and Distinct Opportunities.**The spin-off will result in dedicated, independent management for each of the businesses and enable the respective management teams to adopt strategies and pursue objectives specific to their respective businesses and better focus on strengthening their respective core businesses and operations. Enhancing the management focus with respect to each business is also expected to increase operating flexibility, and allow each company to pursue opportunities for long-term growth distinct to their respective businesses. In addition, the spin-off will give each respective management team the opportunity to focus on the goals and expectations of such company's respective investors. The separation of the experienced management teams and other key personnel operating the businesses will result in the ability for each company to better satisfy the needs of its respective stockholders.

- **Improved Operational and Strategic Flexibility.** The spin-off will permit each business to pursue its own business interests, operating priorities and strategies more effectively without having to consider the impact on the business of the other company or on the balance and composition of pre-spin-off WDC's overall portfolio and will enhance operational flexibility for both businesses.
- **Simplified Investment Profile and Potential Ability to Enhance Marketability.** The business which will constitute Spinco differs significantly in several respects from the remaining business of WDC, including the nature of the business, growth profile, cyclical trends and business cycles and secular growth drivers. The spin-off will simplify how investors evaluate each business, streamline the investment profiles of both businesses, permit investors to better evaluate the individual merits, performance and future prospects of each company's business, and provide investors the ability to invest in each company separately based on those distinct characteristics, all of which may enhance each company's marketability. The spin-off may also attract new investors that either chose not to invest in, or assess the merits of, pre-spin-off WDC given its complexity and its exposure to disparate markets and trends.
- **Tailored Capital Allocation Strategies Align with Distinct Business Strategies and Industry Specific Dynamics.** Without the need to make capital allocation decisions based on WDC's overall pre-spin-off business portfolio, the spin-off will permit each company to implement a capital structure and flexible capital deployment policy that is optimized for its strategy and business needs, and that is aligned with each company's target investor base. WDC believes that the spin-off will provide flexibility to better manage capital structure based on each company's forecasted cash generation, planned investments, credit rating requirements, acquisition activity and capital returns, among other factors. Each company will also have direct access to the debt and equity capital markets to fund its growth strategies, and the ability to concentrate its financial resources solely on its own operations.
- **Improved Alignment of Equity Incentives.** The spin-off is expected to increase the effectiveness of stock-based incentive compensation by providing management and employees with incentives that more directly align with the operating and financial performances of the business in which they serve. WDC believes that improved alignment of equity incentives will enhance the ability of each of WDC and Spinco to attract, retain and incentivize qualified personnel.
- **Separate Acquisition Currency.** The spin-off will provide each of WDC and Spinco with its own distinct equity currency that relates solely to its business to use in pursuing strategic opportunities. For example, each of WDC and Spinco will be able to pursue strategic acquisitions in which potential sellers would prefer equity or to raise cash by issuing equity to public or private investors.
- **Facilitate Potential Mergers and Acquisitions and Resulting Synergies.** While Spinco will have significant restrictions on participating in merger and acquisition activity for two years following the spin-off pursuant to the tax matters agreement, ultimately, the separation may facilitate merger and acquisition activity that may generate significant benefits for Spinco, its customers and its stockholders.

The WDC Board of Directors also considered potentially negative factors in evaluating the spin-off, including:

- The potential for increased aggregate ongoing administrative costs for the two companies operating on a stand-alone basis post-spin-off, such as expenses associated with reporting and compliance as public companies and separate working capital requirements, overhead, insurance, financing and other operating costs, as well the potentially higher cost of capital as separate companies.
- Spinco and WDC currently take advantage of pre-spin-off WDC's size and purchasing power in procuring certain goods and services. After the spin-off, as standalone companies, Spinco and/or WDC may be unable to obtain these goods and services at prices or on terms as favorable as those currently obtained by pre-spin-off WDC.

- One-time costs we expect to incur related to the spin-off and in connection with the transition to becoming a stand-alone public company that are likely to include, among others, professional services costs, tax expense, recruiting and other costs associated with hiring for two stand-alone corporate structures and costs to separate IT systems and create two separate stand-alone IT structures.
- The loss of currently shared customers, go-to-market teams and the synergies of joint product development.
- The potential for execution risks related to the spin-off, including disruption to the business as a result of the spin-off and the possibility that Spinco and/or WDC do not achieve the expected benefits of the spin-off for a variety of reasons.
- The spin-off may divert management's time and attention, which could have a material adverse effect on the business, results of operations, financial condition and cash flows of Spinco.
- Following the spin-off, Spinco and/or WDC may be more susceptible to market fluctuations and other events particular to one or more of their products than they currently are as pre-spin-off WDC.
- The potential that reduced business diversification, with each post-spin-off company operating with a smaller product portfolio than pre-spin-off WDC, could increase the volatility of earnings and cash flow.
- Certain costs and liabilities that were otherwise less significant to pre-spin-off WDC could be more significant to WDC and/or Spinco after the spin-off as smaller, stand-alone companies.
- WDC's and Spinco's common stock could experience selling pressure after the spin-off as certain pre-spin-off stockholders may not be interested in holding an investment in one of the two post-spin-off companies.
- A lack of comparable public companies to Spinco may limit investors' ability to appropriately value Spinco's common stock.
- WDC investors who have an investment strategy of tracking an index fund, such as the S&P 500 index, may sell the shares of Spinco common stock that they receive in the distribution if Spinco is not listed on the same index. As a result, the price of Spinco common stock may decline or experience volatility as Spinco's stockholder base changes.
- There may be, or there may be the appearance of, conflicts of interest or differences in strategy in Spinco's relationship with WDC. Actual, potential or perceived conflicts could give rise to investor dissatisfaction, settlements with stockholders, litigation or regulatory inquiries or enforcement actions.

The WDC Board of Directors concluded that the potential benefits of the spin-off outweighed these factors and risks. The WDC Board of Directors also considered these potential benefits and potentially negative factors in light of the risk that the spin-off is abandoned or otherwise not completed, resulting in WDC not separating into two independent, publicly traded companies.

In view of the wide variety of factors considered in connection with the evaluation of the spin-off and the complexity of these matters, the WDC Board of Directors did not find it useful to, and did not attempt to, quantify, rank or otherwise assign relative weights to the factors considered.

The anticipated benefits of the spin-off are based on a number of assumptions, and there can be no assurance that such benefits will materialize to the extent anticipated, or at all. In the event the spin-off does not result in such benefits, the costs associated with the spin-off could have an adverse effect on each company individually and in the aggregate. For more information, see the section of this information statement entitled "Risk Factors."

***Reasons for WDC's Retention of 19.9% of Spinco Common Stock***

WDC's plan to transfer less than all of the Spinco common stock to its stockholders in the distribution is motivated by its desire to establish, in an efficient and non-taxable, cost-effective manner, an appropriate capital structure for each of WDC and Spinco, including by reducing, directly or indirectly, WDC's indebtedness during the 12-month period following the distribution. WDC will dispose of all of the Spinco common stock that it retains after the distribution through one or more subsequent exchanges of Spinco common stock for WDC debt held by WDC creditors and/or through distributions of Spinco common stock to WDC stockholders as dividends or in exchange for outstanding shares of WDC common stock, in each case during the 12-month period following the distribution.

***Formation of a Holding Company Prior to the Distribution and Internal Reorganization***

As part of the spin-off, WDC formed Spinco as a corporation in Delaware on February 5, 2024, for the purpose of transferring to Spinco certain assets and liabilities, including certain entities holding assets and liabilities, associated with the Flash Business in anticipation of the planned spin-off. Spinco has engaged in no business activities to date, and it has no material assets or liabilities of any kind, other than those incident to its formation and those incurred in connection with the spin-off. Prior to the distribution, through a series of internal reorganization transactions, (i) WDC and its subsidiaries will transfer the assets and liabilities associated with the Flash Business to Spinco or certain entities which will become its subsidiaries and transfer the equity interests of certain entities holding such assets and liabilities to Spinco and (ii) Spinco and its subsidiaries will transfer the assets and liabilities associated with the HDD Business that are held by Spinco's subsidiaries, if any, to WDC or its subsidiaries, in each case, as set forth in the separation and distribution agreement. WDC and its subsidiaries will also transfer all or a portion of certain other corporate and shared assets and liabilities to Spinco (or certain entities which will become its subsidiaries) and Spinco and its subsidiaries will also transfer all or a portion of certain other corporate and shared assets and liabilities to WDC or its subsidiaries, in each case, pursuant to the terms of the separation and distribution agreement. In exchange for the transfer of flash assets and liabilities to Spinco, Spinco will pay WDC the Spinco Dividend. WDC will continue to hold WDC's HDD Business. Spinco is also expected to enter into certain financing arrangements and incur certain indebtedness prior to and in connection with the spin-off. See the section of this information statement entitled "Description of Certain Indebtedness" for more information.

***Reasons for Furnishing this Information Statement; Changes in the Terms of the Spin-Off***

This information statement is being furnished solely to provide information to WDC stockholders who are entitled to receive shares of our common stock in the distribution. The information statement is not, and is not to be construed as, an inducement or encouragement to buy, hold or sell any of our securities or securities of WDC. We believe that the information in this information statement is accurate as of the date set forth on the cover.

Changes may occur after that date and none of us, WDC, the Spinco Board of Directors or the WDC Board of Directors undertake any obligation to update such information, except as required by applicable federal securities laws.

WDC does not intend to notify its stockholders of any modifications to the terms of thespin-off, including the waiver of any conditions to the distribution, that, in the judgment of its board of directors, are not material. However, the WDC Board of Directors would likely consider material matters such as significant changes to the distribution ratio, or significant changes to the assets to be contributed or the liabilities to be assumed in the separation, as well as the waiver of the condition that the WDC Board of Directors receives the Tax Opinion with respect to the spin-off. To the extent that the WDC Board of Directors determines that any modification by WDC materially changes the material terms of the spin-off, including through the waiver of a condition to the distribution, WDC will notify WDC stockholders in a manner reasonably calculated to inform them about the modification as may be required by law, by, for example, publishing a press release, filing a current report on Form 8-K or making available a supplement to this information statement. As of the date hereof, the WDC Board of Directors does not intend to waive any of the conditions described herein.

***Conditions to the Distribution***

The distribution of our common stock by WDC is subject to the satisfaction or waiver of the following conditions, among others:

- The SEC will have declared effective the registration statement of which this information statement forms a part, with no stop order relating to the registration statement in effect, and no proceedings for such purpose will be pending before, or threatened by, the SEC.
- Nasdaq will have approved the listing of Spinco common stock, subject to official notice of issuance.
- WDC will have received the Tax Opinion from its tax counsel Skadden, substantially to the effect that, among other things, the distribution, together with certain related transactions, will qualify as a reorganization within the meaning of sections 368(a)(1)(D), 361 and 355 of the Code. See the section of this information statement entitled "United States Federal Income Tax Consequences of the Distribution."
- All actions and filings necessary or appropriate under applicable securities laws or "blue sky" laws and the rules and regulations thereunder will have been taken.
- No preliminary or permanent injunction or other order, decree or ruling issued by a governmental authority, and no statute, rule, regulation or executive order promulgated or enacted by any governmental authority shall be in effect preventing the consummation of, or materially limiting the benefits of, the transactions contemplated by the separation and distribution agreement.
- Those reorganization transactions with respect to the HDD Business and Flash Business to be completed prior to the distribution will have been effectuated in all material respects.
- The WDC Board of Directors shall have declared the distribution and finally approved all related transactions (and such declaration or approval shall not have been withdrawn).
- No event or development shall have occurred or failed to occur that, in the judgment of the WDC Board of Directors, in its sole discretion, prevents the consummation of, or makes it inadvisable to effect the separation, the distribution or the other related transactions.
- Any required governmental approvals necessary to consummate the distribution and the transactions contemplated by the separation and distribution agreement and the ancillary agreements shall have been obtained and be in full force and effect.
- The mailing of this information statement (or notice of internet availability thereof) to record holders of WDC common stock as of [●], the record date for the distribution.
- Each of the ancillary agreements shall have been executed and delivered by each party thereto.
- An independent appraisal firm shall have delivered the Solvency Opinions; and such Solvency Opinions shall be reasonably acceptable to WDC in form and substance; and such Solvency Opinions shall not have been withdrawn or rescinded or modified in any respect adverse to WDC.
- WDC shall have either:
  - refinanced the obligations under its existing credit agreement; or
  - obtained a waiver from the requisite lenders under its existing credit agreement, in each case, in a manner and to the extent necessary (as determined by WDC in good faith) to permit the transactions.
- Spinco shall have consummated the necessary debt financing transactions (as determined by Spinco in good faith).

WDC and Spinco cannot assure you that any or all of these conditions will be met, and the WDC Board of Directors may also waive conditions to the distribution in its sole discretion. If the spin-off is completed and the WDC Board of Directors waives any such condition, such waiver could have a material adverse effect on WDC's

and Spinco's respective business, financial condition or results of operations, including, without limitation, as a result of litigation relating to any preliminary or permanent injunctions that sought to prevent the consummation of the spin-off, or the failure of WDC and Spinco to obtain any required regulatory approvals. As of the date hereof, the WDC Board of Directors does not intend to waive any of the conditions described herein.

The fulfillment of the above conditions will not create any obligation on behalf of WDC to effect thespin-off, and WDC may at any time decline to go forward with the spin-off. Until the spin-off has occurred, WDC has the right not to complete thespin-off, even if all the conditions have been satisfied, if, at any time prior to the distribution, the WDC Board of Directors determines, in its sole discretion, that the spin-off is not in the best interests of WDC or its stockholders, that a sale or other alternative is in the best interests of WDC or its stockholders, or that market conditions or other circumstances are such that it is not advisable at that time to separate the Flash Business from WDC.

***Solvency Opinion***

In furtherance of the related condition referenced above, prior to the separation, an independent appraisal firm shall have delivered:

- opinions, dated as of (x) the date of the declaration of the distribution by the WDC Board of Directors and (y) the distribution date (or, with respect to clause (y), a bringdown of such opinion as of the distribution date), to the WDC Board of Directors that (1) after giving effect to the consummation of the transactions, (a) the assets of each of WDC and Spinco, at a fair valuation, exceed its respective debts (including contingent liabilities), (b) each of WDC and Spinco will be able to pay its respective debts (including contingent liabilities) as they become due and (c) neither WDC nor Spinco will have an unreasonably small amount of either assets or capital for the operations of the business in which it is engaged or in which management has indicated it intends to engage and (2) immediately prior to giving effect to the distribution and pursuant to Section 170 of the DGCL, the surplus of WDC exceeds the net amount of the distribution less the Spinco Dividend; and
- opinions, dated as of (x) the date of the declaration of the Spinco Dividend by the Spinco Board of Directors and (y) the distribution date (or, with respect to clause (y), a bringdown of such opinion as of the distribution date), to the Spinco Board of Directors that (1) after giving effect to the consummation of the transactions, (a) the assets of Spinco, at a fair valuation, exceed its debts (including contingent liabilities), (b) Spinco will be able to pay its debts (including contingent liabilities) as they become due and (c) Spinco will not have an unreasonably small amount of either assets or capital for the operations of the business in which it is engaged or in which management has indicated it intends to engage and (B) immediately prior to giving effect to the Spinco Dividend and pursuant to Section 170 of the DGCL, the surplus of Spinco exceeds the amount of the Spinco Dividend.

***The Number of Shares You Will Receive***

For each share of WDC common stock that you owned as of [●] Pacific time on [●], the record date for the distribution, you will receive a number of shares of Spinco common stock equal to the distribution ratio on or about [●], the distribution date. The actual number of shares to be distributed will be determined based on the number of shares of WDC common stock outstanding on the record date for the distribution.

***Transferability of Shares You Receive***

Shares of Spinco common stock distributed to holders in connection with the distribution will be transferable without registration under the Securities Act, except for shares received by persons who may be deemed to be Spinco affiliates. Persons who may be deemed to be Spinco affiliates after the distribution generally include individuals or entities that control, are controlled by or are under common control with Spinco, which may include certain of Spinco's executive officers, directors or principal stockholders. Securities held by Spinco affiliates will be

subject to resale restrictions under the Securities Act. Spinco affiliates will be permitted to sell shares of Spinco common stock only pursuant to an effective registration statement or an exemption from the registration requirements of the Securities Act, such as the exemption afforded by Rule 144 under the Securities Act.

***When and How You Will Receive the Distributed Shares***

WDC expects to distribute the shares of Spinco common stock on or about [●], the distribution date. [●] will serve as the transfer agent and registrar for our common stock and as distribution agent in connection with the distribution.

If you own shares of WDC common stock as of [●] Pacific time on [●], the record date for the distribution, the shares of Spinco common stock that you will be entitled to receive in the distribution will be issued electronically, as of the distribution date, to you in direct registration form or to your broker, bank or other nominee on your behalf. If you are a registered holder, the distribution agent will then mail you a direct registration account statement that reflects your shares of Spinco common stock. Direct registration form refers to a method of recording share ownership when no physical share certificates are issued to stockholders, as is the case in this distribution. If you sell shares of WDC common stock in the "regular-way" market up to and including the distribution date, you will be selling your right to receive shares of Spinco common stock in the distribution.

If you hold your shares through a brokerage firm or bank, the brokerage firm or bank would be said to hold the shares in "street name" and ownership would be recorded on the brokerage firm or bank's books and your brokerage firm or bank will credit your account for the shares of Spinco common stock that you are entitled to receive in the distribution. If you have any questions concerning the mechanics of having shares held in "street name," we encourage you to contact your bank or brokerage firm.

WDC stockholders will not be required to make any payment or surrender or exchange their shares of WDC common stock or take any other action to receive their shares of our common stock.

***Treatment of Equity Incentive Arrangements***

We expect that WDC equity awards outstanding at the time of the distribution will be adjusted using the following principles:

- Generally, the intent is to maintain the economic value of those awards before and after the separation date, while also streamlining and simplifying the post-distribution administration of such awards. Generally, employees who will continue at WDC after the spin-off will have their outstanding WDC equity awards adjusted and become post-separation WDC awards, while employees who transition to Spinco will have their outstanding WDC equity awards converted to equivalent equity awards of Spinco.
- Each outstanding WDC RSU award held by a Spinco employee at the level of vice president or above (other than any such Spinco employee who resides in China, Israel, Malaysia, the Philippines or Thailand immediately prior to the separation) will generally become both a post-separation WDC award and a Spinco award.
- The number of shares of Spinco common stock or WDC common stock, as applicable, subject to such awards held by WDC employees and Spinco employees below the level of vice president will be determined in a manner intended to preserve the aggregate value of the equity award by adjusting the number of shares subject to such awards based on a ratio that takes into account the pre-separation per share closing trading price of WDC common stock and the average of either the post-separation per share trading price of WDC common stock or post-separation per share trading price of Spinco common stock, as applicable, over 5 trading days following the separation.

- The terms of all converted equity awards, such as the vesting schedule, settlement dates and method of settlement, will generally continue unchanged, as equitably adjusted to reflect the distribution, except that for each outstanding WDC PSU: (a) held by a continuing WDC employee, such PSUs will remain in place as WDC PSUs, with the performance measures with respect to fiscal year 2025 deemed achieved at target performance to avoid distortions associated with the separation and with performance measures applicable for subsequent performance years to be determined in the normal course; and (b) held by a Spinco employee, the performance measure achievement will be determined based on actual performance for completed fiscal years and based on target performance for fiscal years not yet completed as of the spin-off date and such PSUs will be converted into WDC and Spinco equity awards subject to only time-based vesting following the spin-off.
- The number of shares of WDC common stock subject to each converted WDC PSU award held by a Spinco employee at the level of vice president and above (other than any such Spinco employee who resides in China, Israel, Malaysia, the Philippines or Thailand immediately prior to the separation) will be equal to the performance-adjusted number of shares subject to the pre-separation award, and the number of shares of Spinco common stock subject to each converted Spinco award held by any such Spinco employee will be equal to the number of shares of Spinco common stock an individual holder of WDC common stock will receive in the distribution calculated based on the number of performance-adjusted WDC shares of common stock subject to the pre-separation award.

With respect to employees, the following table provides additional information regarding the adjustments expected to be made to each type of WDC equity award outstanding as of the distribution date. As a result of the adjustments to such awards in connection with the distribution, the precise number of shares of Spinco common stock or WDC common stock, as applicable, to which the adjusted awards will relate will not be known until the 5th trading day following the distribution date or shortly thereafter.

| | **RSUs** |
|---|---|
| WDC Employee | Adjusts and becomes a post-separation WDC RSU award with adjustments intended to preserve the aggregate value of the equity award based on a ratio that takes into account the pre-separation per share closing trading price of WDC common stock on the trading day prior to the separation and the average post-separation per share closing trading price of WDC common stock over 5 trading days following the separation and remains outstanding under the terms of the applicable WDC equity incentive plan. |
| Spinco Employee | Converts to a Spinco RSU award with adjustments intended to preserve the aggregate value of the equity award based on a ratio that takes into account the pre-separation per share closing trading price of WDC common stock on the trading day prior to the separation and the average post-separation per share closing trading price of Spinco common stock over 5 trading days following the separation.<br><br>Each Spinco RSU award is assumed under the applicable Spinco equity incentive plan and remains subject to the same terms and conditions in effect immediately prior to the separation for the corresponding WDC RSU award. |
| Spinco Employee VP+ | Other than in an excluded jurisdiction (China, Israel, Malaysia, the Philippines and Thailand), becomes both a post-separation WDC RSU award and a Spinco RSU award. See *Spinco Employee* section above for treatment of excluded jurisdiction equity awards. |

| | |
|---|---|
| | The number of shares of WDC common stock subject to each post-separation WDC RSU award will be equal to the number of shares subject to the pre-separation award, and the number of shares of Spinco common stock subject to each Spinco RSU award will be equal to the number of shares of Spinco common stock an individual holder of WDC common stock will receive in the distribution calculated based on the number of WDC shares of common stock subject to the pre-separation award. |
| | **PSUs** |
| WDC Employee | Adjusts and becomes a post-separation WDC PSU award that remains outstanding under the terms of the applicable WDC equity incentive plan, except that any performance measures with regard to fiscal year 2025 will be deemed achieved at target performance to avoid distortions associated with the separation, with performance measures for subsequent performance years to be determined in the normal course. |
| Spinco Employee | N/A; No Spinco employees below the level of vice president hold PSUs. |
| Spinco Employee VP+ | In a manner consistent with the RSU treatment above, generally converts to WDC and Spinco equity awards, subject to the same terms and conditions applicable to the corresponding WDC PSU award immediately prior to the separation, except that such WDC and Spinco equity awards shall be subject to only time-based vesting following the spin-off. See *Spinco Employee* section for RSUs above for treatment of excluded jurisdiction equity awards.<br><br>The number of shares subject to the pre-separation award will be adjusted based on the number of shares that would otherwise have vested under the corresponding WDC PSU award based on actual performance for completed fiscal years and based on target performance for fiscal years not yet completed as of the spin-off date. |

***General Treatment of Fractional Shares of Common Stock***

WDC will not distribute any fractional common stock shares to its stockholders. Instead, the transfer agent will aggregate fractional shares into whole shares, sell the whole shares in the open market at prevailing market prices and distribute the aggregate cash proceeds (net of discounts and commissions) of the sales pro rata (based on the fractional shares such holder would otherwise be entitled to receive) to each holder who otherwise would have been entitled to receive a fractional share of common stock in the distribution. The transfer agent, in its sole discretion, without any influence by WDC or us, will determine when, how, through which broker-dealer and at what price to sell the whole shares. Any broker-dealer used by the transfer agent will not be an affiliate of either WDC or us. Neither we nor WDC will be able to guarantee any minimum sale price in connection with the sale of these shares. Recipients of cash in lieu of fractional shares of common stock will not be entitled to any interest on the amounts of payment made in lieu of fractional shares.

The aggregate net cash proceeds of these sales will be taxable for U.S. federal income tax purposes. For an explanation of the material United States federal income tax consequences of the distribution, see the section of this information statement entitled “United States Federal Income Tax Consequences of the Distribution.” If you are the registered holder of shares of WDC common stock, you will receive a check from the distribution agent in an amount equal to your pro rata share of the aggregate net cash proceeds of the sale. The amount of this payment will depend on the prices at which the transfer agent sells the aggregated fractional shares of our common stock in the open market shortly after the distribution date and will be reduced by any amount required to be withheld for tax purposes and any brokerage fees and other expenses incurred in connection with these

sales of fractional shares. If you hold your shares of WDC common stock through a bank or brokerage firm, your bank or brokerage firm will receive, on your behalf, your pro rata share of the aggregate net cash proceeds of the sales and will electronically credit your account for your share of such proceeds.

***Results of the Spin-Off***

Immediately following the spin-off, Spinco will be a separate, publicly traded company, and we expect to have approximately 144 million shares of our common stock outstanding as a result of the distribution. The actual number of shares to be distributed will be determined after [●], the record date for the distribution. The distribution will not affect the number of outstanding shares of WDC common stock and WDC preferred stock.

## Market for Spinco Common Stock

There is currently no public market for our common stock. A condition to the distribution is the listing of our common stock shares on Nasdaq. We intend to apply to list our common stock on Nasdaq under the symbol "SNDK." We have not and will not set the initial price of shares of our common stock. The initial price will be established by the public markets.

We cannot predict the price at which shares of our common stock will trade after the distribution. In fact, the combined trading prices, after the spin-off, of shares of our common stock that each WDC stockholder will receive in the distribution and the shares of common stock of WDC held at the record date for the distribution may not equal the "regular-way" trading price of a WDC share immediately prior to completion of the spin-off. The price at which shares of our common stock trade may fluctuate significantly, particularly until an orderly public market develops. Trading prices for our common stock will be determined in the public markets and may be influenced by many factors.

## Trading Between the Record Date and the Distribution Date

Beginning on or shortly before the record date for the distribution and continuing up to and including the distribution date, WDC expects that there will be two markets in WDC common stock: a "regular-way" market and an "ex-distribution" market. Shares of WDC common stock that trade on the "regular-way" market will trade with an entitlement to shares of Spinco common stock distributed pursuant to the distribution. Shares of WDC common stock that trade on the "ex-distribution" market will trade without an entitlement to shares of Spinco common stock distributed pursuant to the distribution. Each stockholder trading in WDC shares would make any decision as to whether to trade one or more of such stockholder's shares in WDC in the "regular-way" market or the "ex-distribution" market. If you sell shares of WDC common stock in the "regular-way" market up to and including through the distribution date, you will be selling your right to receive shares of Spinco common stock in the distribution. If you own shares of WDC common stock as of [●] Pacific time on [●], the record date for the distribution, and sell those shares on the "ex-distribution" market up to and including through the distribution date, you will receive the shares of Spinco common stock that you are entitled to receive pursuant to your ownership as of the record date for the distribution.

Furthermore, beginning shortly before the distribution date and continuing up to and including the distribution date, we expect that there will be a "when-issued" market in our common stock. "When-issued" trading refers to a sale or purchase made conditionally because the security has been authorized but not yet issued. The "when-issued" trading market will be a market for our common stock that will be distributed to holders of WDC common stock on [●], the distribution date. If you own shares of WDC common stock as of [●] Pacific time on [●], the record date for the distribution, you will be entitled to a number of shares of Spinco common stock equal to the distribution ratio for each share of WDC common stock you hold. You may trade this entitlement to our shares, without the WDC shares you own, on the "when-issued" market. On the first trading day following the distribution date, "when-issued" trading with respect to our common stock will end, and "regular-way" trading will begin.

### Transaction and Separation Costs

Spinco will incur certain costs in connection with the consummation of the transaction. We currently estimate that theone-time separation costs we will incur, primarily employee-related costs such as recruitment expenses, costs to establish certain standalone functions and information technology systems, professional services fees and other separation-related costs during our transition to being a stand-alone public company, will be approximately $104 million. Except as otherwise set forth in the separation and distribution agreement, any such costs incurred prior to the completion of the spin-off will be borne by WDC, and any such costs incurred from and after the completion of the spin-off will be borne by the applicable party incurring such costs.

### Incurrence/Treatment of Debt

In connection with the separation, we expect to enter into the Facilities. For a more detailed description of the Facilities, see the section of this information statement entitled "*Description of Certain Indebtedness*" on page 192.

### Regulatory Approval

Our registration statement on Form 10, of which this information statement forms a part, must become effective prior to the distribution, and shares of Spinco common stock to be distributed must have been approved for listing on Nasdaq, subject to official notice of distribution. In certain jurisdictions outside the U.S., consents, authorizations, orders or approvals from certain foreign governments are required in order to complete the separation with respect to certain entities and assets which may include, but are not limited to, approvals to merge or demerge, to form new legal entities (including obtaining required registrations and/or licenses or permits) and to transfer assets and/or liabilities (including under certain foreign investment laws). It is currently anticipated that all material transfers will occur without material delays beyond the distribution, but we cannot offer any assurance that such transfers will ultimately occur or not be delayed for an extended period of time. For more information, see the Risk Factor entitled – *Certain entities or assets that are part of our separation from WDC may not be transferred to us or may not be transferred to WDC, as applicable, prior to the distribution or at all*. Other than the requirements discussed above, we do not believe that any other material governmental or regulatory filings or approvals will be necessary to consummate the distribution.

### No Shareholder Vote

No vote of WDC stockholders is required or sought in connection with thespin-off.

### No Appraisal Rights

Under the DGCL, WDC stockholders will not have appraisal rights in connection with the distribution.

### Background to the Separation and Distribution

As part of WDC's ongoing strategic planning process, the WDC Board of Directors and senior management regularly review and assess WDC's long-term goals and opportunities, industry trends, competitive environment and short-and long-term performance in light of WDC's strategic plan, with the goal of maximizing stockholder value. In connection with these activities, the WDC Board of Directors and senior management meet from time to time in the ordinary course of business to consider and evaluate various courses of action, including business combinations, acquisitions, dispositions, stock buybacks, special dividends, internal restructurings, capital raising, debt financings or refinancings, spin-offs and other transactions.

In early 2022, the WDC Board of Directors directed WDC management to begin exploring a broad range of strategic alternatives. In connection with this review, WDC engaged Lazard Ltd., as its financial advisor (and subsequently engaged Qatalyst Partners LP and J.P. Morgan as its financial advisors), and Skadden, as its legal advisor. Between February 2022 and June 2022, the WDC Board of Directors considered strategic options, which included a spin-off transaction.

On June 7, 2022, WDC announced that, following constructive dialogue with many of WDC's stockholders, including Elliott Investment Management L.P., it was reviewing potential strategic alternatives aimed at further optimizing long-term value for its stockholders, and that the Executive Committee of the WDC Board of Directors would oversee the assessment process and fully evaluate a comprehensive range of alternatives, including options for separating WDC's market-leading flash and HDD franchises.

From June 2022 to October 2023, the WDC Board of Directors engaged in such strategic review. WDC's financial advisors reached out to multiple strategic parties and financial sponsors regarding a transaction with WDC, including a possible spin-off followed by a merger involving the Flash Business. The WDC Board of Directors thoroughly explored this option, among others, which included extensive due diligence and negotiations. The WDC Board of Directors ultimately determined that such transaction was not actionable at this time. The WDC Board of Directors and the Executive Committee then reviewed the risks and benefits of standalone alternatives, including a spin-off of its Flash Business.

On October 30, 2023, WDC announced that the WDC Board of Directors had completed its strategic review of WDC's business and, after evaluating a comprehensive range of alternatives, unanimously authorized management to pursue a plan to spin-off the Flash Business from the remaining HDD Business.

The WDC Board of Directors considered other transactions and considerations as part of the full review process, including not proceeding with the spin-off transaction, and reviewed and considered the agreements related to the spin-off. The WDC Board of Directors believes that separating the Flash Business from the remainder of WDC and distributing Spinco shares to WDC stockholders is in the best interests of WDC and its stockholders. For more information, see the sections of this information statement entitled "The Separation and Distribution—General—Reasons for the Spin-Off" and "Risk Factors."

The WDC Board of Directors unanimously approved the transactions described herein, subject to the WDC Board of Directors declaring the distribution prior to the closing of the spin-off.

## UNITED STATES FEDERAL INCOME TAX CONSEQUENCES OF THE DISTRIBUTION

The following discussion is a summary of the generally applicable U.S. federal income tax consequences that may be relevant to WDC and to the holders of shares of WDC common stock in connection with the spin-off. This discussion is based on the Code, the Treasury Regulations promulgated thereunder, judicial interpretations thereof, and administrative rulings and published positions of the IRS, all as in effect as of the date hereof and all of which are subject to change or differing interpretations, possibly with retroactive effect. Any such change could affect the accuracy of the statements and conclusions set forth herein. This summary assumes that the separation will be consummated in accordance with the separation and distribution agreement and as described in this information statement.

Except as specifically described below, this summary is limited to holders of shares of WDC common stock that are U.S. Holders, as defined immediately below. For purposes of this summary, a "U.S. Holder" is a beneficial owner of WDC common stock that is, for U.S. federal income tax purposes:

- an individual who is a citizen or a resident of the United States;
- a corporation, or other entity taxable as a corporation for U.S. federal income tax purposes, created or organized under the laws of the United States or any state thereof or the District of Columbia;
- an estate, the income of which is includible in gross income for U.S. federal income tax purposes regardless of its source; or
- a trust, (a) the administration of which is subject to the primary supervision of a U.S. court and which has one or more U.S. persons who have the authority to control all substantial decisions of the trust or (b) that has a valid election in effect under applicable Treasury Regulations to be treated as a U.S. person.

This discussion is limited to U.S. Holders of WDC common stock that hold their WDC common stock as "capital assets" within the meaning of Section 1221 of the Code (generally, property held for investment). Further, this discussion is for general information only and does not purport to address all aspects of U.S. federal income taxation that may be relevant to a particular holder in light of their particular circumstances, nor does it address the consequences to stockholders subject to special treatment under the United States federal income tax laws, such as: insurance companies; tax-exempt organizations; banks and other financial institutions; pension plans; cooperatives; real estate investment trusts; dealers in securities or currencies; traders that elect to use a mark-to-market method of accounting; certain former U.S. citizens or long-term residents; persons holding shares as part of a straddle, hedge, conversion, constructive sale or other integrated transaction for U.S. federal income tax purposes; persons who acquire shares pursuant to any employee share option or otherwise as compensation; persons holding shares through an individual retirement account or other tax-deferred account; persons who actually or constructively own 10% or more of our stock (by vote or value); persons whose functional currency is not the U.S. dollar; or partnerships or other entities or arrangements subject to tax as partnerships for U.S. federal income tax purposes or persons holding shares through such entities.

If a partnership (or any other entity or arrangement subject to tax as a partnership for U.S. federal income tax purposes) is a beneficial owner of shares of WDC common stock, the tax treatment of a partner in such partnership will generally depend on the status of the partner and the activities of the partnership. A partnership for U.S. federal income tax purposes that beneficially owns shares of WDC and its partners are urged to consult their tax advisor as to the tax consequences of the spin-off.

In addition, this discussion does not address any U.S. state or local or non-U.S. tax considerations or any U.S. federal estate, gift or alternative minimum tax considerations, or the Medicare tax on certain net investment income.

HOLDERS OF WDC COMMON STOCK SHOULD CONSULT THEIR TAX ADVISORS REGARDING THE PARTICULAR TAX CONSIDERATIONS RELEVANT TO THEM REGARDING THE SPIN-OFF, INCLUDING THE APPLICABILITY AND EFFECT OF U.S. FEDERAL, STATE, LOCAL AND NON-U.S. TAX LAWS.

*Tax Opinion*

It is a condition to the completion of the distribution that WDC receives the Tax Opinion from its tax counsel, Skadden, substantially to the effect that, among other things, the distribution, together with certain related transactions, will qualify as a reorganization within the meaning of sections 368(a)(1)(D), 361 and 355 of the Code. This condition may be waived by WDC in its sole discretion.

In rendering the Tax Opinion to be given as of the closing of the distribution, Skadden will rely on (i) customary representations and covenants made by WDC and Spinco, including those contained in certificates of officers of WDC and Spinco and (ii) specified assumptions, including an assumption regarding the completion of the separation, the distribution and certain related transactions in the manner contemplated by the transaction agreements. In addition, Skadden's ability to provide the Tax Opinion will depend on the absence of changes in existing facts or law between the date of this information statement and the closing date of the distribution. If any of the representations, covenants or assumptions on which Skadden will rely are inaccurate, Skadden may not be able to provide the Tax Opinion, or the tax consequences of the distribution could differ from those described below.

The Tax Opinion will not be binding upon the IRS or any court. We cannot assure you that the IRS will agree with the conclusions expected to be set forth in the Tax Opinion, and it is possible that the IRS or another tax authority could adopt a position contrary to one or all of those conclusions and that a court could sustain that contrary position. If any of the facts, representations, assumptions or undertakings described or made in connection with the Tax Opinion are not correct, are incomplete or have been violated, WDC's ability to rely on the Tax Opinion could be jeopardized. As of the date of this information statement, we are not aware of any facts or circumstances, however, that would cause these facts, representations or assumptions to be untrue or incomplete or that would cause any of these undertakings to fail to be complied with, in any material respect.

*Treatment of the Distribution*

Assuming the distribution, together with certain related transactions, qualifies as a reorganization within the meaning of sections 368(a)(1)(D), 361 and 355 of the Code, for U.S. federal income tax purposes:

- no gain or loss will be recognized by WDC as a result of the distribution (except for certain items that may be required to be recognized under Treasury Regulations regarding consolidated federal income tax returns);
- no gain or loss will be recognized by, or be includible in the income of, a holder of WDC common stock solely as a result of the receipt of our common stock in the distribution;
- the aggregate tax basis of the shares of WDC common stock and shares of Spinco common stock (including any fractional shares deemed received, as discussed below) in the hands of each WDC stockholder immediately after the distribution will be the same as the aggregate tax basis of the shares of WDC common stock held by such holder immediately prior to the distribution, allocated between the shares of WDC common stock and shares of Spinco common stock in proportion to their relative fair market values immediately following the spin-off;
- the holding period with respect to shares of Spinco common stock received by WDC stockholders (including any fractional shares deemed received, as discussed below) will include the holding period of the WDC common stock with respect to which such Spinco common stock was received; and
- WDC stockholders that have acquired different blocks of WDC common stock at different times or at different prices should consult their tax advisors regarding the allocation of their aggregate adjusted basis among, and their holding period of, our shares distributed with respect to blocks of WDC common stock.

If, notwithstanding the conclusions that we expect to be included in the Tax Opinion, it is ultimately determined that the distribution does not qualify as tax-free under Sections 368(a)(1)(D), 361 and 355 of the Code for U.S.

federal income tax purposes, then WDC would generally recognize gain with respect to the transfer of Spinco common stock and certain related transactions. In addition, each WDC stockholder that receives shares of Spinco common stock in the distribution would be treated as receiving a distribution in an amount equal to the fair market value of Spinco common stock that was distributed to such stockholder, which would generally be taxed as a dividend to the extent of the stockholder's pro rata share of WDC's current and accumulated earnings and profits, including WDC's taxable gain, if any, on the distribution, then treated as a non-taxable return of capital to the extent of the stockholder's basis in WDC stock and thereafter treated as capital gain from the sale or exchange of WDC stock.

Even if the distribution otherwise qualifies for tax-free treatment under Sections 368(a)(1)(D), 361 and 355 of the Code, the distribution may result in corporate level taxable gain to WDC under Section 355(e) of the Code if either WDC or Spinco undergoes a 50% or greater ownership change as part of a plan or series of related transactions that includes the distribution, potentially including transactions occurring after the distribution. If an acquisition or issuance of stock triggers the application of Section 355(e) of the Code, WDC would recognize taxable gain as described above, but the distribution would be tax-free to each WDC stockholder (except with respect to any tax on any cash received in lieu of fractional shares).

A U.S. Holder that receives cash instead of fractional shares of Spinco common stock should be treated as though such U.S. Holder first received a distribution of a fractional share of Spinco common stock and then sold it for the amount of cash received. Such U.S. Holder should recognize capital gain or loss, measured by the difference between the cash received for such fractional share and the U.S. Holder's basis in the fractional share, as determined above. Such capital gain or loss should generally be a long-term capital gain or loss if the U.S. Holder's holding period for such U.S. Holder's WDC common stock exceeds one year on the date of the distribution.

U.S. Treasury Regulations require certain stockholders of WDC common stock who receive Spinco common stock in the distribution to attach a detailed statement setting forth certain information relating to the distribution to their respective U.S. federal income tax returns for the year in which the distribution occurs. Within a reasonable period after the distribution, WDC will provide stockholders who receive our common stock in the distribution with the information necessary to comply with such requirement. In addition, all stockholders are required to retain permanent records relating to the amount, basis and fair market value of Spinco common stock received in the distribution and to make those records available to the IRS upon request of the IRS.

## DIVIDEND POLICY

We do not currently intend to pay any cash dividends in the foreseeable future. We currently intend to retain all available funds and future earnings, if any, for the operation of our business and to strengthen our financial position and flexibility. The payment of cash dividends in the future will be dependent upon our revenue and earnings, capital requirements and general financial condition and results of operations, as well as applicable law, regulatory constraints, industry practice and other business considerations determined by our board of directors to be relevant. The payment of any cash dividends will be within the discretion of the Spinco Board of Directors. In addition, the terms governing our current or future debt may also limit or prohibit dividend payments. Accordingly, we cannot guarantee that we will ever pay dividends in the future or that we would continue to pay any dividends that we may commence in the future.

In addition, under Delaware law, the Spinco Board of Directors may declare dividends only to the extent of our surplus (which is defined as total assets at fair market value, minus total liabilities, minus statutory capital) or, if there is no surplus, out of our net profits for the then-current and/or immediately preceding fiscal year.

## CAPITALIZATION

The following table sets forth our cash and cash equivalents and capitalization as of September 27, 2024, on a historical and a pro forma basis to give effect to the spin-off and related transactions as if they had occurred on September 27, 2024, our latest balance sheet date.

The cash and cash equivalents and capitalization information in the following table may not necessarily reflect what our cash and cash equivalents and capitalization would have been had we been operating as a standalone company as of September 27, 2024. Additionally, the information in the following table may not necessarily reflect what our cash and cash equivalents and capitalization may be in the future.

The following table should be read in conjunction with the section of this information statement titled "Management's Discussion and Analysis of Financial Condition and Results of Operations," "Unaudited Pro Forma Condensed Combined Financial Information," our unaudited Condensed Combined Financial Statements and Combined Financial Statements and the accompanying notes thereto included elsewhere in this information statement.

| | As of September 27, 2024 | |
|---|---|---|
| (In millions) | Historical | Pro Forma |
| **Assets** | | |
| Cash and cash equivalents (1) | $ 322 | $ 1,000 |
| Notes due from Parent (1) | 1 | — |
| **Liabilities** | | |
| Notes due to Parent (1) | 296 | — |
| Long-term debt (1) | — | 1,963 |
| **Stockholders' equity** | | |
| Common stock, $0.01 par value | — | 1 |
| Additional paid-in-capital | — | 11,332 |
| Parent company net investment | 12,369 | — |
| Accumulated other comprehensive loss | (243) | (248) |
| **Total capitalization** | **$ 12,422** | **$ 13,048** |

(1) Reflects approximately $2,000 million of borrowings expected to be incurred in connection with thespin-off pursuant to the debt financing transactions, inclusive of $20 million current portion of long-term debt, offset by anticipated term loan original issue discount of $10 million and debt issuance costs of $27 million. We will pay WDC, as partial consideration for the Flash Business that WDC is transferring to us in connection with the spin-off, all of the net proceeds that we will receive from the debt financing transactions, together with any interest accrued thereon following our receipt of such proceeds, provided that we will retain an amount in cash and cash equivalents of $1,000 million, after giving effect to this offering, the debt financing transactions and the settlement or termination of Notes due to (from) Parent. Spinco's capital structure remains under review and will be finalized, along with the terms of such indebtedness, prior to the spin-off. See "Management's Discussion and Analysis of Financial Conditions and Results of Operations—Financial Condition, Liquidity and Capital Resources" for additional details.

## UNAUDITED PRO FORMA CONDENSED COMBINED FINANCIAL INFORMATION

The following unaudited pro forma condensed combined financial statements give effect to the spin-off and related adjustments in accordance with Article 11 of the SEC's Regulation S-X, as amended. The spin-off and related transactions are described in the section of this information statement entitled "The Separation and Distribution."

The following unaudited pro forma condensed combined financial statements consist of the unaudited pro forma condensed combined balance sheet as of September 27, 2024, and the unaudited pro forma condensed combined statement of operations for the three months ended September 27, 2024 and for the fiscal year ended June 28, 2024.

The unaudited pro forma condensed combined financial statements and Spinco's combined financial statements and notes thereto included in this information statement shall mean the Flash Business of Western Digital Corporation and references to "Parent" or "WDC" shall mean Western Digital Corporation.

The unaudited pro forma condensed combined financial statements reflect adjustments to our historical unaudited combined balance sheet as of September 27, 2024, and our historical unaudited combined statement of operations for the three months ended September 27, 2024 and audited combined statement of operations for the fiscal year ended June 28, 2024. The unaudited pro forma condensed combined balance sheet as of September 27, 2024, gives effect to the spin-off and related transactions, described below, as if they occurred on September 27, 2024. The unaudited pro forma condensed combined statement of operations for the three months ended September 27, 2024 and for the fiscal year ended June 28, 2024, gives effect to the spin-off and related transactions as if they had occurred on July 1, 2023, the beginning of our most recently completed fiscal year.

The unaudited pro forma condensed combined financial statements have been prepared to include Financing / Capitalization Adjustments and Spin-off Adjustments, collectively "Transaction Accounting Adjustments" and Autonomous Entity Adjustments to reflect our financial condition and results of operations as if we were a separate standalone public company. The unaudited pro forma combined financial statements have been adjusted to give effect to the following (collectively, the "Pro Forma Transactions"):

- the contribution of the assets and liabilities that comprise our business by WDC to Spinco pursuant to the separation and distribution agreement and the retention by WDC of certain specified assets and liabilities reflected in our historical combined financial statements, in each case, pursuant to the separation and distribution agreement;
- the effect of our anticipated post-spin-off capital structure, including the incurrence of indebtedness in an aggregate principal amount equal to approximately $2,000 million pursuant to the debt financing transactions and the application of the net proceeds from the debt financing transactions as described in the section of this information statement entitled "Description of Certain Indebtedness";
- the one-time expenses associated with the spin-off and related transactions and the transition to becoming a stand-alone public company;
- the impact of the ancillary agreements and the provisions contained therein (see "Material Agreements with WDC" within this information statement); and
- other adjustments as described in the accompanying notes to the unaudited pro forma condensed combined financial statements.

On September 28, 2024, a wholly owned subsidiary of WDC that will be a wholly owned subsidiary of Spinco after separation completed the sale of 80% of its equity interest in the SDSS Venture. Following the closing of this transaction, Spinco will account for its retained investment in the SDSS Venture under the equity method of accounting. The SDSS Venture and its associated results of operations are included within Spinco's historical combined financial statements. As the divestiture is not significant to Spinco

and impacts to Spinco's cost of inventory and gross profit margins are not expected to be material, we have not adjusted the unaudited pro forma condensed combined financial information herein. See Note 9, "Related Parties and Related Commitments and Contingencies" in the notes to the unaudited combined financial statements for further information.

We expect to enter into an intellectual property cross license agreement and transitional trademark license agreement with WDC in connection with the spin-off transaction. As the intellectual property cross license agreement provides a royalty-free license and any royalty fees due under the trademark license agreement would not commence until up to 18 months after the effective date of the spin-off, we have not adjusted the unaudited pro forma condensed combined financial information herein.

The unaudited pro forma condensed combined financial statements are subject to the assumptions and adjustments described in the accompanying notes. The pro forma adjustments are based on available information and assumptions we believe are reasonable; however, such adjustments are subject to change. A final determination regarding our capital structure has not yet been made, and the ancillary agreements have not been finalized. As such, the unaudited pro forma condensed combined financial information may be revised in future amendments to reflect the impact on our capital structure and the final form of those agreements, to the extent any such revisions would be deemed material.

The unaudited pro forma condensed combined financial information is based upon available information and assumptions that we believe are reasonable and supportable. The unaudited pro forma condensed combined financial information is for illustrative and informational purposes only. The unaudited pro forma condensed combined financial information may not necessarily reflect what our financial condition, results of operations or cash flows would have been had we been a standalone public company during the periods presented, or what our financial condition, results of operations and cash flows may be in the future. In addition, the unaudited pro forma condensed combined financial information has been derived from our historical combined financial statements, which have been prepared from WDC's historical accounting records. All the allocations and estimates in our historical combined financial statements are based on assumptions that management believes are reasonable.

Our historical combined financial statements, which were the basis for the unaudited pro forma condensed combined financial information, were prepared on a carve-out basis as we did not operate as a separate, independent company for the periods presented. Accordingly, such financial information reflects an allocation of certain corporate costs, such executive management, finance, tax, legal, information technology, employee benefits administration, treasury, risk management, procurement and other shared services. These corporate expenses have been allocated to Spinco based upon direct usage or benefit, where identifiable, with the remainder allocated based upon headcount, revenue or other relevant measures. See Note 1, "Basis of Presentation" and Note 9, "Related Parties and Related Commitments and Contingencies" to the audited combined financial statements included elsewhere in this information statement for further information on the allocation of corporate costs.

We expect to incur incremental costs as a standalone public company related to certain expenses previously allocated from WDC. Our historical combined financial statements include allocations for certain costs of support functions that are provided on a centralized or geographic basis by WDC and its affiliates, which include executive management, finance, tax, legal, information technology, employee benefits administration, treasury, risk management, procurement and other shared services. Additionally, we expect to incur charges from contracts with vendors, which are expected to be incurred in relation to the separation of Spinco as a standalone public company. These charges primarily relate to legal, audit and advisory fees, system implementation costs, business separation costs and other costs. We will also incur new costs relating to our public reporting and compliance obligations as a standalone public company. Any shortfall of required resource needs will be filled through external hiring or will be supported by WDC through the transition services agreement. From a timeframe standpoint, these incremental costs will begin to materialize on the date of this information statement.

Adverse effects and limitations, including those discussed in the section of this information statement entitled "Risk Factors," may impact the actual costs incurred. We are in process of evaluating the extent and timing of such costs to be incurred as a stand-alone public company and accordingly have not reflected any management adjustments for such costs within the unaudited condensed combined pro forma financial information presented below.

The unaudited pro forma condensed combined financial information reported below should be read in conjunction with the section of this information statement entitled "Management's Discussion and Analysis of Financial Condition and Results of Operations" and the historical combined financial statements included elsewhere in this information statement.

**UNAUDITED PRO FORMA CONDENSED COMBINED BALANCE SHEET**
**As of September 27, 2024**
**(in millions)**

| | The Flash Business of Western Digital Corporation (Historical) | Transaction Accounting Adjustments: Financing / Capitalization Adjustments | | Transaction Accounting Adjustments: Spin-off Adjustments | | Transaction Accounting Adjustments: Autonomous Entity Adjustments | | The Flash Business of Western Digital Corporation Pro Forma |
|---|---|---|---|---|---|---|---|---|
| **ASSETS** | | | | | | | | |
| Current assets | | | | | | | | |
| Cash and cash equivalents | $ 322 | $ 678 | A | $ — | | $ — | | $ 1,000 |
| Accounts receivable, net | 1,037 | | | | | | | 1,037 |
| Inventories | 2,069 | | | | | | | 2,069 |
| Income tax receivable | 7 | | | 54 | I | | | 61 |
| Other current assets | 300 | | | (1) | D | 2 | N | 301 |
| Notes due from Parent | 1 | (1) | A | | | | | — |
| Assets held for sale | 652 | | | | | | | 652 |
| Total current assets | 4,388 | 677 | | 53 | | 2 | | 5,120 |
| Property, plant and equipment, net | 552 | | | 26 | C | | | 576 |
| | | | | (2) | D | | | |
| Notes receivable and investments in Flash Ventures | 1,066 | | | | | | | 1,066 |
| Goodwill | 6,932 | | | | | | | 6,932 |
| Deferred tax assets | 56 | | | (4) | G | | | 87 |
| | | | | 35 | I | | | |
| Income tax receivable, non-current | 12 | | | 57 | I | | | 69 |
| Other non-current assets | 884 | 6 | A | 13 | C | 2 | N | 982 |
| | | | | 57 | K | 20 | P | |
| **Total assets** | **$ 13,890** | **$ 683** | | **$ 235** | | **$ 24** | | **$ 14,832** |
| **LIABILITIES AND EQUITY** | | | | | | | | |
| Current liabilities | | | | | | | | |
| Accounts payable | $ 297 | $ — | | $ — | | $ — | | $ 297 |
| Accounts payable to related parties | 352 | | | | | | | 352 |
| Accrued expenses | 236 | | | 4 | C | 4 | P | 244 |
| Income taxes payable | 12 | | | | | | | 12 |
| Accrued compensation | 169 | | | (25) | D | 25 | N | 208 |
| | | | | 39 | J | | | |
| Current portion of long term debt | — | 20 | A | | | | | 20 |
| Notes due to Parent | 296 | (296) | A | | | | | — |
| Liabilities held for sale | 110 | | | | | | | 110 |
| Total current liabilities | 1,472 | (276) | | 18 | | 29 | | 1,243 |
| Long-term debt | — | 1,943 | A | | | | | 1,943 |
| Deferred tax liabilities | 18 | | | | | | | 18 |
| Other liabilities | 274 | | | 8 | C | 16 | P | 543 |
| | | | | 245 | I | | | |
| **Total liabilities** | **1,764** | **1,667** | | **271** | | **45** | | **3,747** |
| Commitments and contingencies | | | | | | | | |
| Shareholder's equity | | | | | | | | |
| Common stock, $0.01 par value | — | | | 1 | F | | | 1 |
| Additional paid-in capital | — | (984) | H | 12,337 | H | (21) | N | 11,332 |
| Parent company net investment | 12,369 | | | (12,369) | E | | | — |
| Accumulated other comprehensive loss | (243) | | | (5) | K | | | (248) |
| Total Shareholder's equity | 12,126 | (984) | | (36) | | (21) | | 11,085 |
| **Total Liabilities and Equity** | **$ 13,890** | **$ 683** | | **$ 235** | | **$ 24** | | **$ 14,832** |

See accompanying notes to unaudited pro forma condensed combined financial information.

**UNAUDITED PRO FORMA CONDENSED COMBINED STATEMENT OF OPERATIONS**
**For the three months ended September 27, 2024**
**(in millions, except per share amounts)**

| | The Flash Business of Western Digital Corporation (Historical) | Transaction Accounting Adjustments: Financing / Capitalization Adjustments | | Transaction Accounting Adjustments: Spin-off Adjustments | | Transaction Accounting Adjustments: Autonomous Entity Adjustments | | The Flash Business of Western Digital Corporation Pro Forma |
|---|---|---|---|---|---|---|---|---|
| Revenue, net | $ 1,883 | $ — | | $ — | | $ — | | $ 1,883 |
| Cost of revenue | 1,157 | | | | | (1) | N | 1,155 |
| | | | | | | (1) | R | |
| **Gross profit** | **726** | — | | — | | **2** | | **728** |
| **Operating expenses** | | | | | | | | |
| Research and development | 283 | | | | | 2 | R | 285 |
| Selling, general and administrative | 130 | | | | | 3 | N | 134 |
| | | | | | | 1 | R | |
| Employee termination, asset impairment and other charges | 2 | | | | | | | 2 |
| Business separation costs | 20 | | | | | | | 20 |
| **Total operating expenses** | 435 | — | | — | | 6 | | 441 |
| **Operating income (loss)** | **291** | — | | — | | **(4)** | | **287** |
| **Interest and other income (expense)** | | | | | | | | |
| Interest income | 3 | (1) | B | | | | | 2 |
| Interest expense | (2) | (37) | B | | | | | (39) |
| Other income (expense), net | (25) | | | 1 | K | | | (24) |
| **Total interest and other income (expense)** | (24) | (38) | | 1 | | — | | (61) |
| **Income before taxes** | **267** | **(38)** | | **1** | | **(4)** | | **226** |
| Income tax expense | 56 | (8) | M | — | M | — | Q | 48 |
| **Net Income** | **$ 211** | **$ (30)** | | **$ 1** | | **$ (4)** | | **$ 178** |
| **Earnings per share:** | | | | | | | | |
| Basic | | | | | | | S | $ 1.24 |
| Diluted | | | | | | | S | $ 1.24 |
| **Weighted-average number of common shares outstanding:** | | | | | | | | |
| Basic | | | | | | | S | 144 |
| Diluted | | | | | | | S | 144 |

See accompanying notes to unaudited pro forma condensed combined financial information.

**UNAUDITED PRO FORMA CONDENSED COMBINED STATEMENT OF OPERATIONS**
**For the year ended June 28, 2024**
**(in millions, except per share amounts)**

| | The Flash Business of Western Digital Corporation (Historical) | Transaction Accounting Adjustments: Financing / Capitalization Adjustments | | Transaction Accounting Adjustments: Spin-off Adjustments | | Transaction Accounting Adjustments: Autonomous Entity Adjustments | | The Flash Business of Western Digital Corporation Pro Forma |
|---|---|---|---|---|---|---|---|---|
| Revenue, net | $ 6,663 | $ — | | $ — | | $ — | | $ 6,663 |
| Cost of revenue | 5,591 | | | 4 | J | (9) | N | 5,576 |
| | | | | | | (10) | R | |
| **Gross profit** | **1,072** | **—** | | **(4)** | | **19** | | **1,087** |
| **Operating expenses** | | | | | | | | |
| Research and development | 1,061 | | | 11 | J | (9) | N | 1,061 |
| | | | | | | (2) | R | |
| Selling, general and administrative | 455 | | | 24 | J | 6 | N | 496 |
| | | | | | | 10 | O | |
| | | | | | | 1 | R | |
| Employee termination, asset impairment and other charges | (40) | | | | | | | (40) |
| Business separation costs | 64 | | | 47 | L | | | 111 |
| **Total operating expenses** | 1,540 | — | | 82 | | 6 | | 1,628 |
| **Operating income (loss)** | **(468)** | **—** | | **(86)** | | **13** | | **(541)** |
| **Interest and other income (expense)** | | | | | | | | |
| Interest income | 12 | (6) | B | | | | | 6 |
| Interest expense | (40) | (115) | B | | | | | (155) |
| Other income (expense), net | (7) | | | 3 | K | | | (4) |
| **Total interest and other income (expense)** | (35) | (121) | | 3 | | — | | (153) |
| **Loss before taxes** | **(503)** | **(121)** | | **(83)** | | **13** | | **(694)** |
| Income tax expense | 169 | (29) | M | (11) | M | (2) | Q | 127 |
| **Net loss** | **$ (672)** | **$ (92)** | | **$ (72)** | | **$ 15** | | **$ (821)** |
| **Loss per share:** | | | | | | | | |
| Basic and diluted | | | | | | | S | $ (5.70) |
| **Weighted-average number of common shares outstanding:** | | | | | | | | |
| Basic and diluted | | | | | | | S | 144 |

See accompanying notes to unaudited pro forma condensed combined financial information.

## NOTES TO THE UNAUDITED PRO FORMA CONDENSED COMBINED FINANCIAL INFORMATION

The unaudited pro forma condensed combined balance sheet as of September 27, 2024, and the unaudited pro forma condensed combined statement of operations for the three months ended September 27, 2024 and for the fiscal year ended June 28, 2024, include the following adjustments:

### Note 1. Transaction Accounting Adjustments

**Financing / Capitalization Adjustments**

A. Reflects approximately $2,000 million of borrowings expected to be incurred in connection with thespin-off pursuant to the debt financing transactions, offset by anticipated term loan and revolving credit facility debt issuance costs of $27 million and $6 million, respectively, and term loan original issue discount of $10 million. We will pay WDC, as partial consideration for the Flash Business that WDC is transferring to us in connection with the spin-off, all of the net proceeds that we will receive from the debt financing transactions, together with any interest accrued thereon following our receipt of such proceeds, provided that we will retain an amount in cash and cash equivalents of $1,000 million, after giving effect to this offering, the debt financing transactions and the settlement or termination of Notes due to (from) Parent. Spinco's capital structure remains under review and will be finalized, along with the terms of such indebtedness, prior to the spin-off. See "Management's Discussion and Analysis of Financial Conditions and Results of Operations—Financial Condition, Liquidity and Capital Resources" for additional details.

The following represents adjustments to cash and cash equivalents:

| (in millions) | As of September 27, 2024 |
|---|---|
| Cash received from issuance of debt | $ 1,990 |
| Cash distribution to WDC at separation | (1,279) |
| Cash paid for debt issuance costs | (33) |
| **Total pro forma adjustment to cash and cash equivalents** | **$ 678** |

We also expect to enter into a 5-year revolving credit facility of $1,500 million; however, the facility is not expected to be drawn upon at the completion of the spin-off. The associated issuance costs are recorded in othernon-current assets and amortized to interest expense over the term of the credit facility. Periodic fees payable on the undrawn portion of the revolving credit facility have also been reflected as adjustments to interest expense.

The following represents adjustments to long-term debt:

| (in millions) | As of September 27, 2024 |
|---|---|
| Cash received from issuance of debt | $ 1,990 |
| Deferred debt issuance costs for term loan | (27) |
| **Total pro forma adjustment to debt** | **1,963** |
| Less: current portion of long-term debt | (20) |
| **Total pro forma adjustment to long-term debt** | **$ 1,943** |

B. The adjustment reflects interest expense of $36 million for the three months ended September 27, 2024 and $141 million for the year ended June 28, 2024 based on a weighted-average term loan interest rate of approximately 7.0%. Additionally, interest expense for the three months ended September 27, 2024 and for the year ended June 28, 2024 reflects of amortization for deferred debt issuance costs incurred in connection

with the issuance of debt as described in Note (A) above, as well as undrawn capacity fees on the revolving credit facility. A 1/8 percent variance in the assumed interest rate on the floating rate indebtedness would change interest expense by $1 million and $3 million for the three months ended September 27, 2024 and fiscal year ended June 28, 2024, respectively. Also included within the adjustment to interest expense and interest income is the elimination of interest expense and interest income, incurred in connection with Notes due to (from) Parent which will be subject to settlement or termination in connection with the spin-off.

The following represents adjustments to interest expense:

| (in millions) | Three months ended September 27, 2024 | Year ended June 28, 2024 |
|---|---|---|
| Interest expense on total debt at estimated weighted average rate of approximately 7.0% | $ 36 | $ 141 |
| Undrawn capacity fee on revolving debt facility | 2 | 6 |
| Amortization of debt issuance costs and original issue discount | 1 | 5 |
| Elimination of interest expense on notes due to Parent | (2) | (37) |
| **Total pro forma adjustment to interest expense** | **$ 37** | **$ 115** |

**Spin-off Adjustments**

C. Reflects adjustments for certain assets and liabilities that are to be transferred and leases which will be novated to us from WDC in connection with the spin-off and were not included in the historical combined financial statements as we did not manage these shared assets and liabilities. Generally, the shared assets and liabilities to be transferred to us relate to corporate overhead including information technology, facilities and certain operational support assets. The costs associated with these assets and liabilities have been allocated to us and are included within the historical combined statements of operations. Differences between the allocated costs included within our historical combined statements of operations and the costs which we expect to incur as a stand-alone company have been reflected as an autonomous entity adjustment (see Note (R) below).

D. Reflects an adjustment to remove various assets and liabilities that are expected to be retained by WDC and primarily consists of leased facilities and employee deferred compensation liabilities which are included in the historical combined balance sheet. Differences between the costs for leased facilities included within our historical combined statements of operations and the costs which we expect to incur as a stand-alone company have been reflected as an autonomous entity adjustment (see Note (R) below).

E. Represents the reclassification of WDC's net investment in Spinco to additional paid-in capital.

F. Reflects the issuance of 144 million shares of our common stock with a par value of $0.01 per share pursuant to the separation and distribution agreement. We have assumed the number of outstanding shares of our common stock based on 346 million shares of WDC common stock outstanding on September 27, 2024, and assumed a distribution of 80.1% of the outstanding shares of our common stock to WDC's stockholders, on the basis of a number of shares of our common stock equal to the distribution ratio for every share of WDC common stock. The actual number of shares issued will not be known until the record date for the distribution. We expect the remaining 19.9% of our common stock will continue to be owned by WDC, which WDC will dispose of through one or more subsequent exchanges of Spinco common stock for WDC debt held by WDC creditors and/or through distributions of Spinco common stock to WDC stockholders as dividends or in exchange for outstanding shares of WDC common stock, in each case during the 12-month period following the distribution.

G. Reflects the adjustment to of deferred tax assets related to temporary differences between the financial reporting and tax basis in certain of our assets and liabilities resulting from legal entity reorganization transactions anticipated in preparation for the spin-off.

H. Adjustments to additional paid-in-capital are summarized below:

| (in millions) | As of September 27, 2024 |
|---|---|
| Reclassification of WDC's net investment in Spinco (Note E) | $ 12,369 |
| Cash payment to WDC (Note A) | (1,279) |
| Settlement of Notes due to (from) Parent (Note A) | 295 |
| Net assets in shared legal entities being transferred to (from) Spinco (Note C and D) | 49 |
| Retention bonus (Note J) | (39) |
| Common stock issuance (Note F) | (1) |
| Deferred income taxes transferred from WDC in connection with the spin-off (Note G) | (4) |
| Uncertain tax positions (Note I) | (99) |
| Transfer of investment Unis JV from Parent (Note K) | 61 |
| Transfer of strategic investments from Parent (Note K) | 1 |
| **Total pro forma adjustment to APIC** | **$ 11,353** |

I. Reflects an addition of liabilities related to uncertain tax provisions ("UTPs") and associated deferred tax assets, as well as current and non-current income tax receivables, which will be transferred to Spinco from WDC. Additionally reflects recognition of liabilities related to indemnification granted by Spinco to WDC related to certain tax matters. The recognition of these UTPs and deferred tax assets has no impact on the unaudited condensed combined pro forma statement of operations, as the effects of UTPs attributable to Spinco have been reflected within our historical combined statements of operations.

J. Reflects cash retention bonus expenses of $39 million to be paid to certain Spinco employees in connection with the separation from WDC.

K. Reflects transfer of WDC's equity investment in the Unis Venture to Spinco in accordance with the separation and distribution agreement and associated equity method earnings. Additionally, reflects transfer of WDC strategic investments in certain unconsolidated entities.

L. Reflects additional charges from contracts with vendors, which are expected to be incurred related to completion of the spin-off transaction through the spin-off effective date. These charges primarily relate to legal, advisor fees, business separation and other costs. All transaction costs incurred during the three months ended September 27, 2024 and the fiscal year ended June 28, 2024 related to the spin-off are included in our historical combined statements of operations. The pro forma adjustments for the year ended June 28, 2024 include additional charges we expect to incur between September 27, 2024 and the spin-off date of $47 million related to business separation. Actual charges that will be incurred could be different from these estimates. These costs are not expected to recur beyond 12 months after the spin-off. We have not reflected a related adjustment within our pro forma condensed combined balance sheet as of September 27, 2024 as the related liabilities are expected to be settled by WDC upon completion of the spin-off.

M. Represents the income tax impact of the transaction accounting pro forma adjustments for the three months ended September 27, 2024 and for the fiscal year ended June 28, 2024. This adjustment was primarily calculated by applying the statutory tax rates in the respective jurisdictions to each of the pre-tax pro forma adjustments in jurisdictions where valuation allowances were not required. The applicable tax rates could be impacted (either higher or lower) depending on many factors subsequent to the spin-off including the profitability in local jurisdictions and the legal entity structure implemented subsequent to the spin-off and may be materially different from the pro forma results.

**Note 2. Autonomous Entity Adjustments**

N. Reflects adjustment to include compensation and benefits associated with certain WDC employees who will be transferred to Spinco by WDC upon effectiveness of the spin-off, in excess of amounts allocated to Spinco in the combined statement of operations. This adjustment is net of $2 million and $12 million for the three months ended September 27, 2024 and year ended June 28, 2024 respectively, in compensation and benefits associated with certain employees of Spinco who will be retained by WDC upon effectiveness of the spin-off. Additionally reflects an adjustment to include or exclude, as appropriate, associated employee-related liabilities within the unaudited pro forma condensed combined balance sheet.

O. Reflects $10 million for the fiscal year ended June 28, 2024, of certain transition services costs associated with the transition services agreement we intend to enter into with WDC. The costs are primarily associated with information technology services and corporate support functions. Adjustment is net of $6 million in fees we expect to charge WDC under a reverse transition services agreement.

P. Reflects the net impact of lease arrangements with third parties and sub-lease arrangements with WDC for corporate offices and data centers that have been entered into or will be entered into prior to the spin-off. These adjustments record the right-of-use assets and related operating lease liabilities based on the estimated present value of the lease payments over the lease term. Differences between the costs historically allocated to us and included within our historical combined statements of operations and the costs which we expect to incur as a stand-alone company have been reflected as an autonomous entity adjustment (see Note (R) below).

Q. Represents the income tax impact of the autonomous entity pro forma adjustments and the expected effects of the separation and distribution agreement and the tax matters agreement for the three months ended September 27, 2024 and for the fiscal year ended June 28, 2024. This adjustment was primarily calculated by applying the statutory tax rates in the respective jurisdictions to each of the pre-tax pro forma adjustments in jurisdictions where valuation allowances were not required. The applicable tax rates could be impacted (either higher or lower) depending on many factors subsequent to the spin-off, including the profitability in local jurisdictions and the legal entity structure implemented subsequent to thespin-off, and may be materially different from the pro forma results.

R. This adjustment represents the difference between the historically allocated facilities expenses incurred by Spinco and the future expected costs based upon the facilities transferred to or from Spinco and contracts entered into by Spinco in connection with the spin-off.

**Note 3. Pro Forma Earnings (Loss) Per Share**

S. Pro forma basic and diluted earnings (loss) per share and pro forma weighted-average basic and diluted shares outstanding for the three months ended September 27, 2024 and for the fiscal year ended June 28, 2024, reflect the number of shares of Spinco common stock which are expected to be outstanding upon completion of the spin-off (see Note (F) above). As Spinco has a loss in the unaudited pro forma condensed combined statement of operations for the fiscal year ended June 28, 2024, the potentially dilutive shares are anti-dilutive and therefore they are not added into the earnings per share calculation. The weighted-average number of shares used to compute pro forma diluted earnings per share for the three months ended September 27, 2024 represents the number of shares we expect to be outstanding in connection with the spin-off. The actual dilutive effect following the completion of the spin-off will depend on various factors, including employees who may change employment between WDC and Spinco and the impact of WDC and Spinco equity-based compensation arrangements. We cannot estimate the dilutive effects at this time.

# BUSINESS

## General

Spinco is a leading developer, manufacturer and provider of data storage devices and solutions based on NAND flash technology. With a differentiated innovation engine driving advancements in storage and semiconductor technologies, our broad and ever-expanding portfolio delivers powerful flash storage solutions for everyone from students, gamers and home offices, to the largest enterprises and public clouds to capture, preserve, access and transform an ever-increasing diversity of data. Our solutions include a broad range of solid state drives, embedded products, removable cards, universal serial bus drives and wafers and components. Our broad portfolio of technology and products addresses multiple end markets of "Cloud," "Client" and "Consumer."

Through the Client end market, we provide our original equipment manufacturer and channel customers a broad array of high-performance flash solutions across personal computer, mobile, gaming, automotive, virtual reality headsets, at-home entertainment, and industrial spaces. The Consumer end market is highlighted by our broad range of retail and other end-user products, which capitalizes on the strength of our product brand recognition and vast points of presence around the world. Cloud is comprised primarily of products for public or private cloud environments and end customers.

We hold a strong position in the Consumer end market and have significant consumer brands and franchises globally, with valuable patent portfolios containing approximately 9,200 granted patents and approximately 2,900 pending patent applications worldwide. We have extensive customer, partner and channel relationships across a number of end-markets and geographies and have a rich heritage of innovation and operational excellence, a wide range of intellectual property assets, broad research and development capabilities and large-scale, efficient manufacturing supply chains. The strong growth in the amount, value and use of data continues, creating a global need for larger, faster, and more capable storage solutions.

We are a customer-focused organization that has developed deep relationships with industry leaders to continue to deliver innovative solutions to help users capture, store and transform data across a boundless range of applications. We help original equipment manufacturers address storage opportunities and solutions to capture and transform data in a myriad of devices and edge technologies. We have also built strong consumer brands with tools to manage vast libraries of personal content and to push the limits of what's possible for storage. At Spinco, we continue to transform ourselves to address the growth in data by providing what we believe to be the broadest range of storage technologies in the industry with a comprehensive product portfolio and global reach.

## Industry

We operate in the data storage industry. The ability to access, store and share data from anywhere on any device is increasingly important to our customers and end users. From the intelligent edge to the cloud, data storage is a fundamental component underpinning the global technology architecture. Our strengths in innovation and cost leadership, diversified product portfolio and broad routes to market provide a foundation upon which we are solidifying our position as an essential building block of the digital economy. There is tremendous market opportunity flowing from the rapid global adoption of the technology architecture built with cloud infrastructure tied to intelligent endpoints all connected by high-performance networks. The value and urgency of data storage at every point across this architecture have never been clearer.

The increase in computing complexity and advancements in artificial intelligence, along with growth in cloud computing applications, connected mobile devices and Internet-connected products, and edge devices is driving unabated growth in the volume of digital content to be stored and used. We believe our expertise and innovation
in flash technology enable us to bring powerful solutions to a broader range of applications. We continuously monitor the full array of flash-based storage technologies, including reviewing these technologies with our customers, to ensure we are appropriately resourced to meet our customers' storage needs.

**Flash Technology**

Flash products provide non-volatile data storage based on flash technology. We develop and manufacture solid state storage products for a variety of applications including enterprise or cloud storage, client storage, automotive, mobile devices and removable memory devices. Over time, we have successfully developed and commercialized successive generations of 2- and 3-dimensional flash technology with increased numbers of storage bits per cell in an increasingly smaller form factor, further driving cost reductions. We devote significant research and development resources to the development of highly reliable, high-performance, cost-effective flash-based technology and are continually pursuing developments in next-generation flash-based technology capacities. We are leveraging our expertise, resources and strategic investments in non-volatile memories to explore a wide spectrum of persistent memory and storage class memory technologies. We have also initiated, defined and developed standards to meet new market needs and to promote wide acceptance of flash storage standards through interoperability and ease of use.

**Our Data Solutions**

Our broad portfolio of technology and products address multiple end markets of "Cloud," "Client" and "Consumer" and are comprised of the SanDisk® brand. Certain of our products will also be sold for a limited transitional period under the Western Digital®, WD® and other brands under license from WDC.

Cloud represents a large and growing end market comprised primarily of products for public or private cloud environments and enterprise customers. We provide the Cloud end market with an array of high-performance enterprise solid state drives. Our high-performance enterprise class solid state drives include high-performance flash-based solid state drive and software solutions that are optimized for performance applications providing a range of capacity and performance levels primarily for use in enterprise servers and supporting high-volume online transactions, AI-related workloads, data analysis and other enterprise applications.

Through the Client end market, we provide numerous data solutions that we incorporate into our client's devices, which consist of solid state drive desktop and notebook PCs, gaming consoles and set top boxes, as well as flash-based embedded storage products for mobile phones, tablets, notebook PCs and other portable and wearable devices, automotive applications, Internet of Things, industrial and connected home applications. Our solid state drives are designed for use in devices requiring high performance, reliability and capacity with various attributes such as low cost per gigabyte, quiet acoustics, low power consumption and protection against shocks.

We serve the Consumer end market with a portfolio of solid state drives and removable flash, including cards and universal serial bus flash drives, through our retail and channel routes to market. We offer client portable solid state drives with a range of capacities and performance characteristics to address a broad spectrum of the client storage market. Our removable cards are designed primarily for use in consumer devices, such as mobile phones, tablets, imaging systems, cameras and smart video systems. Our universal serial bus flash drives are used in the computing and consumer markets and are designed for high-performance and reliability.

**Competition**

Our industry is highly competitive. We believe we are well positioned with our leading flash product portfolio, premium consumer brand, differentiated semiconductor innovation engine and leadership in driving cost
efficiency. Nevertheless, we face strong competition from other manufacturers of flash in the Cloud, Client and
Consumer end markets. We compete with vertically integrated suppliers such as Kioxia, Micron Technology, Inc., Samsung Electronics Co., Ltd., SK Hynix, Inc., Yangtze Memory Technologies Co., Ltd. and numerous smaller companies that assemble flash into products.

**Business Strategy**

Our overall strategy is to leverage our innovation, technology and execution capabilities to be an industry-leading and broad-based developer, manufacturer and provider of storage devices and solutions that support the

infrastructure that has enabled the unabated proliferation of data. We strive to successfully execute our strategy through the following foundational elements in order to create long-term value for our customers, partners, investors and employees:

- *Innovation and Cost Leadership:* We continue to innovate and develop advanced technologies across platforms to deliver timely new products and solutions to meet growing demands for scale, performance and cost efficiency in the market.
- *Broad Product Portfolio:* We leverage our capabilities in firmware, software and systems to deliver compelling and differentiated integrated storage solutions to our customers that offer the best combinations of performance, cost, power consumption, form factor, quality and reliability, while creating new use cases for our solutions in emerging markets.
- *Operational Excellence:* We are focused on delivering the best value for our customers in Cloud, Client and Consumer end markets through a relentless focus on appropriately scaling our operations to efficiently support business growth; achieving best in class cost, quality and cycle-time; maintaining industry leading manufacturing capabilities; and having a competitive advantage in supply-chain management.

Our strategy provides the following benefits, which distinguish us in the dynamic and competitive data storage industry:

- a varied product portfolio that establishes us as a leading developer and manufacturer of integrated products and solutions, making us a more strategic supply partner to our customers;
- efficient and flexible manufacturing capabilities, allowing us to leverage our flash research and development and capital expenditures to deliver innovative and cost-effective storage solutions to multiple markets;
- deep relationships with industry leaders across the data ecosystems that give us the broadest routes to market; and
- industry leading consumer brand awareness and global retail distribution presence.

**Research and Development**

We devote substantial resources to the development of new products and the improvement of existing products. We focus our engineering efforts on optimizing our product design and manufacturing processes to bring our products to market in a cost-effective and timely manner. For a discussion of associated risks, see —*Risk Factors* beginning on page 30 of this Information Statement.

**Patents, Licenses and Proprietary Information**

We rely on a combination of patents, trademarks, copyright and trade secret laws, confidentiality procedures and licensing arrangements to protect our intellectual property rights.

We have approximately 9,200 granted patents and approximately 2,900 pending patent applications worldwide. We continually seek additional United States (“U.S.”) and international patents on our technology. We believe that, although our active patents and patent applications have considerable value, the successful manufacturing and marketing of our products also depends upon the technical and managerial competence of our staff. Accordingly, the patents held and applied for cannot alone ensure our future success.

In addition to patent protection of certain intellectual property rights, we consider elements of our product designs and processes to be proprietary and confidential. We believe that our non-patented IP, particularly some of our process technology, is an important factor in our success. We rely upon non-disclosure agreements, contractual provisions and a system of internal safeguards to protect our proprietary information. Despite these safeguards, there is a risk that competitors may obtain and use such information. The laws of foreign jurisdictions in which we conduct business may provide less protection for confidential information than the laws of the U.S.

We rely on certain technology that we license from other parties to manufacture and sell our products. We believe that we have adequate cross-licenses and other agreements in place in addition to our own intellectual property portfolio to compete successfully in the storage industry. For a discussion of associated risks, see —*Risk Factors* beginning on page 30 of this Information Statement.

**Manufacturing**

We believe that we have significant know-how, unique product manufacturing processes, test and tooling, execution skills, human resources and training to continue to be successful and to adjust our manufacturing operations as necessary. We strive to maintain manufacturing flexibility, high manufacturing yields, reliable products and high-quality components. The critical elements of our production are high volume and utilization, low-cost assembly and testing, strict adherence to quality metrics and maintaining close relationships with our strategic component suppliers to access best-in-class technology and manufacturing capacity. We continually monitor our manufacturing capabilities to respond to the changing requirements of our customers and maintain our competitiveness and position as a data technology leader.

Flash manufacturing requires complex processes involving the production and assembly of precision components with narrow tolerances and rigorous testing. The manufacturing processes involve a number of steps that are dependent on each other and occur in "clean room" environments that demand skill in process engineering and efficient space utilization to control the operating costs of these manufacturing environments. We continually evaluate our manufacturing processes in an effort to increase productivity, sustain and improve quality and decrease manufacturing costs. We continually evaluate which steps in the manufacturing process would benefit from automation and how automated manufacturing processes can improve productivity and reduce manufacturing costs. We also leverage contract manufacturers when strategically advantageous.

**Operations**

Our flash consists of flash-based memory, controllers and firmware and other components. Substantially all of our flash-based memory is obtained from our joint ventures with Kioxia, which provide us with leading-edge, high-quality and low-cost flash memory wafers. While substantially all of our flash memory supply utilized for our products are purchased from these ventures, from time to time, we also purchase flash memory from other flash manufacturers. Controllers are primarily designed in-house and manufactured by third-party foundries or acquired from third-party suppliers. Our assembly and test operations comprise in-house assembly and test facilities located in Penang, Malaysia and other contract manufacturers, and the assembly and test facility owned and operated by the venture recently established with JCET Management Co., Ltd. ("JCET") in Shanghai, China (the "SDSS Venture"), by SanDisk China Limited, a wholly owned indirect subsidiary of WDC and an expected wholly owned subsidiary of Spinco following the separation. The SDSS Venture is 20% owned by Spinco and 80% owned by JCET. We believe the use of our in-house assembly and test facilities and manufacturing partners provide flexibility and give us access to increased production capacity.

We and Kioxia currently operate three business ventures, Flash Partners Ltd., Flash Alliance Ltd. and Flash Forward Ltd. (collectively, "Flash Ventures") across seven flash-based manufacturing facilities in Japan, six of which are located in Yokkaichi, Japan and one of which is located in Kitakami, Japan. Flash Ventures will begin flash-based manufacturing operations at an eighth facility in Japan in calendar year 2025. Through Flash Ventures, we and Kioxia collaborate in the development and manufacture of flash-based memory wafers using semiconductor manufacturing equipment owned or leased by each of the Flash Ventures entities. We co-develop flash technologies (including process technology and memory design) with Kioxia for Flash Ventures' use. We and Kioxia jointly own these co-developed flash technologies. We and Kioxia also contribute to the collaboration and license to each other technologies that are independently developed and owned by each of us and are reasonably necessary to our joint development or manufacture of flash-based memory. We hold a 49.9% ownership position in each of the Flash Ventures entities. We jointly control with Kioxia the operations of Flash

Ventures, and we believe our participation in Flash Ventures helps us reduce product costs, increases our ability to control the quality of our products and speeds delivery of our products to our customers.

Kioxia owns the facilities and provides wafer manufacturing services to Flash Ventures at cost using manufacturing equipment owned or leased by Flash Ventures and process technologies co-owned or contributed by us and Kioxia. Flash Ventures accounts for approximately 80% of the total manufacturing capacity in the facilities owned by Kioxia. We and Kioxia are entitled to purchase a share of Flash Ventures' output, which generally equals 50% each. The price for which we and Kioxia pay Flash Ventures for flash memory wafers is cost plus a small markup. We are obligated to pay for variable costs incurred in producing our share of Flash Ventures' flash-based memory wafer supply, based on a rolling forecast. In addition, we are obligated to pay for half of Flash Ventures' fixed costs regardless of the output we choose to purchase.

While Flash Ventures is operating, we and Kioxia are restricted from working with third parties to manufacture flash-based memory or from fabricating flash-based memory beyond the capacity specified in our agreements with Kioxia. In addition, we may not manufacture flash-based memory ourselves except to the extent that we acquire the manufacturing capacity of a Flash Ventures entity as a result of such entity's dissolution or termination of its joint venture agreements or upon our acquisition of all the ownership interests in such entity.

The agreements governing the operations of the Flash Ventures entities also set out a framework for any investment by the joint venture partners in flash manufacturing capacity. We have jointly invested, and intend to continue to jointly invest, with Kioxia in the manufacturing equipment needed to support Flash Ventures' flash manufacturing operations. In addition, we are obligated to fund 49.9% to 50.0% of capital investments that a Flash Ventures entity decided to make to the extent that the Flash Ventures entity's operating cash flow is insufficient to fund these investments.

Each Flash Ventures entity operates for a set amount of time as agreed between us and Kioxia. Since the start of Flash Ventures, we and Kioxia have extended the term for all three of the Flash Ventures entities. Absent further extensions as mutually agreed between us and Kioxia, Flash Partners Ltd. and Flash Alliance Ltd. are currently set to expire on December 31, 2029, and Flash Forward Ltd. is currently set to expire on December 31, 2034. Each Flash Ventures entity's joint venture agreements may also earlier terminate upon the occurrence of certain specified events, including earlier dissolution by agreement of the parties or an event of default or bankruptcy. Upon the expiration of a Flash Ventures entity's joint venture agreements, whenever that may occur, the applicable Flash Ventures entity will commence a wind-up process and be dissolved. Net proceeds from the dissolution will be distributed in kind or cash to us and Kioxia on a pro rata basis based on our respective ownership positions. The applicable Flash Venture entity will continue to operate during the period of winding up.

WDC also has a joint venture with Unisplendour Corporation Limited and Unissoft (Wuxi) Group Co. Ltd. ("Unis"), referred to as the "Unis Venture", to market and sell our products in China and to develop data storage systems for the Chinese market in the future. Pursuant to the separation and distribution agreement, it is expected that the Unis Venture will be minority owned by Spinco and majority owned by Unis following the separation. The Unis Venture has not historically been managed as a component of Spinco and as such the related equity method investment is not reflected within our historical combined financial statements. In addition, SanDisk China Limited, a wholly owned indirect subsidiary of WDC and an expected wholly owned subsidiary of Spinco following the separation, has recently established a venture with JCET Management Co., Ltd. ("JCET"), referred to as the "SDSS Venture", to own and operate our assembly and test facility in Shanghai, China. The SDSS Venture is 20% owned by Spinco and 80% owned by JCET.

For a discussion of associated risks, see —*Risk Factors* beginning on page 30 of this Information Statement.

**Materials and Supplies**

Our flash consists of flash-based memory, controllers and firmware and other components. Substantially all of our flash-based memory is obtained from Flash Ventures. While substantially all of our flash memory supply utilized for our products is purchased from these ventures, from time to time, we also purchase flash memory from other flash manufacturers. Controllers are primarily designed in-house and manufactured by third-party foundries or acquired from third-party suppliers. We believe the use of our assembly and test facilities, as well as contract manufacturers, provides flexibility and gives us access to increased production capacity. We have developed deep relationships with these vendors and Kioxia to establish a continuous supply of flash-based memory and controllers.

We generally retain multiple suppliers for our component requirements, but for business or technology reasons, we source some of our components from a limited number of sole or single source providers. For a discussion of associated risks, see —*Risk Factors* beginning on page 30 of this Information Statement.

**Sales and Distribution**

We sell our products to computer manufacturers and original equipment manufacturers, cloud service providers, resellers, distributors and retailers throughout the world. We maintain sales offices in selected parts of the world including the major geographies of the Americas, Asia Pacific, Europe and the Middle East. Our international sales, which include sales to foreign subsidiaries of U.S. companies but do not include sales to U.S. subsidiaries of foreign companies, represented 86%, 81% and 82% of our net revenue for 2024, 2023 and 2022, respectively. Sales to international customers are subject to certain risks not normally encountered in domestic operations, including exposure to tariffs and various trade regulations. For a discussion of associated risks, see —*Risk Factors* beginning on page 30 of this Information Statement.

We perform our marketing and advertising functions both internally and through outside firms utilizing both consumer media and trade publications targeting various reseller and end-user markets. We also maintain customer relationships through direct communication and by providing information and support through our website. In accordance with standard storage industry practice, we provide distributors and retailers with limited price protection and programs under which we reimburse certain marketing expenditures. We also provide distributors, resellers and original equipment manufacturers with other sales incentive programs.

For fiscal year 2024, no customer accounted for more than 10% of our net revenue. For the fiscal years 2023 and 2022, one customer accounted for 15% and 11% of our net revenue, respectively.

**Seasonality**

We have historically experienced seasonal fluctuations in our business with higher levels of demand in the first and second quarters as a result of increased customer spending. Seasonality can also be impacted by cyclicality in the industry and macroeconomic conditions. For a discussion of associated risks, see —*Risk Factors* beginning on page 30 of this Information Statement.

**Service and Warranty**

We generally warrant our newly manufactured products against defects in materials and workmanship from one to five years from the date of sale depending on the type of product, with a small number of products having a warranty ranging up to ten years or more. Our warranty obligation is generally limited to repair or replacement. We have engaged third parties in various countries in multiple regions to provide various levels of testing, processing or recertification of returned products for our customers. For additional information regarding our service and warranty policy, see Note 1, *Organization and Basis of Presentation,* and Note 5, *Supplemental Financial Statement Data,* of the Notes to Combined Financial Statements included in this Information Statement.

**Human Capital Management**

In order to support our strategy, an emphasis on talent is required. We plan to focus on attracting, developing, engaging and retaining the best talent for our company. As of June 28, 2024, we employed approximately 12,000 people worldwide.

***Inclusion***

To attract and retain the best talent, we strive to cultivate an inclusive environment where every individual can thrive through a sense of belonging, respect and contribution. We plan to support inclusive hiring, training and development opportunities and strive to ensure equitable pay for employees. Building upon WDC's initiatives
and progress in inclusion, we expect to support the identification of opportunities for new inclusive initiatives, which may include adopting Employee Resource Groups to boost engagement, increasing opportunities for professional development and networking and fostering our diverse representation across our global workforce, including diversity in personal characteristics, experience, skills, gender, race, ethnicity and membership in underrepresented communities.

***Compensation, Benefits and Safety***

We believe in the importance of investing in our people, and we plan to do that through future initiatives which may include: (i) promoting a pay-for-performance culture and offering employees competitive compensation consisting of base salary and both short-term and long-term incentives; (ii) providing competitive benefits (which vary by country/region), including health coverage, life and disability insurance, retirement and paid time off; (iii) benchmarking our compensation and benefits programs; and (iv) providing extensive health and safety resources and training to all of our employees, especially for those who work in our manufacturing and operations.

***Talent Attraction, Development and Engagement***

Foundational to our people strategy is the attraction, development and engagement of our employees. We plan to foster the next generation of talent as a key priority, as we believe that developing our talent will be instrumental in helping us to reach our business goals and retain our people. Our current roadmap for future programs to invest in our employees includes:

- implementing skills-based screening to hire employees based on capabilities and potential;
- fostering an environment of continuous learning through on-demand tools to help employees chart their career journey and track their progress;
- listening to our employees to identify opportunities to strengthen employee engagement as well as influencing our overall strategy; and
- engaging employees by taking actions to promote and ground them in our core values and beliefs as a company, so that we are conducting business in an ethical way.

**Government Regulation**

Our worldwide business activities are subject to various laws, rules and regulations of the United States as well as of foreign governments. Compliance with existing or future governmental regulations, including, but not limited to, those pertaining to global trade, the environment, consumer and data protection, employee health and safety and taxes, could have a material impact on our capital expenditures, earnings, competitive position and overall business in subsequent periods. For a discussion of associated risks, see —*Risk Factors* beginning on page 30 of this Information Statement.

**Corporate Responsibility and Sustainability**

We believe responsible and sustainable business practices support our long-term success. As a company, we strive to protect and support our people, our environment and our communities. We expect to support

sustainability-focused initiatives as well as day-to-day activities, including adopting sustainability-focused policies and procedures, focusing on fostering an inclusive workplace, driving toward more efficient use of materials and energy, careful and active management of our supply chain, community-focused volunteerism programs and philanthropic initiatives and impactful, globally integrated ethics and compliance program.

- We seek to protect the human rights and civil liberties of our employees through policies, procedures and programs that avoid risks of compulsory and child labor, both within our company and throughout our supply chain.
- We plan to foster a workplace of dignity, respect, diversity and inclusion through our recruiting and advancement practices, internal communications and employee resource groups.
- We strive to educate our employees annually on relevant ethics and compliance topics, publish accessible guidance on ethical issues and related company resources in our Global Code of Conduct, and encourage reporting of ethical concerns through any of several global and local reporting channels.
- We expect to support local communities throughout the world, focusing on hunger relief, environmental quality and STEM (science, technology, engineering and math) education, especially for underrepresented and underprivileged youth.
- We strive to utilize a robust integrated management system, with associated policies and procedures, to evaluate and manage occupational health and safety risks, environmental compliance and chemical and hazardous substance risks.
- We seek to minimize our impacts on the environment through emissions reduction targets and other initiatives and to evaluate and enhance our climate resiliency.
- We seek to innovate to reduce the energy used by our products, the energy used to manufacture them and the amount of new materials required to manufacture them.

**Properties**

Our principal executive offices are currently located at 951 Sandisk Drive, Milpitas, California 95035. Our principal manufacturing, R&D, marketing and administrative facilities as of the date of this information statement were as follows:

| Location | Buildings Owned or Leased | Approximate Square Footage | Description |
|---|---|---|---|
| Milpitas, California (United States) | Leased | 578,000 | Flash R&D, marketing and sales, and administrative |
| Longmont, Colorado (United States) | Leased | 62,000 | Flash R&D |
| Penang (Malaysia) | Owned | 1,889,000 | Assembly and test of SSD, manufacturing of media, and Flash R&D |
| Bangalore (India) | Owned and Leased | 1,260,000 | Flash R&D and administrative |
| Kfar Saba (Israel) | Owned | 167,000 | Flash R&D |
| Tefen (Israel) | Owned | 72,000 | Flash R&D |

We also lease office space in various other locations throughout the world primarily for R&D, sales, operations, manufacturing, administration and technical support. We believe our present facilities are adequate for our current needs, although we update our facilities from time to time to meet anticipated future technological and market requirements.

Substantially all of our flash-based memory wafers are manufactured by Kioxia in purpose-built, wafer fabrication facilities located in Yokkaichi and Kitakami, Japan.

**Legal Proceedings**

In the normal course of business, Spinco is subject to legal proceedings, lawsuits and other claims. Although the ultimate aggregate amount of probable monetary liability or financial impact with respect to these other matters is subject to many uncertainties, Spinco's management believes that any monetary liability or financial impact to Spinco from these matters, individually and in the aggregate, would not be material to Spinco's financial condition, results of operations or cash flows. However, any monetary liability and financial impact to Spinco from these matters could differ materially from Spinco's expectations.

## MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

*This section should be read in conjunction with the unaudited Condensed Combined Financial Statements and related Notes and the audited Combined Financial Statements and related Notes included in this information statement, as well as the information contained in the sections of this information statement titled "Unaudited Pro Forma Condensed Combined Financial Information" and "Business." The section of this information statement titled "Management's Discussion and Analysis of Financial Condition and Results of Operations" contains forward-looking statements. See the sections of the information statement titled "Forward-Looking Statements" and "Risk Factors" for a discussion of the uncertainties, risks and assumptions associated with these forward-looking statements that could cause future results to differ materially from those reflected in this section.*

*The unaudited Condensed Combined Financial Statements and audited Combined Financial Statements included in this information statement have been derived from WDC's historical accounting records and are presented on a stand-alone basis as if Spinco's operations had been conducted independently from WDC. The unaudited Condensed Combined Financial Statements and audited Combined Financial Statements have been prepared in accordance with GAAP, by aggregating financial information from the components of Spinco and WDC's accounting records directly attributable to Spinco.*

*The unaudited Condensed Combined Statements of Operations and audited Combined Statements of Operations include all revenues and costs directly attributable to Spinco, including costs for facilities, functions and services used by Spinco. Spinco's business has historically functioned together with the other businesses controlled by WDC. Accordingly, Spinco relied on WDC's corporate overhead and other support functions for its business. Therefore, certain corporate overhead and shared costs have been allocated to Spinco including (i) certain general and administrative expenses related to WDC support functions that are provided on a centralized basis within WDC (e.g., expenses for corporate facilities, executive oversight, treasury, finance, legal, human resources, compliance, information technology, employee benefit plans, stock compensation plans and other corporate functions) and (ii) certain operations support costs incurred by WDC, including product sourcing, maintenance and support services and other supply chain functions. These expenses have been specifically identified, when possible, or allocated based on revenues, headcount, usage or other allocation methods that are considered to be a reasonable reflection of the utilization of services provided or benefit received. Management considers that such allocations have been made on a reasonable basis consistent with benefits received but may not necessarily be indicative of the costs that would have been incurred if Spinco had been operated on a standalone basis for the periods presented.*

Our discussion within Management's Discussion and Analysis of Financial Condition and Results of Operations ("MD&A") is organized as follows:

- *Overview.* This section contains background information on Spinco, summary of significant themes and events during the year as well as strategic initiatives and trends in order to provide context for management's discussion and analysis of our financial condition and results of operations.
- *Results of operations.* This section contains an analysis of our results of operations presented in the accompanying unaudited Condensed Combined Statements of Operations by comparing the results for the quarter ended September 27, 2024 to the results for the quarter ended September 29, 2023. Additionally, this section also contains an analysis of our results of operations presented in the accompanying audited Combined Statements of Operations by comparing the results for the fiscal year ended June 28, 2024 to the results for the fiscal year ended June 30, 2023, and the results for the fiscal year ended July 1, 2022.
- *Non-GAAP financial measures and use of certain terms.* This section provides an analysis of certain non-GAAP Financial Measures used by Spinco's management in the evaluation of the performance of Spinco's ongoing business operations.

- *Financial condition, liquidity and capital resources.* This section provides an analysis of our cash flows and a discussion of our contractual obligations at September 27, 2024.
- *Critical accounting estimates.* This section contains a discussion of the critical accounting estimates that we believe are important to our financial condition and results of operations and that require judgment and estimates on the part of management in their application. In addition, all of our significant accounting policies, including critical accounting policies, are summarized in Note 1, "Organization and Basis of Presentation," in the Notes to Condensed Combined Financial Statements and Combined Financial Statements set forth in this information statement.

**Overview**

***Our Business***

Spinco is a leading developer, manufacturer and provider of data storage devices and solutions based on NAND flash technology. With a differentiated innovation engine driving advancements in storage and semiconductor technologies, our broad and ever-expanding portfolio delivers powerful flash storage solutions for everyone from students, gamers and home offices, to the largest enterprises and public clouds to capture, preserve, access and transform an ever-increasing diversity of data. Our solutions include a broad range of solid-state drives ("SSD"), embedded products, removable cards, universal serial bus drives and wafers and components. Our broad portfolio of technology and products addresses multiple end markets of "Cloud," "Client," and "Consumer."

Through the Client end market, we provide our original equipment manufacturer ("OEM") and channel customers a broad array of high-performance flash solutions across personal computer, mobile, gaming, automotive, virtual reality headsets, at-home entertainment and industrial spaces. The Consumer end market is highlighted by our broad range of retail and other end-user products, which capitalizes on the strength of our product brand recognition and vast points of presence around the world. Cloud is comprised primarily of products for public or private cloud environments and end customers.

Our fiscal year ends on the Friday nearest to June 30 and typically consists of 52 weeks. Approximately every five to six years, we report a 53-week fiscal year to align the fiscal year with the foregoing policy. Fiscal year 2025, which will end on June 27, 2025, and fiscal year 2024, which ended on June 28, 2024, are each comprised 52 weeks, with all quarters presented consisting of 13 weeks.

***Separation of Business Units***

In October 2023, WDC announced that the WDC Board of Directors authorized management to pursue a plan to separate Spinco into an independent public company through a pro rata distribution to holders of WDC common stock. The completion of the planned separation is subject to certain conditions, including final approval by the WDC Board of Directors. At the beginning of the second quarter of fiscal 2025, WDC entered the soft-spin phase of the separation plan. The soft-spin phase represents the period when Spinco will begin testing critical processes and systems to ensure Spinco is ready to operate independently at legal separation. WDC is targeting to complete the separation of Spinco after the close of the second quarter of fiscal 2025.

***Sale-Leaseback***

In September 2023, WDC completed a sale and leaseback of its facility in Milpitas, California, and received net proceeds of $191 million in cash. A substantial majority of these assets are associated with Spinco and included in our Combined Balance Sheet as of June 28, 2024. As a result, $134 million of the net proceeds from the sale-leaseback transaction has been allocated to us on a relative square footage basis. The property is being leased back at a total annual rate of $16 million for the first year, increasing by 3% per year thereafter through January 1, 2039. The lease includes three five-year renewal options and one four-year renewal option for the ability to extend through December 2057. This facility is utilized in Spinco's operations, and a portion of the total annual lease expense will be allocated to Spinco in future periods based on the continued usage of the facility.

***SanDisk Semiconductor (Shanghai) Co. Ltd. ("SDSS")***

As discussed in Note 5, "Supplemental Financial Statement Data," in the Notes to Condensed Combined Financial Statements, in March 2024, WDC entered into an agreement to sell 80% of the equity interest in SanDisk China Limited ("SanDisk China") to JCET, a third-party contract manufacturing company. Subsequent to the first quarter of fiscal 2025, on September 28, 2024, the transaction closed. In connection with this transaction, WDC entered into a 5-year supply agreement with JCET to purchase wafers with a minimum annual commitment of $550 million.

As a result of this transaction, Spinco expects to incur a modest reduction in annual operating expenses and a reduction in annual capital expenditures related to assembly testing of Spinco products. Spinco also expects that the transition to a contract manufacturing model through SDSS will result in a small increase in Spinco's annual cost of revenue for Spinco products.

***Financing Activities***

Spinco receives financing from certain of WDC's subsidiaries in the form of borrowings under revolving credit agreements and promissory notes to fund activities primarily related to Flash Ventures. Additional information regarding our outstanding notes due to (from) Parent is included in Note 9, Related Parties and Related Commitments and Contingencies of the Notes to the Condensed Combined Financial Statements.

Spinco expects to enter into certain financing arrangements prior to or substantially concurrent with thespin-off.

***Operational Update***

Macroeconomic factors such as inflation, changes in interest rates and recession concerns softened demand for our products during 2023 and the first half of 2024. As a result, we and our industry experienced a supply-demand imbalance, which resulted in reduced shipments and negatively impacted pricing during those periods. To adapt to these conditions, since the beginning of 2023, we implemented measures to reduce operating expenses and proactively manage supply and inventory to align with demand and improve our capital efficiency while continuing to deploy innovative products. These actions enabled us to scale back on capital expenditures, consolidate production lines and reduce production. During the first quarter of 2024, these actions resulted in incremental charges for employee termination, asset impairment and charges for unabsorbed manufacturing overhead costs due to the underutilization of facilities as we temporarily scaled back production.

We are now seeing an improvement in the supply and demand dynamic, leading to improved revenues. The increase in demand resulted in increased revenue and gross margin in the first quarter of 2025 from the comparable period in the prior year. We anticipate that digital transformation, including the AI data-cycle, will continue to drive improved market conditions in the near- and long-term for data storage. Leveraging our expertise and innovation in both areas, we believe we are well-positioned to capitalize on this improved market condition.

We will continue to actively monitor developments impacting our business and may take additional responsive actions that we determine to be in the best interest of our business and stakeholders.

**Results of Operations**

*Summary Comparison of Three months ended September 27, 2024 and September 29, 2023*

The following table sets forth, for the periods presented, selected summary information from our Condensed Combined Statements of Operations by dollars and percentage of net revenue[1]:

| | Three Months Ended | | | |
|---|---|---|---|---|
| | September 27, 2024 | | September 29, 2023 | |
| | *(in millions, except percentages)* | | | |
| Revenue, net | $ 1,883 | 100.0% | $ 1,533 | 100.0% |
| Cost of revenue | 1,157 | 61.4 | 1,721 | 112.3 |
| Gross profit (loss) | 726 | 38.6 | (188) | (12.3) |
| Operating expenses: | | | | |
| Research and development | 283 | 15.0 | 240 | 15.7 |
| Selling, general and administrative | 130 | 6.9 | 118 | 7.7 |
| Employee termination, asset impairment and other | 2 | 0.1 | (59) | (3.8) |
| Business separation costs | 20 | 1.1 | — | — |
| Total operating expenses | 435 | 23.1 | 299 | 19.6 |
| Operating income (loss) | 291 | 15.5 | (487) | (31.9) |
| Interest and other income (expense): | | | | |
| Interest income | 3 | 0.2 | 3 | 0.2 |
| Interest expense | (2) | (0.1) | (11) | (0.7) |
| Other income (expense), net | (25) | (1.3) | 1 | 0.1 |
| Total interest and other income (expense), net | (24) | (1.2) | (7) | (0.4) |
| Income (loss) before taxes | 267 | 14.3 | (494) | (32.3) |
| Income tax expense | 56 | 3.0 | 24 | 1.6 |
| Net income (loss) | $ 211 | 11.3% | $ (518) | (33.9)% |

(1) Percentage may not total due to rounding.

The following table sets forth, for the periods presented, summary information regarding our disaggregated revenue:

| | Three months ended | |
|---|---|---|
| | September 27, 2024 | September 29, 2023 |
| | *(in millions)* | |
| Revenue by end market | | |
| Cloud | $ 300 | $ 18 |
| Client | 1,069 | 997 |
| Consumer | 514 | 518 |
| Total revenue | $ 1,883 | $ 1,533 |
| Revenue by Geography | | |
| Asia | $ 1,150 | $ 1,061 |
| Americas | 443 | 230 |
| Europe, Middle East and Africa | 290 | 242 |
| Total revenue | $ 1,883 | $ 1,533 |

***Net Revenue***

*Three months ended September 27, 2024 compared with three months ended September 29, 2023*

Net revenue increased by 23% for the three months ended September 27, 2024 compared to the three months ended September 29, 2023, primarily driven by a 39% increase in average selling prices ("ASP") per gigabyte, partially offset by a 12% decrease in exabytes sold. The increase in ASP per gigabyte was primarily due to improved pricing as the supply-demand balance improved. The decrease in exabytes sold was primarily driven by the near-term drop in demand in the Client and Consumer end markets, partially offset by increased demand in the Cloud end market.

Cloud revenue increased by 1,567% for the three months ended September 27, 2024 compared to the three months ended September 29, 2023, reflecting a 1,355% increase in exabytes sold and a 12% increase in ASP per gigabyte. The increase in exabytes sold was primarily attributable to increased enterprise SSD shipments to data center customers.

Client revenue increased 7% in the three months ended September 27, 2024 compared to in the three months ended September 29, 2023 which reflects a 53% increase in ASP per gigabyte, partially offset by a 29% decrease in exabytes sold.

Consumer revenue decreased 1% in the three months ended September 27, 2024 compared to the three months ended September 29, 2023 due to a 13% decrease in exabytes sold, partially offset by a 9% increase in ASP per gigabyte.

The changes in net revenue by geography in the three months ended September 27, 2024, compared to the three months ended September 29, 2023, primarily reflected higher revenue in the Americas region from Cloud customers as noted above.

For the three months ended September 27, 2024 and September 29, 2023, our top 10 customers accounted for 53% and 46%, respectively, of Spinco's net revenue. For the three months ended September 27, 2024, no single customer accounted for more than 10% of our net revenue. For the three months ended September 29, 2023, one customer accounted for 11% of Spinco's net revenue.

Consistent with standard industry practice, we have sales incentive and marketing programs that provide customers with price protection and other incentives or reimbursements that are recorded as a reduction to gross revenue. For the three months ended September 27, 2024 and September 29, 2023, these programs represented 16% and 24%, respectively, of gross revenues. The amounts attributed to our sales incentive and marketing programs generally vary according to several factors, including industry conditions, list pricing strategies, seasonal demand, competitor actions, channel mix and overall availability of products. Changes in future customer demand and market conditions may require us to adjust our incentive programs as a percentage of gross revenue.

***Gross Profit and Gross Margin***

*Three months ended September 27, 2024 compared with three months ended September 29, 2023*

Gross profit increased by $914 million, or 486%, for the three months ended September 27, 2024 compared to three months ended September 29, 2023, primarily due to improved pricing and favorable product mix. In addition, the prior year period included charges for unabsorbed manufacturing overhead costs of $142 million as a result of the reduced utilization of our manufacturing capacity; no associated charges were incurred in the current period. Gross margin increased 51% over the prior year primarily due to improved pricing and favorable product mix, as mentioned above, with approximately 9% of the increase due to the underutilization charges incurred in the prior year period but not incurred in the current period.

***Operating Expenses***

*Three months ended September 27, 2024 compared with three months ended September 29, 2023*

Research and development expense increased $43 million or 18% for the three months ended September 27, 2024 compared to three months ended September 29, 2023, which reflects an increase of $26 million in compensation and benefits due to higher variable compensation and increased headcount, and a $9 million increase in material purchases.

Selling, general and administrative expense increased $12 million or 10% in the three months ended September 27, 2024 compared to three months ended September 29, 2023. This increase was primarily driven by a $6 million increase in compensation and benefits due to higher variable compensation and increased headcount, a $8 million increase in materials purchases, and a $6 million increase in legal fees, partially offset by a $10 million decrease in strategic review costs.

Employee termination, asset impairment and other increased $61 million or 103% in the three months ended September 27, 2024 compared to three months ended September 29, 2023. The prior year period included a $60 million gain on the sale-leaseback of a facility, which did not occur in the current period. For additional information regarding employee termination, asset impairment and other charges, see Note 13, Employee Termination and Other Charges, in the Notes to Condensed Combined Financial Statements.

Business separation costs were $20 million for the three months ended September 27, 2024, primarily reflecting outside service fees to support the planned separation of Spinco from WDC.

***Interest and Other Income (Expense), net***

*Three months ended September 27, 2024 compared with three months ended September 29, 2023*

The total expense recognized within interest and other income (expense), net increased by $17 million, or 243%, in the three months ended September 27, 2024, compared to the three months ended September 29, 2023. This increase was primarily due to a $19 million increase in foreign exchange losses and a $9 million increase in losses on our equity investments, partially offset by a $9 million decrease in interest expense on borrowings due to our Parent.

***Income Tax Expense***

The Tax Cuts and Jobs Act (the "2017 Act"), enacted on December 22, 2017, includes a broad range of tax reform proposals affecting businesses. WDC completed its accounting for the tax effects of the enactment of the 2017 Act during the second quarter of 2019. However, the U.S. Treasury and the Internal Revenue Service ("IRS") have issued tax guidance on certain provisions of the 2017 Act since the enactment date, and we anticipate the issuance of additional regulatory and interpretive guidance. WDC applied a reasonable interpretation of the 2017 Act along with the then-available guidance in finalizing its accounting for the tax effects of the 2017 Act. Any additional regulatory or interpretive guidance would constitute new information, which may require further refinements to Spinco's estimates in future periods.

On August 16, 2022, President Biden signed into law the Inflation Reduction Act of 2022, which contained significant law changes related to tax, climate, energy and health care. The tax measures include, among other things, a corporate alternative minimum tax ("CAMT") of 15% on corporations with three-year average annual adjusted financial statement income ("AFSI") exceeding $1.0 billion. The corporate alternative minimum tax is effective for us beginning with fiscal year 2024. We are not subject to the CAMT of 15% for fiscal year 2025 as our average annual AFSI did not exceed $1.0 billion for the preceding three-year period.

On December 20, 2021, the Organization for Economic Co-operation and Development G20 ("OECD/G20") Inclusive Framework on Base Erosion and Profit Shifting released Model Global Anti-Base Erosion rules under Pillar Two ("Pillar Two Model Rules"). Several non-US jurisdictions have either enacted legislation or announced their intention to enact future legislation to adopt certain or all components of the Pillar Two, some of

which are effective for Spinco in fiscal year 2025. For fiscal year 2025, we currently expect to be able to meet certain transitional safe harbors and do not expect any material Pillar Two taxes. As more jurisdictions adopt this legislation in fiscal year 2026, there may be material increases in our future tax obligations in certain jurisdictions.

The following table sets forth income tax information from our Statement of Operations by dollar and effective tax rate:

| | September 27, 2024 | September 29, 2023 |
|---|---|---|
| | *(in millions)* | |
| Income before taxes | $ 267 | $ (494) |
| Income tax expense | $ 56 | $ 24 |
| Effective tax rate | 21% | (5)% |

Beginning in fiscal year 2023, the Tax Cuts and Jobs Act (the "2017 Act") requires the Company to capitalize and amortize R&D expenses rather than expensing them in the year incurred. The tax effects related to the capitalization of R&D expenses are included in the effective tax rate for the three months ended September 27, 2024 and September 29, 2023.

The relative mix of earnings and losses by jurisdiction, the deduction for foreign-derived intangible income, credits and tax holidays in Malaysia, the Philippines and Thailand that have or will expire at various dates during years 2025 through 2031 resulted in decreases to the effective tax rate below the U.S. statutory rate for the three months ended September 27, 2024. However, the tax effects of the mandatory capitalization of R&D expenses offset these decreases, resulting in the effective tax rate being closer to the U.S. Federal statutory rate for the three months ended September 27, 2024.

For additional information regarding income tax expense, see Note 12, *Income Tax Expense,* in the Notes to the Condensed Combined Financial Statements

*Summary Comparison of 2024, 2023 and 2022*

The following table sets forth, for the periods presented, selected summary information from our Combined Statements of Operations by dollars and percentage of net revenue[1]:

| | 2024 | | 2023 | | 2022 | |
|---|---|---|---|---|---|---|
| | *(in millions, except percentages)* | | | | | |
| Revenue, net | $6,663 | 100.0% | $ 6,086 | 100.0% | $9,754 | 100.0% |
| Cost of revenue | 5,591 | 83.9 | 5,656 | 92.9 | 6,510 | 66.7 |
| Gross profit | 1,072 | 16.1 | 430 | 7.1 | 3,244 | 33.3 |
| Operating expenses: | | | | | | |
| Research and development | 1,061 | 15.9 | 1,167 | 19.2 | 1,362 | 14.0 |
| Selling, general and administrative | 455 | 6.8 | 558 | 9.2 | 666 | 6.8 |
| Employee termination, asset impairment and other | (40) | (0.6) | 69 | 1.1 | 16 | 0.2 |
| Business separation costs | 64 | 1.0 | — | — | — | — |
| Goodwill impairment | — | — | 671 | 11.0 | — | — |
| Total operating expenses | 1,540 | 23.1 | 2,465 | 40.5 | 2,044 | 21.0 |
| Operating income (loss) | (468) | (7.0) | (2,035) | (33.4) | 1,200 | 12.3 |
| Interest and other income (expense): | | | | | | |
| Interest income | 12 | 0.2 | 21 | 0.3 | 6 | 0.1 |
| Interest expense | (40) | (0.6) | (31) | (0.5) | (15) | (0.2) |
| Other income (expense), net | (7) | (0.1) | 43 | 0.7 | 43 | 0.4 |
| Total interest and other income (expense), net | (35) | (0.5) | 33 | 0.5 | 34 | 0.3 |
| Income (loss) before taxes | (503) | (7.5) | (2,002) | (32.9) | 1,234 | 12.7 |
| Income tax expense | 169 | 2.5 | 141 | 2.3 | 170 | 1.7 |
| Net income (loss) | $ (672) | (10.0)% | $(2,143) | (35.2)% | $1,064 | 10.9% |

(1) Percentage may not total due to rounding.

The following table sets forth, for the periods presented, summary information regarding our disaggregated revenue:

| | 2024 | 2023 | 2022 |
|---|---|---|---|
| | *(in millions)* | | |
| Revenue by end market | | | |
| Cloud | $ 325 | $ 500 | $ 1,264 |
| Client | 4,069 | 3,637 | 6,038 |
| Consumer | 2,269 | 1,949 | 2,452 |
| Total revenue | $ 6,663 | $ 6,086 | $ 9,754 |
| Revenue by geography | | | |
| Americas | $ 1,095 | $ 1,266 | $ 1,921 |
| Europe, Middle East and Africa | 1,058 | 930 | 1,349 |
| Asia | 4,510 | 3,890 | 6,484 |
| Total revenue | $ 6,663 | $ 6,086 | $ 9,754 |

***Net Revenue***

*Year ended June 28, 2024 compared with year ended June 30, 2023*

Net revenue increased 9% in 2024 compared to 2023, primarily driven by a 21% increase in exabytes sold, partially offset by an 8% decline in average selling prices ("ASP") per gigabyte. The increase in exabytes sold was primarily driven by improved demand from our OEM customers in our Client end market, and higher shipments of SSDs to our customers in our Consumer end market, partially offset by lower shipments in our Cloud end market. The decrease in ASP per gigabyte was primarily driven by the supply-demand imbalance in the first half of the year, prior to the recent improvement in supply-demand conditions as described above.

The 35% decrease in Cloud revenue in 2024 compared to 2023, is primarily due to a 31% decrease in exabytes shipments and a 5% decrease in ASP per gigabyte. The decline in ASP per gigabyte was primarily attributable to the factors described above. In Client, the 12% increase in revenue in 2024 compared to 2023 reflects a 24% increase in exabyte shipments, partially offset by a 5% decrease in ASP per gigabyte. In Consumer, the 16% increase in revenues in 2024 compared to 2023 was due to a 32% increase in exabytes sold, partially offset by a 10% decrease in ASP per gigabyte.

The changes in net revenue by geography in 2024, compared to 2023, primarily reflected larger growth in Asia from OEMs in this region as their production levels increased as well as routine variations in the mix of business.

*Year ended June 30, 2023 compared with year ended July 1, 2022*

Net revenue decreased 38% in 2023 compared to 2022, substantially all driven by a decline in the ASP of 39% per gigabyte, primarily reflecting the macroeconomic pressures described in the "Operational Update" above. The decline in the ASP per gigabyte was due to the supply-demand imbalance described in the "Key Developments—Operational Update" section above as well as a shift in product mix.

The 60% decrease in Cloud revenue in 2023 compared to 2022, is primarily due to a 28% decrease in exabytes shipments and a 45% decrease in ASP per gigabyte. The decline in ASP per gigabyte was primarily attributable to the factors described in the "Key Developments—Operational Update" section above. In Client, the 40% decrease in revenue in 2023 compared to 2022 reflects a decline of 42% decrease in ASP per gigabyte, due to pricing pressure across flash products. In Consumer, the 21% decrease in revenues in 2023 compared to 2022 was due to approximately 30% decrease in ASP per gigabyte, partially offset by a 14% increase in exabytes sold.

The changes in net revenue by geography in 2023, compared to 2022, reflect a 40% decline in Asia from lower Client revenue from OEMs in this region as they reduced purchases to align with current market demand.

For 2024, 2023 and 2022, our top 10 customers accounted for 41%, 47% and 47%, respectively, of Spinco's net revenue. For 2024 no single customer accounted for more than 10% of our net revenue. For 2023 and 2022, one customer accounted for 15% and 11%, respectively, of Spinco's net revenue.

Consistent with standard industry practice, we have sales incentive and marketing programs that provide customers with price protection and other incentives or reimbursements that are recorded as a reduction to gross revenue. For 2024, 2023 and 2022, these programs represented 19%, 21% and 15%, respectively, of gross revenues. The amounts attributed to our sales incentive and marketing programs generally vary according to several factors, including industry conditions, list pricing strategies, seasonal demand, competitor actions, channel mix and overall availability of products. Changes in future customer demand and market conditions may require us to adjust our incentive programs as a percentage of gross revenue.

***Gross Profit and Gross Margin***

*Year ended June 28, 2024 compared with year ended June 30, 2023*

Gross profit increased $642 million, or 149%, in 2024 compared to 2023, largely due to higher revenue, cost reductions due to cost efficiencies achieved through improved manufacturing operations and cost-saving actions and a more favorable product mix. The increase also reflected charges of approximately $252 million for unabsorbed manufacturing overhead costs as a result of the increased utilization of our manufacturing capacity in 2024 as compared to $296 million of such costs in 2023, and a $54 million write-down of Flash inventory as a result of the decreases in market pricing in 2024 compared to charges of $108 million of such costs in 2023. Gross margin increased 9% over the prior year with approximately 2% of the increase due to the net charges noted above and the remainder driven by improving pricing, cost reduction initiatives and a favorable shift in product mix.

*Year ended June 30, 2023 compared with year ended July 1, 2022*

Gross profit decreased $2.8 billion, or 87%, in 2023 compared to 2022, which reflected the decrease in revenue described above as well as $296 million charges for unabsorbed manufacturing overhead costs as a result of the reduced utilization of our manufacturing capacity, and a $108 million write-down of certain flash inventory to the lower of cost or market value, partially offset by $207 million of charges related to a contamination event in the Flash Ventures' fabrication facilities incurred in 2022, and a $64 million decrease in charges related to amortization expense on acquired intangible assets, some of which became fully amortized in 2023. Gross margin decreased 26% over 2022, with approximately 4% of the decline due to the net charges noted above and the remainder driven by the lower ASP per gigabyte.

***Operating Expenses***

*Year ended June 28, 2024 compared with year ended June 30, 2023*

Research and development expense decreased $106 million or 9% in 2024 compared to 2023, which reflects a decrease of $57 million in compensation and benefits due to reduced headcount, a decrease of $36 million in costs related to a reduction in our portion of development costs of the fabrication facilities of Flash Ventures, a decrease of $22 million in depreciation and amortization attributable to lower capital expenditures and a decrease of $6 million in outside services, which were partially offset by an increase of $15 million in material purchases.

Selling, general and administrative expense decreased $103 million or 18% in 2024 compared to 2023. This decrease was driven by a decrease of $133 million in intangible amortization expense and a decrease of $6 million in all other—miscellaneous costs, partially offset by an increase of $19 million in compensation and benefits due to an increase in variable compensation and an increase of $17 million in material purchases.

Employee termination, asset impairment and other decreased $109 million or 158% compared to 2023, due to a $60 million gain on the sale-leaseback of the Milpitas California facility and a $53 million decrease in employee termination costs as a result of fewer restructuring actions taken in the current period, partially offset by $4 million related to asset impairment caused by project cancellations. For additional information regarding employee termination, asset impairment, and other charges, see Note 13, *Employee Termination, Asset Impairment and Other*, in the Notes to Combined Financial Statements.

*Year ended June 30, 2023 compared with year ended July 1, 2022*

Research and development expense decreased $195 million or 14% in 2023 compared to 2022, which reflects a decrease of $123 million in compensation and benefits due to lower variable compensation and a reduced headcount, a decrease of $25 million in materials cost related to product samples, as well as savings resulting from our actions to reduce expenses in the dynamic economic environment in 2023.

Selling, general and administrative expense decreased $108 million or 16% in 2023 compared to 2022, which reflects a decrease of $60 million in compensation and benefits due to lower variable compensation and a reduced headcount, a decrease of $23 million in materials cost related to product samples, a decrease of $22 million in intangible amortization expense due to certain intangible assets becoming fully amortized in 2023, as well as savings resulting from our actions to reduce expenses in the dynamic economic environment in 2023. The decrease was partially offset by a $20 million charges related to our strategic review.

Employee termination, asset impairment and other increased $53 million or 331% compared to 2022, due to an increase of $46 million in restructuring actions taken to adjust our cost structure to align with the current demand environment and a $9 million gain on sale of a business in 2022, partially offset by a decrease of $2 million in loss on disposal of assets. For additional information regarding employee termination, asset impairment, and other, see Note 13, *Employee Termination, Asset Impairment and Other,* in the Notes to Combined Financial Statements.

***Interest and Other Income (Expense), net***

*Year ended June 28, 2024 compared with year ended June 30, 2023*

The total interest and other income (expense), net decreased $68 million or 206% in 2024 compared to 2023. This decline was primarily driven by a $48 million decrease in equity earnings from Flash Ventures, coupled with a decrease of $9 million in interest income and a corresponding increase of $9 million in interest expense.

*Year ended June 30, 2023 compared with year ended July 1, 2022*

The total interest and other income (expense), net decrease of $1 million or 3% in 2023 compared to 2022, which was primarily driven by an increase of $16 million in interest expense, partially offset by an increase of $15 million in interest income.

***Income Tax Expense***

The Tax Cuts and Jobs Act (the "2017 Act"), enacted on December 22, 2017, includes a broad range of tax reform proposals affecting businesses. WDC completed its accounting for the tax effects of the enactment of the 2017 Act during the second quarter of 2019. However, the U.S. Treasury and the Internal Revenue Service ("IRS") have issued tax guidance on certain provisions of the 2017 Act since the enactment date, and Spinco anticipates the issuance of additional regulatory and interpretive guidance. WDC applied a reasonable interpretation of the 2017 Act along with the then-available guidance in finalizing its accounting for the tax effects of the 2017 Act. Any additional regulatory or interpretive guidance would constitute new information, which may require further refinements to Spinco's estimates in future periods.

On August 16, 2022, President Biden signed into law the Inflation Reduction Act of 2022, which contained significant law changes related to tax, climate, energy and health care. The tax measures include, among other things, a corporate alternative minimum tax or CAMT, of 15% on corporations with three-year average annual adjusted financial statement income, or AFSI, exceeding $1.00 billion. We are not subject to the CAMT of 15% for fiscal year 2024 as our average annual AFSI did not exceed $1.00 billion for the preceding three-year period.

The following table sets forth income tax information from our Statement of Operations by dollar and effective tax rate:

| | 2024 | 2023 | 2022 |
|---|---|---|---|
| | *(in millions, except percentages)* | | |
| Income (loss) before taxes | $(503) | $(2,002) | $1,234 |
| Income tax expense | 169 | 141 | 170 |
| Effective tax rate | (34)% | (7)% | 14% |

Beginning in 2023, the 2017 Act requires us to capitalize and amortize research and development expenses rather than expensing them in the year incurred. The tax effects related to the capitalization of research and development expenses are included in income tax expense but did not have a material impact on our effective tax rate.

The primary drivers of the difference between the effective tax rate for 2024 and the U.S. federal statutory rate of 21% are the relative mix of earnings and losses by jurisdiction, the deduction for foreign derived intangible income, credits and tax holidays in Malaysia that will expire at various dates during years 2028 through 2031.

The primary drivers of the difference between the effective tax rate for 2023 and 2022 and the U.S. federal statutory rate of 21% for both periods are the relative mix of earnings and losses by jurisdiction, the deduction for foreign derived intangible income, credits and tax holidays in Malaysia that will expire at various dates during years 2028 through 2031.

Our future effective tax rate is subject to future regulatory developments and changes in the mix of our U.S. earnings compared to foreign earnings. Our total tax expense in future years may also vary as a result of discrete items such as excess tax benefits or deficiencies.

On December 20, 2021, the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting released Model Global Anti-Base Erosion rules under Pillar Two ("Pillar Two Model Rules"). Several non-US jurisdictions have either enacted legislation or announced their intention to enact future legislation to adopt certain or all components of the Pillar Two Model Rules, which may be effective for us as early as 2025. When effective, this legislation could materially increase our tax obligations in certain jurisdictions. We continue to evaluate the tax impact of enacted and future legislation concerning the Pillar Two Model Rules in the non-US tax jurisdictions we operate in.

For additional information regarding income tax expense, see Note 12, *Income Tax Expense,* in the Notes to the Combined Financial Statements.

**Non-GAAP Financial Measures and Use of Certain Terms:**

***Non-GAAP Financial Measures***

*Adjusted Earnings Before Interest, Taxes, Depreciation and Amortization ("Adjusted EBITDA").* Spinco's management uses the non-GAAP measure Adjusted EBITDA because it provides useful information to investors as an indicator of performance of Spinco's ongoing business operations. Spinco determines Adjusted EBITDA based on GAAP net income (loss) attributable to Spinco plus interest and other income (expense), net; income tax expense; depreciation and amortization; stock-based compensation expense; employee termination, asset impairment and other; expenses related to strategic review; business separation costs; and other special items, including charges or credits that Spinco believes are not a part of the ongoing operation of its business. This format is useful to investors because it allows analysis and comparability of operating trends. It also includes the same information that is used by Spinco management to make decisions and to assess our financial performance. Refer to the table below for the reconciliations of net income (loss) attributable to Spinco (GAAP) to Adjusted EBITDA (non-GAAP).

Spinco's definitions and calculations of these non-GAAP measures may differ from similarly titled measures reported by other companies and cannot, therefore, be compared with similarly titled measures of other companies. These non-GAAP measures should not be considered as substitutes for, or superior to, results determined in accordance with GAAP.

***Free Cash Flow and Adjusted Free Cash Flow***

Free cash flow and adjusted free cash flow arenon-GAAP financial measures. Free cash flow reflects Spinco's cash flow provided by (used in) operating activities less capital expenditures. Adjusted free cash flow reflects Spinco's cash flows provided by (used in) operating activities less capital expenditures and the activity related to Flash Ventures, net. We make cash contributions to Flash Ventures to fund their capital expenditures for equipment or infrastructure to support the Flash Ventures' production of wafer inventory for sale. This cash contributions are typically recovered over a number of years as the Flash Ventures generate cash from their production and sale of wafer inventory. These cash contributions and repayments are reflected within investing activities in our Condensed Combined Statements of Cash Flows as Notes receivable issuances to Flash Ventures and Notes receivable proceeds from Flash Ventures, respectively. Spinco considers the adjusted free cash flow generated in any period to be a useful indicator of cash that is available for strategic opportunities, including, among others, investing in Spinco's business, making strategic acquisitions and strengthening the balance sheet.

***Use of Certain Terms***

*Revenue by End Market.* Spinco's broad portfolio of technology and products addresses multiple end markets. Cloud represents a large and growing end market comprised primarily of products for public or private cloud environments and enterprise customers. Through the Client end market, Spinco provides its OEM and channel customers a broad array of high-performance flash solutions across personal computer, mobile, gaming, automotive, virtual reality headsets, at-home entertainment and industrial spaces. The Consumer end market is highlighted by Spinco's broad range of retail and otherend-user products, which capitalize on the strength of Spinco's product brand recognition and vast points of presence around the world.

**Non-GAAP Financial Measures—Adjusted EBITDA**

| | Three months ended | |
|---|---|---|
| **(in millions; unaudited)** | **September 27, 2024** | **September 29, 2023** |
| **Net Income (Loss) (GAAP)** | $ 211 | $ (518) |
| Income tax expense | 56 | 24 |
| Interest and other income (expense), net | 24 | 7 |
| Depreciation and amortization | 54 | 57 |
| **EBITDA (6)** | 345 | (430) |
| Stock-based compensation expense (1) | 41 | 40 |
| Employee termination, asset impairment and other (2) | 2 | (59) |
| Strategic review (3) | — | 10 |
| Business separation costs (4) | 20 | — |
| Other (5) | — | 1 |
| **Adjusted EBITDA (non-GAAP) (7)** | $ 408 | $ (438) |

(1) Because of the variety of equity awards used by companies, the varying methodologies for determining stock-based compensation expense, the subjective assumptions involved in those determinations and the volatility in valuations that can be driven by market conditions outside Spinco's control, Spinco believes excluding stock-based compensation expense enhances the ability of management and investors to understand and assess the underlying performance of its business over time and compare it against Spinco's peers, a majority of whom also exclude stock-based compensation expense from their non-GAAP results.

(2) Represents employee terminations and/or restructuring of operations in order to realign Spinco's operations with anticipated market demand or to achieve cost synergies from the integration of acquisitions, and charges from the impairment of intangible assets and other long-lived assets. In addition, Spinco records

credits related to gains upon sale of property due to restructuring or reversals of charges recorded in prior periods and has taken actions to reduce the amount of capital invested in facilities, including the sale-leaseback of facilities. These charges or credits are inconsistent in amount and frequency, and Spinco believes they are not indicative of the underlying performance of its business.

(3) Represents third-party spending for consulting, accounting, tax and legal advisor expenses associated with the Spinco's review of potential strategic alternatives aimed at further optimizing the long-term value for stockholders. Spinco believes these charges do not reflect Spinco's operating results and that they are not indicative of the underlying performance of its business.

(4) Represents tax stamp duties and third-party spending for consulting, accounting, tax and legal advisor expenses associated with the operational separation of Spinco from WDC to create an independent public company including legal entity restructuring and administrative fees to establish the new legal structure of Spinco. Spinco believes these charges do not reflect Spinco's operating results and that they are not indicative of the underlying performance of the business.

(5) Represents charges or gains that Spinco believes are not a part of the ongoing operation of its business. The resulting expense or benefit is inconsistent in amount and frequency.

(6) EBITDA is defined as net income before income tax expense, interest and other income (expense), net, and depreciation and amortization.

(7) Adjusted EBITDA is defined as EBITDA (as defined above), adjusted to exclude certain expenses, gains and losses that Spinco believes are not indicative of its core operating results or because these exclusions are consistent with the financial models and estimates published by many analysts who follow Spinco and its peers.

**Non-GAAP Financial Measures—Adjusted EBITDA**

| | Years ended | | |
|---|---|---|---|
| **(in millions; unaudited)** | **June 28, 2024** | **June 30, 2023** | **July 1, 2022** |
| **Net Income (Loss) (GAAP)** | $ (672) | $ (2,143) | $ 1,064 |
| Income tax expense | 169 | 141 | 170 |
| Interest and other income (expense), net | 35 | (33) | (34) |
| Depreciation and amortization | 224 | 448 | 525 |
| **EBITDA (10)** | (244) | (1,587) | 1,725 |
| Stock-based compensation expense (1) | 149 | 165 | 171 |
| Contamination related charges (2) | — | — | 207 |
| Recoveries from a power outage incident (3) | — | — | (7) |
| Recoveries of contamination related charges (4) | (36) | — | — |
| Employee termination, asset impairment and other (5) | (40) | 69 | 16 |
| Goodwill impairment (6) | — | 671 | — |
| Strategic review (7) | 20 | 20 | — |
| Business separation costs (8) | 64 | — | — |
| Other (9) | — | 1 | 3 |
| **Adjusted EBITDA (non-GAAP) (11)** | $ (87) | $ (661) | $ 2,115 |

(1) Because of the variety of equity awards used by companies, the varying methodologies for determining stock-based compensation expense, the subjective assumptions involved in those determinations and the volatility in valuations that can be driven by market conditions outside Spinco's control, Spinco believes excluding stock-based compensation expense enhances the ability of management and investors to understand and assess the underlying performance of its business over time and compare it against Spinco's peers, a majority of whom also exclude stock-based compensation expense from their non-GAAP results.

(2) Represents scrapped inventory and rework costs, decontamination and other costs needed to restore the facilities to normal capacity and under-absorbed overhead costs, which were expensed as incurred.
(3) Represents recoveries received for the losses associated with the repair of damaged tools and thewrite-off of damaged inventory and unabsorbed manufacturing overhead costs due to the power outage incident in 2019.
(4) Represents insurance recoveries received for losses incurred due to a contamination incident in 2022, which primarily consisted of scrapped inventory and rework costs, decontamination and other costs needed to restore facilities to normal capacity.
(5) Represents employee terminations and/or restructuring of operations in order to realign Spinco's operations with anticipated market demand or to achieve cost synergies from the integration of acquisitions, and charges from the impairment of intangible assets and other long-lived assets. In addition, Spinco records credits related to gains upon sale of property due to restructuring or reversals of charges recorded in prior periods and has taken actions to reduce the amount of capital invested in facilities, including the sale-leaseback of facilities. These charges or credits are inconsistent in amount and frequency, and Spinco believes they are not indicative of the underlying performance of its business.
(6) Represents goodwill impairment charges due to changes in industry and macroeconomic conditions in the fiscal year ended June 30, 2023.
(7) Represents third-party spending for consulting, accounting, tax and legal advisor expenses associated with Spinco's ongoing review of potential strategic alternatives aimed at further optimizing the long-term value for stockholders. Spinco believes these charges do not reflect Spinco's operating results and that they are not indicative of the underlying performance of its business.
(8) Represents tax stamp duties and third-party spending for consulting, accounting, tax and legal advisor expenses associated with the operational separation of Spinco from WDC to create an independent public company including legal entity restructuring and administrative fees to establish the new legal structure of Spinco. Spinco believes these charges do not reflect Spinco's operating results and that they are not indicative of the underlying performance of the business.
(9) Represents charges or gains that Spinco believes are not a part of the ongoing operation of its business. The resulting expense or benefit is inconsistent in amount and frequency.
(10) EBITDA is defined as net income before income tax expense, interest and other income (expense), net, and depreciation and amortization.
(11) Adjusted EBITDA is defined as EBITDA (as defined above), adjusted to exclude certain expenses, gains and losses that Spinco believes are not indicative of its core operating results or because these exclusions are consistent with the financial models and estimates published by many analysts who follow Spinco and its peers.

**Reconciliation of GAAP to Non-GAAP Financial Measures**
**(in millions; unaudited)**

| | Three months ended | |
|---|---|---|
| | September 27, 2024 | September 29, 2023 |
| **GAAP gross profit** | $ 726 | $ (188) |
| Stock-based compensation expense | 6 | 5 |
| **Non-GAAP gross profit** | $ 732 | $ (183) |
| **GAAP operating expenses** | $ 435 | $ 299 |
| Stock-based compensation expense | (35) | (35) |
| Employee termination, asset impairment and other | (2) | 59 |
| Business separation costs | (20) | — |
| Strategic review | — | (10) |
| Other | — | (1) |
| **Non-GAAP operating expenses** | $ 378 | $ 312 |
| **GAAP operating income (loss)** | $ 291 | $ (487) |
| Gross profit adjustments | 6 | 5 |
| Operating expense adjustments | 57 | (13) |
| **Non-GAAP operating income (loss)** | $ 354 | $ (495) |
| **GAAP interest and other income (expense), net** | $ (24) | $ (7) |
| Interest and other income (expense), net adjustments | — | — |
| **Non-GAAP interest and other income (expense), net** | $ (24) | $ (7) |
| **GAAP income tax expense** | $ 56 | $ 24 |
| Income tax adjustments | 11 | (11) |
| **Non-GAAP income tax expense** | $ 67 | $ 13 |

**Reconciliation of GAAP to Non-GAAP Financial Measures**
**(in millions; unaudited)**

| | Years ended | | |
|---|---|---|---|
| | June 28, 2024 | June 30, 2023 | July 1, 2022 |
| **GAAP gross profit** | $ 1,072 | $ 430 | $ 3,244 |
| Stock-based compensation expense | 20 | 19 | 18 |
| Amortization of acquired intangible assets | — | — | 64 |
| Contamination related charges | — | — | 207 |
| Recoveries from a power outage incident | — | — | (7) |
| Recoveries of contamination related charges | (36) | — | — |
| **Non-GAAP gross profit** | $ 1,056 | $ 449 | $ 3,526 |
| **GAAP operating expenses** | $ 1,540 | $ 2,465 | $ 2,044 |
| Stock-based compensation expense | (129) | (146) | (153) |
| Amortization of acquired intangible assets | — | (133) | (155) |
| Employee termination, asset impairment and other | 40 | (69) | (16) |
| Goodwill impairment | — | (671) | — |
| Business separation costs | (64) | — | — |
| Strategic review | (20) | (20) | — |
| Other | (2) | (1) | (3) |
| **Non-GAAP operating expenses** | $ 1,365 | $ 1,425 | $ 1,717 |
| **GAAP operating income (loss)** | $ (468) | $ (2,035) | $ 1,200 |
| Gross profit adjustments | (16) | 19 | 282 |
| Operating expense adjustments | 175 | 1,040 | 327 |
| **Non-GAAP operating income (loss)** | $ (309) | $ (976) | $ 1,809 |
| **GAAP interest and other income (expense), net** | $ (35) | $ 33 | $ 34 |
| Interest and other income (expense), net adjustments | (2) | — | — |
| **Non-GAAP interest and other income, net** | $ (37) | $ 33 | $ 34 |
| **GAAP income tax expense** | $ 169 | $ 141 | $ 170 |
| Income tax adjustments | (13) | 140 | 76 |
| **Non-GAAP income tax expense** | $ 156 | $ 281 | $ 246 |

**Reconciliation of GAAP to Non-GAAP Financial Measures**
**(in millions, except per share amounts; unaudited)**

| | Three months ended | |
|---|---|---|
| | September 27, 2024 | September 29, 2023 |
| **GAAP net income (loss)** | $ 211 | $ (518) |
| Stock-based compensation expense | 41 | 40 |
| Employee termination, asset impairment and other | 2 | (59) |
| Strategic review | — | 10 |
| Business separation costs | 20 | — |
| Other | — | 1 |
| Income tax adjustments | (11) | 11 |
| **Non-GAAP net income (loss)** | **$ 263** | **$ (515)** |
| **Cash flows** | | |
| Cash flow provided by (used in) operating activities | $ (131) | $ (169) |
| Purchases of property, plant and equipment, net | (67) | 110 |
| **Free cash flow** | (198) | (59) |
| Activity related to Flash Ventures, net | 48 | 13 |
| **Adjusted free cash flow** | **$ (150)** | **$ (46)** |

**Reconciliation of GAAP to Non-GAAP Financial Measures**
**(in millions, except per share amounts; unaudited)**

| | Years ended | | |
|---|---|---|---|
| | June 28, 2024 | June 30, 2023 | July 1, 2022 |
| **GAAP net income (loss)** | $ (672) | $ (2,143) | $ 1,064 |
| Stock-based compensation expense | 149 | 165 | 171 |
| Amortization of acquired intangible assets | — | 133 | 219 |
| Contamination related charges | — | — | 207 |
| Recoveries from a power outage incident | — | — | (7) |
| Recoveries of contamination related charges | (36) | — | — |
| Employee termination, asset impairment and other | (40) | 69 | 16 |
| Goodwill impairment | — | 671 | — |
| Strategic review | 20 | 20 | — |
| Business separation costs | 64 | — | — |
| Other | — | 1 | 3 |
| Income tax adjustments | 13 | (140) | (76) |
| **Non-GAAP net income (loss)** | **$ (502)** | **$ (1,224)** | **$ 1,597** |
| **Cash flows** | | | |
| Cash flow provided by (used in) operating activities | $ (309) | $ (713) | $ 1,151 |
| Purchases of property, plant and equipment, net | (29) | (219) | (410) |
| **Free cash flow** | (338) | (932) | 741 |
| Activity related to Flash Ventures, net | 239 | 14 | (91) |
| **Adjusted free cash flow** | **$ (99)** | **$ (918)** | **$ 650** |

To supplement the condensed combined financial statements presented in accordance with GAAP, the table above sets forth non-GAAP gross profit; non-GAAP operating expenses; non-GAAP operating income (loss); non-GAAP interest and other income (expense), net; non-GAAP income tax expense; non-GAAP net income (loss); non-GAAP net income (loss) attributable to common shareholders; free cash flow and adjusted free cash flow ("non-GAAP measures"). These non-GAAP measures are not in accordance with, or an alternative for, measures prepared in accordance with GAAP and may be different from non-GAAP measures used by other companies. Spinco believes the presentation of these non-GAAP measures, when shown in conjunction with the corresponding GAAP measures, provides useful information to investors for measuring Spinco's earnings performance and comparing it against prior periods. Specifically, Spinco believes these non-GAAP measures provide useful information to both management and investors as they exclude certain expenses, gains and losses that Spinco believes are not indicative of its core operating results or because they are consistent with the financial models and estimates published by many analysts who follow Spinco and its peers. As discussed further below, these non-GAAP measures exclude, as applicable, stock-based compensation expense, amortization of acquired intangible assets, contamination related charges, recoveries from a power outage incident, recoveries of contamination related charges, employee termination, asset impairment and other, goodwill impairment, expenses related to our strategic review, business separation costs, other adjustments and income tax adjustments, and Spinco believes these measures along with the related reconciliations to the GAAP measures provide additional detail and comparability for assessing Spinco's results. These non-GAAP measures are some of the primary indicators management uses for assessing Spinco's performance and planning and forecasting future periods. These measures should be considered in addition to results prepared in accordance with GAAP, but should not be considered a substitute for, or superior to, GAAP results.

As described above, Spinco excludes the following items from itsnon-GAAP measures:

Stock-based compensation expense. Because of the variety of equity awards used by companies, the varying methodologies for determining stock-based compensation expense, the subjective assumptions involved in those determinations and the volatility in valuations that can be driven by market conditions outside Spinco's control, Spinco believes excluding stock-based compensation expense enhances the ability of management and investors to understand and assess the underlying performance of its business over time and compare it against Spinco's peers, a majority of whom also exclude stock-based compensation expense from their non-GAAP results.

Amortization of acquired intangible assets. Spinco incurs expenses from the amortization of acquired intangible assets over their economic lives. Such charges are significantly impacted by the timing and magnitude of Spinco's acquisitions and any related impairment charges.

Contamination related charges. In February 2022, a contamination of certain materials used in Spinco's manufacturing process occurred and affected production operation at the Flash Ventures manufacturing facilities in Yokkaichi and Kitakami, Japan. The contamination resulted in scrapped inventory and rework costs, decontamination and other costs needed to restore the facilities to normal capacity and under absorption of overhead costs, which are expensed as incurred. These charges are inconsistent in amount and frequency, and Spinco believes these charges are not part of the ongoing production operation of its business.

Recoveries from a power outage incident. In June 2019, an unexpected power outage incident occurred at the Flash Ventures manufacturing facilities in Yokkaichi, Japan. The power outage incident resulted in costs associated with the repair of damaged tools and the write-off of damaged inventory and unabsorbed manufacturing overhead costs which are expensed as incurred. During fiscal year 2022, Spinco received recoveries for these losses from other parties. The recoveries are inconsistent in amount and frequency, and Spinco believes they are not part of the ongoing production operation of its business.

Recoveries of contamination related charges. During fiscal year 2024 Spinco received insurance recoveries for losses from contamination-related charges. The recoveries, which primarily consisted of compensation for scrapped inventory, rework costs, decontamination and other expenses needed to restore the facilities to normal capacity. The recoveries are inconsistent in amount and frequency, and Spinco believes they are not part of the ongoing production operation of its business.

Employee termination, asset impairment and other. From time to time, in order to realign Spinco's operations with anticipated market demand or to achieve cost synergies from the integration of acquisitions, Spinco may terminate employees and/or restructure its operations. From time to time, Spinco may also incur charges from the impairment of intangible assets and other long-lived assets. In addition, Spinco may record credits related to gains upon sale of property due to restructuring or reversals of charges recorded in prior periods as well as taking actions to reduce the amount of capital invested in facilities, including the sale-leaseback of facilities. These charges or credits are inconsistent in amount and frequency, and Spinco believes they are not indicative of the underlying performance of its business.

Goodwill impairment. In fiscal year 2023, certain macroeconomic conditions caused Spinco to perform a quantitative impairment analysis. Management determined that the carrying value of the reporting unit exceeded its fair value, resulting in the recognition of a $671 million impairment charge for the fiscal year ended June 30, 2023. Spinco believes this charge does not reflect Spinco's operating results and is not indicative of the underlying performance of the business.

Strategic review. Spinco incurred expenses associated with its review of potential strategic alternatives aimed at further optimizing the long-term value for stockholders. Spinco believes these charges do not reflect Spinco's operating results and that they are not indicative of the underlying performance of its business.

Business separation costs. On October 30, 2023, WDC announced that its Board of Directors had completed its strategic review of its business and authorized WDC to pursue a plan to separate its HDD and Flash business units to create two independent, public companies. As a result of the plan, Spinco has incurred separation and transition costs and expects to incur such costs through the completion of the separation of the businesses. The separation and transition costs are recorded within Business separation costs in the Condensed Combined Statements of Operations. Spinco believes these charges do not reflect Spinco's operating results and that they are not indicative of the underlying results of its business.

Other. From time to time, Spinco incurs charges or gains that Spinco believes are not a part of the ongoing operation of its business. The resulting expense or benefit is inconsistent in amount and frequency.

Income tax adjustments. Income tax adjustments include the difference between income taxes based on a forecasted annualnon-GAAP tax rate and a forecasted annual GAAP tax rate as a result of the timing of certain non-GAAP pre-tax adjustments. The income tax adjustments also include adjustments to estimates related to the current status of the rules and regulations governing the transition to the Tax Cuts and Jobs Act and the re-measurement of certain unrecognized tax benefits primarily related to tax positions taken in prior quarters, including interest. These adjustments are excluded because Spinco believes that they are not indicative of the underlying performance of its ongoing business.

**Quarterly Financial Information**

The following tables set forth selected unaudited quarterly financial information for the fiscal quarters ended September 27, 2024, June 28, 2024, March 29, 2024, December 29, 2023, September 29, 2023, June 30, 2023, March 31, 2023, December 30, 2022, and September 30, 2022. The supplemental information below includes condensed combined balance sheets, condensed combined statements of operations and condensed combined cash flows. The information for each of these quarters has been prepared on the same basis as the unaudited condensed combined financial statements and the combined financial statements. Our historical results are not necessarily indicative of the results that should be expected in any future period. Refer to the tables below for quarterly results:

**The Flash Business of Western Digital Corporation**

**QUARTERLY CONDENSED COMBINED BALANCE SHEETS**

*(in millions)*

| | September 27, 2024 | June 28, 2024 | March 29, 2024 | December 29, 2023 | September 29, 2023 | June 30, 2023 | March 31, 2023 | December 30, 2022 | September 30, 2022 |
|---|---|---|---|---|---|---|---|---|---|
| **ASSETS** | | | | | | | | | |
| Current assets: | | | | | | | | | |
| Cash and cash equivalents | $ 322 | $ 328 | $ 377 | $ 425 | $ 202 | $ 292 | $ 245 | $ 158 | $ 229 |
| Accounts receivable, net | 1,037 | 935 | 814 | 684 | 630 | 539 | 305 | 876 | 847 |
| Inventories | 2,069 | 1,955 | 1,730 | 1,612 | 1,876 | 2,269 | 2,448 | 2,337 | 2,205 |
| Income tax receivable | 7 | 7 | 4 | 1 | 3 | 3 | 76 | 79 | 9 |
| Other current assets | 300 | 221 | 218 | 240 | 229 | 234 | 260 | 289 | 231 |
| Notes due from Parent | 1 | 102 | 133 | 20 | 86 | 63 | 441 | 500 | 527 |
| Assets held for sale | 652 | — | — | — | — | — | — | — | — |
| Total current assets | 4,388 | 3,548 | 3,276 | 2,982 | 3,026 | 3,400 | 3,775 | 4,239 | 4,048 |
| Property, plant and equipment, net | 552 | 791 | 788 | 803 | 832 | 933 | 961 | 990 | 1,034 |
| Notes receivable and investments in Flash Ventures | 1,066 | 1,001 | 1,091 | 1,350 | 1,351 | 1,411 | 1,498 | 1,478 | 1,319 |
| Goodwill | 6,932 | 7,207 | 7,209 | 7,212 | 7,210 | 7,212 | 7,216 | 7,216 | 7,361 |
| Other intangibles, net | — | — | — | — | — | — | 17 | 55 | 94 |
| Deferred tax assets | 56 | 96 | 71 | 73 | 76 | 76 | 76 | 76 | 76 |
| Income tax receivable, non-current | 12 | 11 | 9 | 9 | 10 | 9 | 9 | 9 | 7 |
| Other non-current assets | 884 | 852 | 884 | 909 | 929 | 779 | 770 | 729 | 685 |
| Total assets | $ 13,890 | $13,506 | $ 13,328 | $ 13,338 | $ 13,434 | $13,820 | $ 14,322 | $ 14,792 | $ 14,624 |
| **LIABILITIES AND EQUITY** | | | | | | | | | |
| Current liabilities: | | | | | | | | | |
| Accounts payable | $ 297 | $ 357 | $ 386 | $ 396 | $ 410 | $ 334 | $ 322 | $ 340 | $ 392 |
| Accounts payable to related parties | 352 | 313 | 310 | 250 | 277 | 292 | 260 | 363 | 290 |
| Accrued expenses | 236 | 424 | 381 | 387 | 467 | 483 | 357 | 443 | 644 |
| Income taxes payable | 12 | 20 | 7 | 15 | 16 | 48 | 21 | 17 | 55 |
| Accrued compensation | 169 | 195 | 140 | 105 | 100 | 98 | 101 | 101 | 127 |
| Notes due to Parent | 296 | 814 | 823 | 926 | 887 | 919 | 926 | 852 | 825 |
| Liabilities held for sale | 110 | — | — | — | — | — | — | — | — |
| Total current liabilities | 1,472 | 2,123 | 2,047 | 2,079 | 2,157 | 2,174 | 1,987 | 2,116 | 2,333 |
| Deferred tax liabilities | 18 | 15 | 6 | 22 | 14 | 28 | 45 | 60 | 60 |
| Other liabilities | 274 | 286 | 336 | 341 | 338 | 179 | 184 | 189 | 189 |
| Total liabilities | 1,764 | 2,424 | 2,389 | 2,442 | 2,509 | 2,381 | 2,216 | 2,365 | 2,582 |
| Commitments and contingencies | | | | | | | | | |
| Parent company net investment: | | | | | | | | | |
| Parent company net investment | 12,369 | 11,534 | 11,339 | 11,211 | 11,323 | 11,782 | 12,327 | 12,668 | 12,539 |
| Accumulated other comprehensive loss | (243) | (452) | (400) | (315) | (398) | (343) | (221) | (241) | (497) |
| Total Parent company net investment | 12,126 | 11,082 | 10,939 | 10,896 | 10,925 | 11,439 | 12,106 | 12,427 | 12,042 |
| Total liabilities and Parent company net investment | $ 13,890 | $13,506 | $ 13,328 | $ 13,338 | $ 13,434 | $13,820 | $ 14,322 | $ 14,792 | $ 14,624 |

**The Flash Business of Western Digital Corporation**

**QUARTERLY CONDENSED COMBINED STATEMENTS OF OPERATIONS**

*(in millions)*

| | Three Months Ended | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| | September 27, 2024 | June 28, 2024 | March 29, 2024 | December 29, 2023 | September 29, 2023 | June 30, 2023 | March 31, 2023 | December 30, 2022 | September 30, 2022 |
| Revenue, net | $ 1,883 | $ 1,760 | $ 1,705 | $ 1,665 | $ 1,533 | $ 1,399 | $ 1,308 | $ 1,657 | $ 1,722 |
| Cost of revenue | 1,157 | 1,124 | 1,242 | 1,504 | 1,721 | 1,551 | 1,378 | 1,422 | 1,305 |
| Gross profit (loss) | 726 | 636 | 463 | 161 | (188) | (152) | (70) | 235 | 417 |
| Operating expenses: | | | | | | | | | |
| Research and development | 283 | 298 | 277 | 246 | 240 | 266 | 278 | 302 | 321 |
| Selling, general and administrative | 130 | 117 | 107 | 113 | 118 | 128 | 141 | 145 | 144 |
| Employee termination, asset impairment and other charges | 2 | 4 | 2 | 13 | (59) | 36 | 9 | 18 | 6 |
| Business separation costs | 20 | 18 | 12 | 34 | — | — | — | — | |
| Goodwill Impairment charges | — | — | — | — | — | — | — | 149 | 522 |
| Total operating expenses | 435 | 437 | 398 | 406 | 299 | 430 | 428 | 614 | 993 |
| Operating income (loss) | 291 | 199 | 65 | (245) | (487) | (582) | (498) | (379) | (576) |
| Interest and other income (expense): | | | | | | | | | |
| Interest income | 3 | 3 | 3 | 3 | 3 | 7 | 6 | 5 | 3 |
| Interest expense | (2) | (9) | (9) | (11) | (11) | (11) | (8) | (6) | (6) |
| Other income (expense), net | (25) | 4 | (5) | (7) | 1 | 6 | 4 | 16 | 17 |
| Total interest and other income (expense), net | (24) | (2) | (11) | (15) | (7) | 2 | 2 | 15 | 14 |
| Income (loss) before taxes | 267 | 197 | 54 | (260) | (494) | (580) | (496) | (364) | (562) |
| Income tax expense | 56 | 77 | 27 | 41 | 24 | 25 | 37 | 55 | 24 |
| Net income (loss) | $ 211 | $ 120 | $ 27 | $ (301) | $ (518) | $ (605) | $ (533) | $ (419) | $ (586) |

***Quarterly Revenue Trends***

For the quarters ended December 30, 2022, March 31, 2023, and June 30, 2023, there was a decline in revenue due to macroeconomic factors including inflation, higher interest rates and recession concerns, which softened demand for our products, leading to reduced shipments and pricing challenges. In contrast, the quarters ended September 29, 2023, December 29, 2023, March 29, 2024, June 28, 2024, and September 27, 2024 showed significant growth compared to the comparable quarters in the prior year, driven primarily by improved supply and demand dynamics and better pricing, which positively impacted our revenue.

***Quarterly Operating Expense Trends***

*Research and Development.* The fluctuations in research and development are largely a result of normal fluctuations in compensation and benefits, development costs, and depreciation and amortization.

*Selling, general and administrative.* For the quarters ended September 30, 2022, through March 29, 2024, selling, general and administrative expenses trended downward primarily driven by reductions in intangible amortization expense, compensation and benefits and materials costs. The driver for the increase in selling, general, and administrative expenses in the three months ended June 28, 2024 and September 27, 2024, was primarily higher variable compensation, increased headcount and increased legal fees.

*Employee termination, asset impairment and other charges.* For the quarter ended June 30, 2023, the increase in employee termination, asset impairment and other expenses was driven by increased restructuring initiatives to adjust our cost structure to align with the demand environment. The fluctuation in employee termination, asset

impairment and other charges during the quarter ended September 29, 2023 was primarily driven by a $60 million gain on the sale-leaseback of our Milpitas, California facility.

*Business separation costs.* The charges related to business separation costs for the quarters ended September 29, 2023, December 29, 2023, March 29, 2024, and June 28, 2024 relate to outside service fees to support the planned separation of Spinco from WDC.

*Goodwill Impairment charges.* For the quarters ended September 30, 2022, and December 30, 2022, we determined that the carrying value of Spinco's single reporting unit exceeded its fair value, resulting in the recognition of impairment charges of $522 million and $149 million, respectively.

**The Flash Business of Western Digital Corporation**
**QUARTERLY CONDENSED COMBINED CASH FLOWS**
*(in millions)*

| | Three Months Ended | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| | September 27, 2024 | June 28, 2024 | March 29, 2024 | December 29, 2023 | September 29, 2023 | June 30, 2023 | March 31, 2023 | December 30, 2022 | September 30, 2022 |
| Net cash provided by (used in) operating activities | $ (131) | $ (130) | $ (12) | $ 2 | $ (169) | $ (301) | $ (122) | $ (525) | $ 235 |
| Net cash provided by (used in) investing activities | (19) | (3) | 100 | (9) | 122 | (60) | (71) | (82) | 24 |
| Net cash provided by (used in) financing activities | 214 | 85 | (134) | 228 | (43) | 409 | 280 | 535 | (364) |
| Total cash flows | $ 64 | $ (48) | $ (46) | $ 221 | $ (90) | $ 48 | $ 87 | $ (72) | $ (105) |

**Financial condition, liquidity and capital resources**

The following table summarizes our statements of cash flows of September 27, 2024 and September 29, 2023:

| | September 27, 2024 | September 29, 2023 |
|---|---|---|
| | *(in millions)* | |
| Net cash provided by (used in): | | |
| Operating Activities | $ (131) | $ (169) |
| Investing Activities | (19) | 122 |
| Financing Activities | 214 | (43) |
| Effect of exchange rate changes on cash | 1 | — |
| Changes in cash and cash equivalents classified as assets held for sale | (71) | — |
| Net increase (decrease) in cash and cash equivalents | $ (6) | $ (90) |

As noted previously, we have been scaling back on capital expenditures, consolidating production lines and reducing bit growth to align with market demand. Net cash provided by investing activities in the three months ended September 29, 2023 includes $134 million in proceeds associated with the sale-leaseback of our Milpitas, California facility while there were no proceeds from sale of facilities or equipment for the three months ended September 27, 2024. We continue to be cautious in our capital investment and expect our cash capital expenditures in 2025 to be higher than in 2024 but remain below 2023 expenditures.

We believe our cash, and cash equivalents, as discussed in "Key Developments—Financing Activities" above, will be sufficient to meet our working capital needs for at least the next twelve months and for the foreseeable future thereafter, as we navigate the current market downturn before returning to profitable operations and positive cash flows when the market normalizes. We believe we can also access the various capital markets to further supplement our liquidity position if necessary.

A total of $314 million and $321 million, of our cash and cash equivalents were held outside of the U.S. as of September 27, 2024, and June 28, 2024, respectively. There are no material tax consequences that were not previously accrued for on the repatriation of this cash.

***Operating Activities***

Net cash used in operating activities primarily consists of net income or loss, adjusted fomon-cash charges, plus or minus changes in operating assets and liabilities. Net cash used as a result of changes in operating assets and liabilities was $344 million in the three months ended September 27, 2024, as compared to $285 million net cash provided in the three months ended September 29, 2023, reflecting an increase in the volume of our business, as discussed above.

Changes in our operating assets and liabilities are largely affected by our working capital requirements, which are dependent on the volume of our business and the effective management of our cash conversion cycle as well as timing of payments for taxes. Our cash conversion cycle measures how quickly we can convert our products into cash through sales. The cash conversion cycles were as follows:

| | September 27, 2024 | September 29, 2023 |
|---|---|---|
| | *(in days)* | |
| Days sales outstanding | 50 | 33 |
| Days in inventory | 163 | 152 |
| Days payables outstanding | (51) | (56) |
| Cash Conversion cycle | 162 | 129 |

Changes in days sales outstanding, or DSO, are generally due to the timing of shipments. Changes in days in inventory, or DIO, are generally related to the timing of inventory builds. Changes in days payables outstanding, or DPO, are generally related to production volume and the timing of purchases during the period. From time to time, we modify the timing of payments to our vendors. We make modifications primarily to manage our vendor relationships and to manage our cash flows, including our cash balances. Generally, we make the payment term modifications through negotiations with our vendors or by granting to, or receiving from, our vendors' payment term accommodations.

For the three months ended September 27, 2024, DSO increased by 17 days over the three months ended September 29, 2023, reflecting lower accounts receivable factoring and the timing of shipments and customer collections. During the three months ended September 27, 2024, DIO increased by 11 days over the three months ended September 29, 2023, primarily reflecting higher production volume in the current period. DPO decreased by 5 days over the comparable period in the prior year primarily due to routine variations in the timing of purchases and payments during the period.

***Investing Activities***

Net cash used in investing activities in the three months ended September 27, 2024 primarily consisted of $67 million in purchases of property, plant and equipment, partially offset by $48 million of net notes receivable proceeds from activity related to Flash Ventures. Net cash provided by investing activities in the three months

ended September 29, 2023 primarily consisted of $134 million proceeds from the sale of property, plant and equipment, which includes the proceeds from the sale-leaseback of our Milpitas, California facility and $13 million in net proceeds from activity related to Flash Ventures, partially offset by $24 million in purchases of property, plant and equipment.

***Financing Activities***

Net cash provided by financing activities in the three months ended September 27, 2024 primarily consisted of $189 million transferred from Parent and $101 million in proceeds from notes due from Parent, offset by $76 million in net repayments on notes due to Parent. Net cash used in financing activities in the three months ended September 29, 2023 primarily consisted of $84 million in origination of notes due from Parent and $30 million in net repayments on notes due to Parent, partially offset by $71 million transferred from Parent.

The following table summarizes our statements of cash flows as of 2024, 2023 and 2022:

| | 2024 | 2023 | 2022 |
|---|---|---|---|
| | | *(in millions)* | |
| Net cash provided by (used in): | | | |
| Operating Activities | $(309) | $(713) | $1,151 |
| Investing Activities | 210 | (189) | (472) |
| Financing Activities | 136 | 860 | (650) |
| Effect of exchange rate changes on cash | (1) | (1) | (2) |
| Net increase (decrease) in cash and cash equivalents | $ 36 | $ (43) | $ 27 |

As noted previously, we have been scaling back on capital expenditures, consolidating production lines and reducing bit growth to align with market demand. We reduced our portion of the capital expenditures by Flash Ventures for its operations to approximately $773 million in 2024 from approximately $1.4 billion in 2023. After consideration of the Flash Ventures' lease financing of its capital expenditures and net operating cash flow, we reduced our net cash used for our purchases of property, plant and equipment and net activity in notes receivable relating to Flash Ventures $210 million in 2024, as compared to cash used of $205 million in 2023. We continue to be cautious in our capital investment and expect our cash capital expenditures in 2025 to remain below 2023 expenditures.

We believe our cash, and cash equivalents, as discussed in "Key Developments—Financing Activities" above, will be sufficient to meet our working capital needs for at least the next twelve months and for the foreseeable future thereafter, as we navigate the current market downturn before returning to profitable operations and positive cash flows when the market normalizes. We believe we can also access the various capital markets to further supplement our liquidity position if necessary.

A total of $321 million, $286 million and $332 million of our cash and cash equivalents were held outside of the U.S. as of June 28, 2024, June 30, 2023, and July 1, 2022, respectively. There are no material tax consequences that were not previously accrued for on the repatriation of this cash.

***Operating Activities***

Net cash provided by or used in operating activities primarily consists of net income or loss, adjusted fonon-cash charges, plus or minus changes in operating assets and liabilities. Net cash used as a result of changes in operating assets and liabilities was $86 million for 2024, as compared to $197 million net cash provided in 2023, which reflects the reduction in the volume of our business. Comparably, the net cash provided by changes in operating assets and liabilities was $197 million for 2023, compared to $600 million net cash used in 2022,

which reflects the increase in the volume of our business. Changes in our operating assets and liabilities are largely affected by our working capital requirements, which are dependent on the effective management of our cash conversion cycle as well as timing of payments for taxes. Our cash conversion cycle measures how quickly we can convert our products into cash through sales. At the end of the respective fourth quarters, the cash conversion cycles were as follows:

| | 2024 | 2023 | 2022 |
|---|---|---|---|
| | | *(in days)* | |
| Days sales outstanding | 56 | 35 | 49 |
| Days in inventory | 103 | 134 | 117 |
| Days payables outstanding | (35) | (37) | (46) |
| Cash conversion cycle | 124 | 132 | 120 |

Changes in days sales outstanding, or DSO, are generally due to the timing of shipments. Changes in days in inventory, or DIO, are generally related to the timing of inventory builds. Changes in days payables outstanding, or DPO, are generally related to production volume and the timing of purchases during the period. From time to time, we modify the timing of payments to our vendors. We make modifications primarily to manage our vendor relationships and to manage our cash flows, including our cash balances. Generally, we make the payment term modifications through negotiations with our vendors or by granting to, or receiving from, our vendors' payment term accommodations.

In 2024, DSO increased by 21 days over 2023, reflecting lower accounts receivable factoring and the timing of shipments and customer collections. In 2024, DIO decreased by 31 days over 2023, primarily reflecting an increase in products shipped. In 2024, DPO decreased by 2 days over 2023, primarily due to reductions in production volume and capital expenditures as well as routine variations in the timing of purchases and payments during the period.

In 2023, DSO decreased by 14 days over 2022, reflecting the increase in accounts receivable factoring. In 2023, DIO increased by 17 days over 2022, primarily reflecting a decline in products shipped in light of the market environment. In 2023, DPO decreased by 9 days over 2022, primarily due to reductions in production volume and capital expenditures as well as routine variations in the timing of purchases and payments during the period.

***Investing Activities***

Net cash provided by investing activities in 2024 primarily consisted of $239 million of net notes receivable proceeds from (issuance to) Flash Ventures and $137 million of proceeds from the sale of property, plant and equipment, partially offset by $166 million in purchases of property, plant and equipment. Net cash used in investing activities in 2023 primarily consisted of $219 million in purchases of property, plant and equipment, partially offset by a $14 million net decrease in notes receivable issuance to Flash Ventures and $16 million in net proceeds from the sale of strategic investments and other. Net cash used in investing activities in 2022 primarily consisted of $410 million in purchases of property, plant and equipment, and a $91 million net increase in notes receivable issuances to Flash Ventures, offset by $25 million in proceeds from the disposition of business, $3 million in net proceeds from the sale of strategic investments and other, and $1 million in proceeds from the sale of property, plant and equipment.

***Financing Activities***

Net cash provided by financing activities in 2024 primarily consisted of $394 million transferred from Parent and $14 million in proceeds from notes due from Parent, offset by $170 million in origination of notes due from Parent and $102 million in net repayments on notes due to Parent.

Net cash provided in financing activities in 2023 primarily consisted of $676 million transferred from Parent and $216 million in proceeds from notes due from Parent, offset by $32 million in net repayments on notes due to Parent.

Net cash used in financing activities in 2022 primarily consisted of $933 million transferred to Parent, offset by $307 million in proceeds from notes due to Parent and $199 million in net proceeds from notes due from Parent.

***Off-Balance Sheet Arrangements***

Other than the commitments related to Flash Ventures incurred in the normal course of business and certain indemnification provisions (see "Short- and Long-term Liquidity—*Purchase Obligations and Other Commitments*" below), we do not have any other material off-balance sheet financing arrangements or liabilities, guarantee contracts, retained or contingent interests in transferred assets, or any other obligation arising out of a material variable interest in an unconsolidated entity. We do not have any majority-owned subsidiaries that are not included in the Condensed Combined Financial Statements and Combined Financial Statements. Additionally, with the exception of Flash Ventures, joint venture with Unisplendour Corporation Limited and Unissoft (Wuxi) Group Co. Ltd., and the SDSS Venture, we do not have an interest in, or relationships with, any variable interest entities. For additional information regarding our off-balance sheet arrangements, see Note 9, *Related Parties and Related Commitments and Contingencies*, of the Notes to the Condensed Combined Financial Statements and Notes to the Combined Financial Statements.

**Short-and-Long-term Liquidity**

***Material Cash Requirements as of September 27, 2024***

In addition to cash requirements for unrecognized tax benefits foreign exchange contracts, and indemnifications discussed below, and notes due to Parent of $296 million which are expected to be settled on or before the effectiveness of the spin-off and are reflected in current liabilities given the notes are due upon demand, the following is a summary of our known material cash requirements, including those for capital expenditures, as of September 27, 2024:

| | Total | Remaining Nine Months of 2025 | 2-3 Years (2026-2027) | 4-5 Years (2028-2029) | More than 5 Years (Beyond 2029) |
|---|---|---|---|---|---|
| | | | *(in millions)* | | |
| Flash Ventures related commitments[1] | $5,643 | $ 2,281 | $ 2,378 | $ 790 | $ 194 |
| Operating Leases | 295 | 15 | 43 | 38 | 199 |
| Purchase obligations and other commitments | 276 | 35 | 91 | 40 | 110 |
| Total | $6,214 | $ 2,331 | $ 2,512 | $ 868 | $ 503 |

(1) Includes reimbursement for depreciation and lease payments on owned and committed equipment, funding commitments for loans and equity investments and payments for other committed expenses, including research and development and building depreciation. Funding commitments assume no additional operating lease guarantees. Additional operating lease guarantees can reduce funding commitments.

***Flash Ventures***

Flash Ventures sells to, and leases back from, a consortium of financial institutions a portion of its tools and has entered into equipment lease agreements, of which we guarantee half or all of the outstanding obligations under each lease agreement. The leases are subject to customary covenants and cancellation events that relate to Flash Ventures and each of the guarantors. The occurrence of a cancellation event could result in an acceleration of the

lease obligations and a call on our guarantees. As of September 27, 2024, and as of June 28, 2024, we were in compliance with all covenants under these Japanese lease facilities. See Note 9, *Related Parties and Related Commitments and Contingencies*, of the Notes to the Condensed Combined Financial Statements and Notes to the Combined Financial Statements.

***Purchase Obligations and Other Commitments***

In the normal course of business, we enter into purchase orders with suppliers for the purchase of components used to manufacture our products. These purchase orders generally cover forecasted component supplies needed for production during the next quarter, are recorded as a liability upon receipt of the components, and generally may be changed or canceled at any time prior to shipment of the components. We also enter into long-term agreements with suppliers that contain fixed future commitments, which are contingent on certain conditions such as performance, quality and technology of the vendor's components. These arrangements are included under "Purchase obligations and other commitments" in the table above.

***Unrecognized Tax Benefits***

As of September 27, 2024, the liability for unrecognized tax benefits (excluding accrued interest and penalties) was approximately $43 million. Accrued interest and penalties related to unrecognized tax benefits for the three months ended September 27, 2024, were approximately $5 million. Of these amounts, approximately $48 million could result in potential cash payments.

***Mandatory Research and Development Expense Capitalization***

Since the beginning of 2023, the 2017 Act has required us to capitalize and amortize research and development expenses rather than expensing them in the year incurred, which is expected to result in higher cash tax payments in future profitable periods, if not repealed or otherwise modified.

***Foreign Exchange Contracts***

We purchase foreign exchange contracts to hedge the impact of foreign currency fluctuations on certain underlying assets, liabilities and commitments for operating expenses and product costs denominated in foreign currencies. For a description of our current foreign exchange contract commitments, Note 7, *Derivative Instruments and Hedging Activities*, of the Notes to the Condensed Combined Financial Statements and Notes to the Combined Financial Statements.

***Indemnifications***

In the ordinary course of business, we may provide indemnifications of varying scope and terms to customers, vendors, lessors, business partners and other parties with respect to certain matters, including, but not limited to, losses arising out of our breach of agreements, products or services to be provided by us, environmental compliance, or intellectual property infringement claims made by third parties. In addition, we have entered into indemnification agreements with our directors and certain of our officers that will require us, among other things, to indemnify them against certain liabilities that may arise by reason of their status or service as directors or officers. We maintain director and officer insurance, which may cover certain liabilities arising from our obligation to indemnify our directors and officers in certain circumstances.

It is not possible to determine the maximum potential amount under these indemnification agreements due to the limited history of prior indemnification claims and the unique facts and circumstances involved in each particular agreement. Such indemnification agreements may not be subject to maximum loss clauses. Historically, we have not incurred material costs as a result of obligations under these agreements.

**Critical accounting estimates**

We have prepared the accompanying unaudited Condensed Combined Financial Statements and audited Combined Financial Statements in accordance with GAAP. The preparation of the financial statements requires the use of judgments and estimates that affect the reported amounts of revenues, expenses, assets, liabilities and WDC net investment. We have adopted accounting policies and practices that are generally accepted in the industry in which we operate. If these estimates differ significantly from actual results, the impact to the unaudited Condensed Combined Financial Statements and audited Combined Financial Statements may be material.

*Revenue*

We provide distributors and retailers (collectively referred to as "resellers") with limited price protection for inventories held by resellers at the time of published list price reductions. We also provide resellers and OEMs with other sales incentive programs. Spinco records estimated variable consideration related to these items as a reduction to revenue at the time of revenue recognition. We use judgment in our assessment of variable consideration in contracts to be included in the transaction price. We use the expected value method to arrive at the amount of variable consideration. Spinco constrains variable consideration until the likelihood of a significant revenue reversal is not probable and believes that the expected value method is the appropriate estimate of the amount of variable consideration based on the fact that we have a large number of contracts with similar characteristics.

For sales to OEMs, Spinco's methodology for estimating variable consideration is based on the amount of consideration expected to be earned based on the OEMs' volume of purchases from Spinco or other agreed-upon sales incentive programs. For sales to resellers, the methodology for estimating variable consideration is based on several factors, including historical pricing information, current pricing trends and channel inventory levels. Estimating the impact of these factors requires significant judgment and differences between the estimated and actual amounts of variable consideration can be significant.

*Inventories*

We value inventories at the lower of cost or net realizable value, or NRV, with cost determined on afirst-in, first-out basis. We record inventory write-downs of our inventory to lower of cost or net realizable value or for obsolete or excess inventory based on assumptions, which requires significant judgment. The determination of NRV involves estimating the average selling prices less any selling expenses of inventory based on market conditions and customer demand. To estimate the average selling prices and selling expenses of inventory, we review historical sales, future demand, economic conditions, contract prices and other information.

We periodically perform an excess and obsolete analysis of our inventory based on assumptions, which includes changes in business and economic conditions, changes in technology and projected demand of our products. If in any period we anticipate a change in those assumptions to be less favorable than our previous estimates, additional inventory write-downs may be required and could materially and negatively impact our gross margin. If in any period, we can sell inventories that had been written down to a level below the realized selling price in the previous period, higher gross profit would be recognized in that period. Although adjustments to these reserves have typically been immaterial, in fiscal year 2024, we recorded a charge to cost of revenue of $95 million, primarily to reduce component inventory to NRV as a result of a sudden change in demand for certain products.

*Income Taxes*

Income taxes are calculated as if Spinco files tax returns separate from WDC. We account for income taxes under the asset and liability method, which provides that deferred tax assets and liabilities be recognized for

temporary differences between the financial reporting basis and the tax basis of our assets and liabilities and expected benefits of utilizing net operating loss, or NOL, and tax credit carryforwards. We record a valuation allowance when it is more likely than not that the deferred tax assets will not be realized. Each quarter, we evaluate the need for a valuation allowance for our deferred tax assets and we adjust the valuation allowance so that we record net deferred tax assets only to the extent that we conclude it is more likely than not that these deferred tax assets will be realized. The assessment of valuation allowances against our deferred tax assets requires estimations and significant judgment. We continue to assess and adjust valuation allowances based on operating results and market conditions. We account for interest and penalties related to income taxes as a component of the provision for income taxes.

We recognize liabilities for uncertain tax positions based on a two-step process. To the extent a tax position does not meet a more-likely-than-not level of certainty, no benefit is recognized in the financial statements. If a position meets the more-likely-than-not level of certainty, it is recognized in the financial statements at the largest amount that has a greater than 50% likelihood of being realized upon ultimate settlement. Interest and penalties related to unrecognized tax benefits are recognized on liabilities recorded for uncertain tax positions and are recorded in our provision for income taxes. The actual liability for unrealized tax benefits in any such contingency may be materially different from our estimates, which could result in the need to record additional liabilities for unrecognized tax benefits or potentially adjust previously recorded liabilities for unrealized tax benefits and materially affect our operating results.

*Goodwill*

Goodwill is not amortized. Instead, it is tested for impairment on an annual basis or more frequently if events or changes in circumstances indicate that goodwill may be impaired. Spinco performs an annual impairment test as of the beginning of its fourth quarter or sooner if an indicator of impairment exists. We use qualitative factors to determine whether goodwill is more likely than not impaired and whether a quantitative test for impairment is considered necessary. If we conclude from the qualitative assessment that goodwill is more likely than not impaired, we are required to perform a quantitative assessment to determine the amount of impairment. We are required to use judgment when applying the goodwill impairment test, including in the identification of our reporting units. In addition, the estimates used to determine the fair value of each of our reporting unit may change based on results of operations, macroeconomic conditions or other factors. Changes in these estimates could materially affect Spinco's assessment of the fair value and goodwill impairment, which could result in a material charge and adversely affect our results of operations. We have not identified any impairment indicators for our reporting unit as of September 27, 2024 or as of June 28, 2024. We recorded goodwill impairment charges of $671 million for 2023 and recorded no goodwill impairment charges for 2022.

# MANAGEMENT

## Directors and Executive Officers Following the Spin-Off

### *Executive Officers*

Following the spin-off, we will be an independent, publicly traded company. The following table sets forth information regarding individuals who are expected to serve as Spinco's executive officers, including their positions after the spin-off, and is followed by biographies of each such executive officer. We expect that additional executive officers will be subsequently added. While some of Spinco's executive officers are currently employees of WDC, after the spin-off, none of these individuals will be employees of WDC. The information set forth below is as of November 25, 2024.

| Name | Age | Position |
|---|---|---|
| David V. Goeckeler | 63 | Chief Executive Officer |
| Luis F. Visoso Lomelin | 55 | Chief Financial Officer |

### Biographies

**David V. Goeckeler.** David V. Goeckeler will serve as our Chief Executive Officer. Mr. Goeckeler currently serves as the Chief Executive Officer of WDC, a role he has held since March 2020, and will continue to serve as the Chief Executive Officer of WDC until the completion of the spin-off. In addition, Mr. Goeckeler currently serves as a member of the WDC Board of Directors and is expected to remain on the WDC Board of Directors through the completion of the spin-off. Mr. Goeckeler previously served as executive vice president and general manager, networking and security, and in other senior leadership roles at Cisco Systems, Inc. from 2014 to March 2020. For additional biographical information for Mr. Goeckeler, please refer to the section titled "Directors – Biographies" below.

**Luis F. Visoso Lomelin.** Luis F. Visoso Lomelin will serve as our Chief Financial Officer. Mr. Visoso Lomelin currently serves as WDC's Executive Vice President and Chief Administrative Officer and will continue to serve in this role until the completion of the spin-off. Prior to his role at WDC, Mr. Visoso Lomelin served as executive vice president and chief financial officer of Unity Software Inc., a platform for creating and operating interactive, real-time 3D content, from March 2023 to Jully 2024 and senior vice president and chief financial officer from April 2021 to March 2023. Mr. Visoso Lomelin previously served as chief financial officer of Palo Alto Networks from July 2020 to March 2021, and served in various roles at Amazon.com from December 2018 to July 2020, including as chief financial officer of Amazon Web Services. From 1993 to 2018, Mr. Visoso Lomelin held various finance positions of increasing responsibility at Cisco Systems and The Proctor & Gamble Company.

### *Directors*

The following table sets forth information with respect to those persons who are expected to serve on the Spinco Board of Directors following the completion of the spin-off, and is followed by biographies of each such individual. The WDC Board of Directors will continue to evaluate the composition of the future Spinco Board of Directors in order to reflect an appropriate mix of skills, experience and attributes and additional individuals may be added to the Spinco Board of Directors in the future. The information set forth below is as of November 25, 2024.

| Name | Age | Title |
|---|---|---|
| Kimberly E. Alexy | 54 | Director |
| Richard B. Cassidy II | 73 | Director |
| Thomas Caulfield | 65 | Director |
| David V. Goeckeler | 63 | Director and Chief Executive Officer |
| Devinder Kumar | 69 | Director |
| Matthew E. Massengill | 63 | Director |
| Necip Sayiner | 59 | Director |
| Ellyn J. Shook | 61 | Director |
| Miyuki Suzuki | 64 | Director |

**Biographies**

**KIMBERLY E. ALEXY, 54**

**SKILLS & EXPERIENCE**

- From her more than 25 years of experience in capital markets, corporate finance and investments across several financial institutions, Ms. Alexy will bring to the Spinco Board of Directors deep expertise in finance and first-hand transaction experience.
- Ms. Alexy will also contribute her specialized knowledge of cybersecurity issues, which includes a CERT Certificate in Cybersecurity Oversight for corporate directors issued by the CERT Division of the Software Engineering Institute at Carnegie Mellon University, strengthening the Spinco Board of Director's risk oversight function.
- Additionally, Ms. Alexy has a CFA designation, and her financial skills and prior experience qualify her as an "audit committee financial expert" under SEC rules. Her previous service on numerous public company boards of directors has been instrumental in Ms. Alexy's leadership in overseeing WDC's enterprise risk management program as Chair of the Audit Committee. Her experience will provide the Spinco Board of Directors with valuable insights and perspectives.

**OTHER PUBLIC BOARDS**

**Current**

- Western Digital Corporation

**Past Five Years**

- Five9, Inc.
- Mandiant, Inc.
- Alteryx, Inc.
- FireEye

**CAREER HIGHLIGHTS**

**Alexy Capital Management,** a private investment fund

- Founder and principal (2005-present)

**Prudential Securities**

- Senior vice president and managing director (1998-2003)

**Lehman Brothers**

- Vice president of equity research (1995-1998)

**RICHARD B. CASSIDY II, 73**

**SKILLS & EXPERIENCE**

- From his more than 45 years of experience in the semiconductor industry, including over 20 years in leadership roles, Mr. Cassidy will bring to the Spinco Board of Directors deep expertise in both the technical and business areas of the industry.
- Additionally, Mr. Cassidy is a board member of the Global Semiconductor Alliance, an organization dedicated to the advancement of the worldwide semiconductor industry

**CAREER HIGHLIGHTS**

**Taiwan Semiconductor Manufacturing Company ("TSMC"), Arizona**, an advanced semiconductor manufacturing fabrication

- Chairman, CEO and former president (January 2020-present)

**TSMC Ltd.,** a multinational semiconductor manufacturing company

- Senior vice president (2019-present)
- President and CEO, North America (2004-2018)

**OTHER PUBLIC BOARDS**

| Current | Past Five Years |
|---|---|
| • None | • None |

**THOMAS CAULFIELD, 65**

**SKILLS & EXPERIENCE**

- Having served as an executive in the technology industry for over 30 years, Dr. Caulfield will bring crucial semiconductor technical and business expertise which will enable the Spinco Board of Directors to oversee strategies to drive innovation and unlock stockholder value.
- Dr. Caulfield has direct experience leading various aspects of global technology companies ranging from research and development, to supply chain, to sales.
- Dr. Caulfield will bring public company board experience to the Spinco Board of Directors.

**CAREER HIGHLIGHTS**

**GlobalFoundries Inc.,** a multinational semiconductor contract manufacturing and design company

- CEO (2018-present)
- Senior vice president and general manager, Fab 8 semiconductor wafer manufacturing facility (2014-2018)

**Soraa, Inc.**

- President and chief operating officer (2012-2014)

**Caitin Inc.**

- CEO (2010-2012)

**OTHER PUBLIC BOARDS**

| Current | Past Five Years |
|---|---|
| • Western Digital Corporation<br>• GlobalFoundries Inc. | • None |

**DAVID V. GOECKELER, 63 CHIEF EXECUTIVE OFFICER**

**SKILLS & EXPERIENCE**

- With more than 30 years in the technology industry, Mr. Goeckeler has a proven ability to set and implement strategy of large, global technology franchises, including in his current position as WDC's CEO.
- Mr. Goeckeler will bring deep experience in technical and senior management positions, having positioned WDC to capitalize on opportunities in the shifting landscape through large-scale development projects and strategic acquisitions.
- His experience will allow Mr. Goeckeler to lead and manage Spinco's day-to-day operations, while overseeing the strategic direction of Spinco.

**CAREER HIGHLIGHTS**

**Western Digital Corporation**

- CEO (March 2020-present)

**Cisco Systems, Inc.,** a multinational technology company

- Executive vice president and general manager, networking and security (2017-March 2020)
- Senior vice president and general manager, networking and security business group (2016-2017)
- Senior vice president and general manager, security business (2014-2016)

**OTHER PUBLIC BOARDS**

| Current | Past Five Years |
|---|---|
| • Western Digital Corporation | • None |
| • Automatic Data Processing, Inc. | |

**DEVINDER KUMAR, 69**

**SKILLS & EXPERIENCE**

- Mr. Kumar brings over 40 years of experience in the technology industry, including ten years as CFO and executive vice president of Advanced Micro Devices, Inc. ("AMD Inc."), a multinational semiconductor company, and was responsible for the global finance organization and global corporate services and facilities.
- Mr. Kumar also has global experience spanning North America, Asia, Europe and the Middle East, including spending 10 years in Asia as financial controller for AMD Penang and group regional finance director for AMD's manufacturing services group across Singapore, Thailand, China and Malaysia.

**CAREER HIGHLIGHTS**

**AMD, Inc**.

- CFO and executive vice president (2013-January 2023)
- Treasurer (2015-January 2023)
- Senior vice president and corporate controller (2006-2012)

**OTHER PUBLIC BOARDS**

| Current | Past Five Years |
|---|---|
| • Ciena Corporation, a global leader in optical and routing systems, services and automation software | • None |

**MATTHEW E. MASSENGILL, 63**

**SKILLS & EXPERIENCE**

- Mr. Massengill brings over 30 years of executive management and leadership experience, including as WDC's former CEO, President and COO, which will be instrumental to Spinco Board of Directors' role in overseeing achievement of strategic objectives and risk management.
- Mr. Massengill also has extensive background in various aspects of the global technology market and will bring valuable insight into identification and mitigation of key risks faced by technology companies.
- His prior service on other public company boards will enable Mr. Massengill to provide strong, independent leadership to the Spinco Board of Directors.

**CAREER HIGHLIGHTS**

**Western Digital Corporation**

- Chair of the Board (2015-present and 2001-2007)
- CEO (2000-2005)
- President (2000-2002)
- Chief Operating Officer (1999-2000)

**OTHER PUBLIC BOARDS**

| Current | Past Five Years |
|---|---|
| • Western Digital Corporation | • None |

**NECIP SAYINER, 59**

**SKILLS & EXPERIENCE**

- Dr. Sayiner will provide deep knowledge of the semiconductor industry from his prior experiences as a CEO and executive leader at several semiconductor companies.
- Dr. Sayiner also served as the chairman of the Semiconductor Industry Association, from 2015 to 2016, and as vice chairman from 2014 to 2015.

**CAREER HIGHLIGHTS**

**Renesas Electronics Corporation,** a provider of semiconductor solutions

- Executive vice president and general manager (2017-2019)
- President, Renesas Electronics America (2017-2019)

**Intersil Corporation,** a provider of power management and precision analog solutions

- President and CEO (2013-2017)

**Silicon Laboratories Inc.,** a fabless global technology and semiconductor manufacturer

- President and CEO (2005-2012)

**OTHER PUBLIC BOARDS**

**Current**

- Rambus, Inc., a semiconductor manufacturer
- Axcelis Technologies, Inc., a supplier to the semiconductor manufacturing industry

**Past Five Years**

- Power Integrations, Inc., a semiconductor manufacturing company

**ELLYN J. SHOOK, 61**

**SKILLS & EXPERIENCE**

- Ms. Shook has extensive experience with human capital management and setting and overseeing compensation programs as chair of the compensation committee of a public company and former chief human resources officer of a global organization.
- Ms. Shook also serves as an executive committee member of the Professional Roundtable of Chief Human Resources Officers.

**CAREER HIGHLIGHTS**

**Accenture plc.,** a global management consulting and professional services company

- Chief leadership and human resources officer (2014-2024)
- Senior managing director, human resources (2011-2014)
- Lead, global human resources (2004-2011)

**OTHER PUBLIC BOARDS**

**Current**

- The Baldwin Group, an insurance advisory firm

**Past Five Years**

- None

**MIYUKI SUZUKI, 64**

**SKILLS & EXPERIENCE**

- Ms. Suzuki is a seasoned leader in the technology and telecommunications industries and will contribute her comprehensive perspectives around the technology industry to the Spinco Board of Directors.
- Ms. Suzuki also has deep global operations experience across the Asia Pacific region, which will provide valuable insight to the Spinco Board of Directors.
- Ms. Suzuki has substantial governance experience as a public company director at Twilio, a global software company and private company board experience specific to Japan-based companies (Jera Co., Inc. and, previously, MetLife Japan).

**CAREER HIGHLIGHTS**

**Cisco Systems, Inc.**

- President, Asia Pacific, Japan and China (2018-February 2021)
- President and general manager, Japan (2015-2018)

**Jetstar Japan**

- President and CEO (2011-2015)

**KVH (now Colt Technology Services)**

- President and vice chairman (2007-2011)

**Lexis Nexis Asia Pacific**

- President and CEO (2004-2006)

**OTHER PUBLIC BOARDS**

**Current**

- Western Digital Corporation
- Twilio Inc.

**Past Five Years**

- None

## Our Board Following the Spin-Off and Corporate Governance Guidelines

Upon completion of the spin-off, we expect that the Spinco Board of Directors will be comprised of nine directors. After completion of the spin-off, the Spinco Board of Directors is expected to consist of such number of directors as shall be determined from time to time solely by resolution of the Spinco Board of Directors. Each director will be elected annually by the stockholders at each annual meeting of stockholders for a term expiring at the next annual meeting of stockholders. We have not yet set the date of the first annual meeting of stockholders to be held following the spin-off.

The Spinco Board of Directors is expected to adopt corporate governance guidelines (the "Corporate Governance Guidelines") that will provide a framework for the effective governance of Spinco. The Corporate Governance Guidelines will address significant corporate governance issues, including, among other things: the appointment, role and responsibilities of Spinco's Lead Independent Director, if any; director nominee qualifications; director independence; limitations on director service on other boards; director orientation and continuing education; annual performance evaluations of the Spinco Board of Directors and committees; and succession planning and management development. A copy of the Corporate Governance Guidelines will be available at our website at www.sandisk.com.

## Director Independence

The Spinco Board of Directors will annually review the relationship that each director has with Spinco. Following such annual review, only those directors who the Spinco Board of Directors affirmatively determines do not have a relationship which, in the opinion of the Spinco Board of Directors, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director, under the listing standards of The Nasdaq Stock Market LLC, will be considered independent directors. At the time of the spin-off, the Spinco Corporate Governance Guidelines are expected to adopt the definition of independence described in the director independence requirements for Nasdaq listed companies. In doing so, the Spinco Board of Directors will take into account certain factors listed in the Corporate Governance Guidelines and such other factors as it may deem relevant. A majority of the Spinco Board of Directors will be comprised of independent directors upon completion of the spin-off. We expect that all directors except Mr. Goeckeler will meet the independence requirements set forth in the listing standards of Nasdaq at the time of the spin-off. There are no family relationships among any of our directors or executive officers.

## Board Committees

Effective upon the completion of the spin-off, the Spinco Board of Directors is expected to have four standing committees: an Audit Committee, a Compensation and Talent Committee, a Governance Committee and an Executive Committee. The principal functions of each committee are briefly described below. We intend to comply with the listing requirements and other rules and regulations of Nasdaq, as amended or modified from time to time, with respect to each of these committees and each of these committees will be comprised exclusively of independent directors, other than the Executive Committee. Additionally, the Spinco Board of Directors may, from time to time, establish other committees to facilitate the board's oversight of management of the business and affairs of Spinco.

### *Audit Committee*

The purpose of the Audit Committee of the Spinco Board of Directors ("Audit Committee") will be to assist the Spinco Board of Directors in discharging its oversight responsibility by: (i) reviewing the integrity of the accounting and financial reporting processes of Spinco and its subsidiaries and the audit of Spinco's financial statements; (ii) overseeing Spinco's compliance with legal and regulatory requirements; (iii) reviewing the independent accountants' qualifications and independence; (iv) overseeing the performance of Spinco's internal audit function and Spinco's independent accountants; and (v) preparing the report required by the rules of the SEC to be included in Spinco's annual proxy statement. Among other things, the Audit Committee will also:

- be directly responsible for appointing, compensating and overseeing independent accountants, with input from management;
- pre-approve all audit and non-audit services provided by our independent accountants;
- review annual and quarterly financial statements;
- review adequacy of accounting and financial personnel resources;
- oversee and appoint our chief audit executive and review the internal audit plan and internal controls;
- review and discuss with management risk assessment and enterprise risk management policies, including risks related to financial reporting, accounting, internal controls, fraud, capital structure, legal and regulatory compliance and cybersecurity;
- review and discuss with management the implementation of legal and regulatory requirements regarding public disclosure of topics covered by the corporate responsibility and sustainability programs; and
- oversee ethics and compliance program.

***Compensation and Talent Committee***

The purpose of the Compensation and Talent Committee of the Spinco Board of Directors ("Compensation and Talent Committee") will be to (i) carry out responsibilities of the Spinco Board of Directors relating to the compensation of Spinco's executives, (ii) produce the Compensation Committee Report for inclusion in Spinco's proxy statement, in accordance with applicable rules and regulations and (iii) periodically review Spinco's people policies, programs and initiatives. The Compensation and Talent Committee will communicate to Spinco's stockholders Spinco's compensation philosophy, policy and programs. Among other things, the Compensation and Talent Committee will also:

- evaluate and approve executive officer compensation;
- review Spinco's people programs and initiatives, including inclusion programs;
- review and make recommendations on non-employee director compensation;
- review and approve corporate goals and objectives for Spinco Chief Executive Officer's compensation and evaluates Spinco Chief Executive Officer's performance in light of those goals and objectives;
- oversee incentive and equity-based compensation plans;
- review and make changes to benefit plans, or recommend changes to the Spinco Board of Directors if required;
- review and approve any compensation recovery (clawback) policy, or amendment to the policy, that is applicable to executive officers, and oversee and administrator such policy;
- review and approve stock ownership guidelines applicable to executive officers; and
- oversee the Chief Executive Officer succession planning process and senior leadership development program.

***Governance Committee***

The purpose of the Governance Committee of the Spinco Board of Directors ("Governance Committee") will be to (i) develop and recommend to the Spinco Board of Directors a set of corporate governance principles applicable to Spinco, (ii) identify individuals qualified to become members of the Spinco Board of Directors and, consistent with criteria approved by the Spinco Board of Directors, make recommendations to the Spinco Board of Directors regarding director candidates for membership on the Spinco Board of Directors, (iii) assist the Spinco Board of Directors in overseeing Spinco's corporate responsibility and sustainability policies and programs and (iv) oversee the evaluation of the Spinco Board of Directors and management. Among other things, the Governance Committee will also:

- evaluate and recommend the size and composition of Spinco Board of Directors and committees and functions of committees;
- develop and recommend Spinco Board of Directors membership criteria;
- identify, evaluate and recommend director candidates;
- review corporate governance issues and practices;
- manage the annual Spinco Board of Directors and committee evaluation process;
- review and oversee responses regarding stockholder proposals relating to corporate governance, corporate responsibility or sustainability matters; and
- oversee Spinco's political and lobbying strategy, activities and expenditures.

***Executive Committee***

The purpose of the Executive Committee of the Spinco Board of Directors ("Executive Committee") will be to act on behalf of the Spinco Board of Directors between Board meetings. Among other things, the Executive Committee will have the authority of the Spinco Board of Directors in management of our business affairs in between meetings of the Spinco Board of Directors, subject to and including, but not limited to, applicable law or the rules and regulations of the SEC or the Nasdaq Stock Market and specific directions given by the Spinco Board of Directors.

## Leadership Structure

The Spinco Board of Directors will not have a policy with respect to whether the roles of Chair of the Spinco Board of Directors ("Chair of the Board") and Chief Executive Officer should be separate and, if they are to be separate, whether the Chair of the Board should be selected from Spinco's non-employee directors or should be an employee. We believe the leadership structure of the Spinco Board of Directors at any point in time should be based upon an assessment of the needs of the Spinco Board of Directors and the Company at the time after giving consideration to, among other things, Spinco's business plans, strategic opportunities and succession planning priorities. The Spinco Board of Directors will also consider the views of stockholders, including as it relates to director independence, as well as corporate governance and industry trends. Spinco's Corporate Governance Guidelines will provide that the Spinco Board of Directors will appoint a Lead Independent Director if the Chair of the Board is not an independent director under Nasdaq listing standards or if the Spinco Board of Directors otherwise deems it appropriate. Spinco's Lead Independent Director will play an important role in maintaining effective independent oversight of the Company.

## Role of the Spinco Board of Directors in Risk Oversight

The Spinco Board of Directors will be responsible for overseeing the risk management process and exercise this risk oversight through both the Spinco Board of Directors and its committees. The Audit Committee and Chief Audit Executive will oversee the enterprise risk management, internal audit and internal controls processes and policies. The Audit Committee, in addition to overseeing the Chief Audit Executive, will also oversee financial reporting, accounting, internal controls, fraud and capital structure; cybersecurity; legal and regulatory compliance, including our ethics and compliance program; legal and regulatory requirements regarding public disclosure of topics that will be covered by our corporate responsibility and sustainability programs; tax and transfer pricing matters; and general business risks. The Compensation and Talent Committee will oversee compensation programs, policies and practices; equity and other incentive plans; recruiting, engagement and retention; people programs, policies and practices, including inclusion programs; and Chief Executive Officer succession planning and senior leadership development. The Governance Committee will oversee board and committee composition, including board leadership structure; director succession planning; corporate governance policies and practices; and corporate responsibility and sustainability policies and programs, including related to human rights, environmental and climate change and corporate political and lobbying activities and expenditures.

While Spinco's management will be responsible for theday-to-day management of the various risks facing Spinco, Spinco Board of Directors, both as a full board and through its committees, will be responsible for monitoring management's actions and decisions. As a part of its oversight responsibilities, the Spinco Board of Directors and the Audit Committee will regularly monitor management's processes for identifying and addressing areas of material risk to Spinco. In doing so, the Spinco Board of Directors and the Audit Committee will receive regular assistance and input from the other committees of the Spinco Board of Directors, as well as regular reports from members of senior management.

### Selection of Nominees for Directors

The Governance Committee will be responsible for recommending nominees for membership to the Spinco Board of Directors. The Governance Committee may receive suggestions for candidates from individual Board members, including Spinco's Chief Executive Officer, as well as from stockholders of Spinco. The Corporate Governance Guidelines will include qualification guidelines for director nominees. All candidates will be evaluated by the Governance Committee using these qualification guidelines and any other factors the Governance Committee deems relevant.

Stockholders wishing to recommend individuals for consideration as directors must contact the Governance Committee by delivering a written notice to Spinco's Corporate Secretary at our principal executive offices and including the following in the notice: the name and address of the stockholder as they appear on our books or other proof of share ownership; the class and number of shares of our common stock beneficially owned by the stockholder as of the date the stockholder gives written notice; a description of all arrangements or understandings between the stockholder and the director candidate and any other person(s) pursuant to which the recommendation or nomination is to be made by the stockholder; the name, age, business address and residence address of the director candidate and a description of the director candidate's business experience for at least the previous five years; the principal occupation or employment of the director candidate; the class and number of shares of our common stock beneficially owned by the director candidate; the consent of the director candidate to serve as a member of the Spinco Board of Directors if appointed or elected; and any other information required to be disclosed with respect to a director nominee in solicitations for proxies for the election of directors pursuant to applicable rules of the SEC. The committee may require additional information as it deems reasonably required to determine the eligibility of the director candidate to serve as a member of the Spinco Board of Directors. Stockholders recommending candidates for consideration by our Board in connection with the next annual meeting of stockholders should submit their written recommendation no later than June 1 of the year of that meeting. The committee will evaluate director candidates recommended by stockholders for election to the Spinco Board of Directors in the same manner and using the same criteria as it uses for any other director candidate. If the committee determines that a stockholder-recommended candidate is suitable for membership on the Spinco Board of Directors, it will include the candidate in the pool of candidates to be considered for nomination upon the occurrence of the next vacancy on the Spinco Board of Directors or in connection with the next annual meeting of stockholders. Stockholders wishing to nominate directors for inclusion in Spinco's proxy statement pursuant to the proxy access provisions in Spinco's bylaws, or to otherwise nominate directors for election at Spinco's annual meeting of stockholders, must follow the procedures described in Spinco's bylaws.

### Code of Business Ethics

Prior to the completion of our spin-off from WDC, we will adopt a Code of Business Ethics that applies to our directors, officers and employees, including our Chief Executive Officer and Chief Financial Officer. The Code of Business Ethics will be designed to deter wrongdoing and to promote, among other things:

- honest and ethical conduct, including the ethical handling of conflicts of interest;
- full, fair, accurate, timely and understandable disclosure in Company reports;
- compliance with applicable laws and governmental rules and regulations;
- prompt internal reporting of violations of the Code of Business Ethics; and
- the protection of the Company's legitimate business interests.

Spinco will make a copy of the Code of Business Ethics available on its website at www.sandisk.com. To the extent required by rules adopted by the SEC and The Nasdaq Stock Market LLC, we intend to promptly disclose future amendments to certain provisions of the Code of Business Ethics, or waivers of such provisions granted to executive officers and directors, on our website under the Corporate Governance section at www.sandisk.com. We also intend to adopt more detailed policies and procedures that will be set forth in our Global Code of Conduct, which will be separate requirements applying to our officers and employees.

## Compensation Committee Interlocks and Insider Participation

During Spinco's fiscal year ended June 28, 2024, Spinco was not yet incorporated for the full fiscal year, was not an independent company and did not have a Compensation and Talent Committee or any other committee serving a similar function. Decisions as to the compensation of those who will serve as Spinco executive officers were made by WDC, as described in the section of this information statement entitled "Compensation Discussion and Analysis."

## COMPENSATION DISCUSSION AND ANALYSIS

### Introduction

Spinco is currently a subsidiary of WDC and not an independent public company. Decisions regarding the past compensation of our Chief Executive Officer were made by the WDC Compensation and Talent Committee (the "WDC Compensation and Talent Committee") of the WDC Board of Directors because he served as an executive officer of WDC. Additionally, the WDC Compensation and Talent Committee approved the past compensation of our Executive Vice President and Chief Financial Officer while he was WDC's Executive Vice President and Chief Administrative Officer, although his past compensation is not disclosed herein because his employment began in July 2024 after the fiscal year ended June 28, 2024.

At the time of the spin-off, Spinco will have in place executive compensation programs, policies, and practices for its executive officers that are generally similar to those of WDC. After the spin-off, the executive compensation programs, policies and practices for our executive officers will be subject to the review and approval of the Spinco Compensation and Talent Committee (the "Compensation and Talent Committee") of the Spinco Board of Directors, which will be formed in connection with the spin-off. We expect the executive compensation programs, policies and practices for our executive officers will align incentives more closely with Spinco's performance, strategic initiatives, industry peers and the long-term interests of our stockholders, which is expected to help us attract, retain and motivate highly qualified personnel.

For purposes of this Compensation Discussion and Analysis and the executive compensation tables that follow, the individuals are referred to as our "named executive officers" (or "NEOs") are listed below:

- David V. Goeckeler, *Chief Executive Officer*
- Luis F. Visoso Lomelin, *Executive Vice President and Chief Financial Officer*

The Compensation and Talent Committee has not yet been established and therefore has not established a specific set of objectives or principles for our executive compensation program. Prior to the spin-off, the WDC Compensation and Talent Committee will make certain compensation decisions and take actions regarding our compensation philosophy, principles and program design, and following the spin-off, the Compensation and Talent Committee will make additional compensation decisions and actions.

It is anticipated that the WDC Compensation and Talent Committee, and after thespin-off, the Compensation and Talent Committee, will establish objectives and principles similar to the objectives and principles that WDC maintained for its compensation program in fiscal 2024, as described in this Compensation Discussion and Analysis.

The following sections of this Compensation Discussion and Analysis describe WDC's executive compensation philosophy, executive compensation program elements and certain of WDC's executive compensation plans, policies and practices for fiscal 2024, as well as, to the extent known, certain aspects of Spinco's anticipated compensation program following the spin-off.

- Section 1—Executive Compensation Philosophy, Objectives and Process
- Section 2—Updates to Fiscal 2024 Executive Compensation Program
- Section 3—Decisions and Outcomes
- Section 4—Fiscal 2025 Decisions
- Section 5—Other Program Features and Policies

## SECTION 1—EXECUTIVE COMPENSATION PHILOSOPHY, OBJECTIVES AND PROCESS

The summary below provides the key objectives of WDC's executive compensation program:

**Attract, retain and motivate premier talent** necessary to accelerate its growth and drive financial, operational and market performance

**Provide competitive target compensation** relative to the technology industry in which it competes for business and talent

**Encourage accountability** by tying a substantial portion of each executive officer's target total direct compensation opportunity to individual, corporate and market-based performance objectives that it expects to create long-term value for stockholders

**Pay for performance** by providing a substantial portion of compensation in the form of "at-risk," variable incentive compensation awards that reward superior individual, corporate and market-based performance and that reduce pay for underperformance

**Align the interests of executive officers with stockholders** through pay-for-performance compensation design and by granting long-term equity awards that include multi-year performance or service vesting requirements

### WDC Compensation Policies and Practices

**WHAT WDC DOES**

- ✓ Pay for performance by tying a substantial portion of executive compensation to the achievement of pre-established performance goals
- ✓ Actively engages with its stockholders on an ongoing basis and consider their feedback in the future design of its executive compensation program
- ✓ Links its executive compensation program to its long-term corporate strategy and sustainable stockholder value creation
- ✓ Uses a mix of performance measures, cash- and equity-based vehicles and short-and long-term incentive compensation opportunities that hold its executive officers accountable for executing on its long-term corporate strategy
- ✓ Cap maximum vesting or payout levels under its incentive compensation awards, which are aligned with competitive market practices
- ✓ Engages an independent compensation consultant to evaluate and advise the WDC Compensation and Talent Committee on its executive compensation program design and pay decisions
- ✓ Evaluate executive compensation data and practices of its proxy peer group companies as selected annually by the WDC Compensation and Talent Committee with guidance from its independent compensation consultant
- ✓ Limits payouts under its change in control severance plan to "double-trigger" events
- ✓ Maintains and adheres to executive stock ownership guidelines
- ✓ Maintains and adheres to a compensation recovery ("clawback") policy
- ✓ Provides limited executive perquisites

**WHAT WDC DOESN'T DO**

- × No tax gross-up payments in connection with severance or change in control payments
- × No repricing of stock options without stockholder approval (other than equitable adjustments permitted under its equity compensation plans)
- × No hedging, pledging or short-sale or derivative transactions by executive officers or directors
- × No dividend equivalent payments on equity awards until they are earned and vested

**Elements of WDC's Fiscal 2024 Executive Compensation Program**

WDC believes its emphasis on variable compensation aligns with its focus on operating excellence and allows its executive compensation levels to reflect its performance. After evaluating its variable compensation plans with its independent compensation consultant, the WDC Compensation and Talent Committee approved the incentive compensation design summarized below for fiscal 2024.

Its actual pay positioning for each of its named executive officers varies based upon the WDC Compensation and Talent Committee's review of its proxy peer group and survey market data, competitive pay levels for comparable roles and each executive officer's role, past performance, scope of responsibility and expected future contributions.

In addition to the elements reflected below, it also provides its executive officers with limited perquisites and certain other indirect benefits, as described in the section below entitled "Other Program Features and Policies."

**Elements of Fiscal 2024 Target Total Direct Compensation**

| | | CEO | Characteristics | Purpose | Performance Link/ Key Benchmark |
|---|---|---|---|---|---|
| FIXED | | **BASE SALARY**<br>  | • Fixed compensation | • Attracts, retains and motivates premier executive talent<br>• Compensates executive officers for sustained individual performance | • Competitive with market and industry practices<br>• Adjusted for experience, responsibility, potential and performance |
| ANNUAL | VARIABLE PAY – AT RISK | **STI**<br>  | • Annual performance-based cash incentive compensation | • Motivates executive officers to accelerate WDC's annual growth and drive financial performance<br>• Encourages accountability by rewarding achievement of corporate and individual performance objectives | • Non-GAAP operating income (45% weighting)<br>• Cash Conversion Cycle (45% weighting)<br>• Emissions (10% weighting)<br>• Individual performance modifier (+/-25%) tied to specific individual performance goals<br>• Individual performance modifier may not increase award payout if non-GAAP operating income is below minimum level |
| LONG-TERM | VARIABLE PAY – AT RISK | **LTI PSUs**<br>  | • Performance-based equity compensation<br>• 3x1 annual performance targets; annual payouts averaged for a final three-year payout<br>• 60% of WDC's CEO's LTI are PSUs | • Encourages accountability by rewarding achievement of long-term (over a three-year period) corporate and market-based performance objectives<br>• Focuses WDC's named executive officers on value creation through annual financial objectives, while also encouraging long-term value creation | • Revenue and non-GAAP EPS goals are each weighted at 50%<br>• Three-year relative Total Shareholder Return ("TSR") modifier (+/-10%)<br>• Relative TSR modifier may not increase payout if absolute TSR is negative |

**RSUs**


- Variable long-term equity compensation
- Vests with respect to 25% after one year and 6.25% quarterly thereafter

- Provides alignment with stockholder interests by focusing executive officers on long-term value creation
- Provides retention value

- Value based on stock price performance

**LTI MIX**


**Process for Determining Executive Compensation**

The WDC Compensation and Talent Committee reviews and determines compensation for its executive officers. The WDC Compensation and Talent Committee reviews the performance and compensation of its executive officers on an annual basis and at the time of hiring, promotion or other change in responsibilities. The WDC Compensation and Talent Committee's annual review typically occurs near the end of the prior fiscal year and beginning of the new fiscal year.

The WDC Compensation and Talent Committee also considers views and input received through stockholder outreach and engagement efforts when making determinations regarding its executive compensation program.

In determining WDC's fiscal 2024 executive compensation program design, the WDC Compensation and Talent Committee's executive compensation decisions were informed by several factors, including:

**EXTERNAL AND INTERNAL FACTORS**

- WDC's compensation philosophy and objectives
- WDC's pay positioning relative to WDC's proxy peer group and broad compensation survey market data
- The executive officer's role, experience, performance and contributions
- Internal pay equity
- WDC's retention objectives
- Succession planning
- Current and historical company performance and strategic and financial goals
- Market performance and general economic conditions

**COMPENSATION CONSULTANT**

- Views from the WDC Compensation and Talent Committee's independent compensation consultant
- Compensation survey and proxy peer group company market data prepared by the independent compensation consultant

**MANAGEMENT**

- The CEO's recommendations for WDC's other executive officers (not including himself)
- The CFO's input on financial targets for WDC's performance-based incentive compensation program, data regarding the impact of the program on WDC's financial results and actual results against WDC's pre-established performance targets
- Internal and external compensation data provided by WDC's Chief People and Inclusion Officer and other staff

**STOCKHOLDERS**

- Feedback received during stockholder outreach and engagement efforts

The WDC Compensation and Talent Committee engaged Compensia, Inc. (“Compensia”) as its independent compensation consultant in fiscal 2024. Compensia reported directly to the WDC Compensation and Talent Committee and communicated with management to gather information and review management proposals as needed. Compensia attended all regularly scheduled meetings of the WDC Compensation and Talent Committee during fiscal 2024 and its responsibilities for fiscal 2024 generally included:

- Reviewing and advising on executive compensation, including the performance metrics used under the executive compensation program
- Reviewing and advising on compensation design and amounts fornon-employee members of the WDC Board of Directors
- Providing recommendations regarding the composition and selection of WDC’s proxy peer group companies
- Analyzing proxy peer group and survey compensation data
- Providing advice regarding executive compensation policies, practices and trends
- Advising on the compensation-related items approved by the WDC Compensation and Talent Committee in connection with the strategic review of WDC’s business

The WDC Compensation and Talent Committee assessed the independence of Compensia pursuant to applicable rules and regulations of the SEC and the Nasdaq Stock Market and concluded that the engagement of Compensia did not raise any conflicts of interest during fiscal 2024 and currently does not raise any conflicts of interest.

**Comparative Market Data**

The WDC Compensation and Talent Committee determines the composition of WDC’s proxy peer group and reevaluates this group on an annual basis with input from its independent compensation consultant.

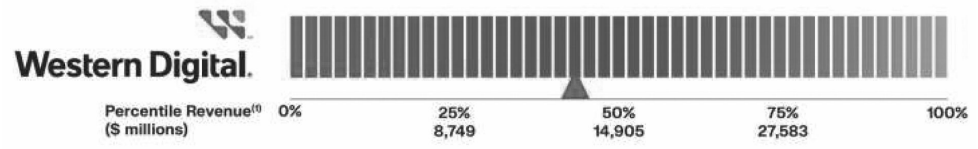
For fiscal 2024, market data was collected from the Radford Global Compensation Database, an independently published survey. The survey data was filtered to screen for companies in WDC’s proxy peer group that participate in the survey and, for executive roles in which such survey screen resulted an insufficient data, a broader screen of technology companies as adjusted for revenue size was used. With input from its independent compensation consultant, the WDC Compensation and Talent Committee considered such market data and industry practices during its annual review of the competitiveness of WDC’s compensation levels and the appropriate mix of compensation elements for WDC’s named executive officers. This market data provided the WDC Compensation and Talent Committee a reference point, which was one of several factors that it used to make compensation decisions during its fiscal 2024 annual compensation review.

**Fiscal 2024 Proxy Peer Group Companies for Benchmarking Pay and Incentive Design**

The proxy peer group companies that the WDC Compensation and Talent Committee used for comparative pay and incentive design purposes for fiscal 2024 consisted of technology companies that compete with WDC for talent and have the size (primarily based on revenue) and business characteristics that WDC believes are comparable. Like WDC, many companies included in WDC’s proxy peer group are included in the Dow Jones U.S. Technology Hardware & Equipment Index.

In choosing companies for WDC’s proxy peer group, the WDC Compensation and Talent Committee focused primarily on industry, talent market and revenue size. Revenue is a commonly used proxy for organizational size and complexity and is typically stable from year-to-year, making it a valuable metric when selecting peers for executive compensation purposes. As part of its decision process, the WDC Compensation and Talent Committee also referenced other metrics for informational purposes, including comparative market capitalization and profitability metrics.

**WDC COMPARED TO PROXY PEER GROUP**




| | | |
|---|---|---|
| Advanced Micro Devices, Inc. | KLA Corporation | NXP Semiconductors N.V. |
| Analog Devices, Inc. | Lam Research Corporation | NVIDIA Corporation |
| Applied Materials, Inc. | Microchip Technology Inc. | ON Semiconductor Corporation |
| Broadcom Inc. | Micron Technology, Inc. | QUALCOMM Incorporated |
| Cisco Systems, Inc. | Motorola Solutions, Inc. | Seagate Technology plc |
| GlobalFoundries Inc | NetApp, Inc. | Texas Instruments Incorporated |
| Hewlett Packard Enterprise Company | | |

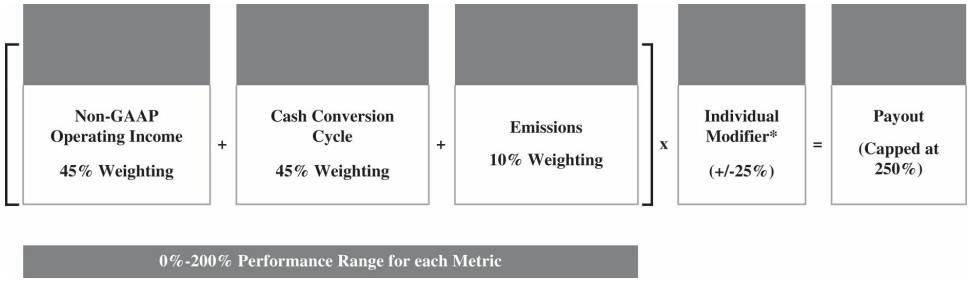
(1) Represents annual revenue for the most recent fiscal year for which data was available through SEC filings as of August 30, 2024.

**SECTION 2—UPDATES TO FISCAL 2024 EXECUTIVE COMPENSATION PROGRAM**

**Fiscal 2024 STI**

The WDC Compensation and Talent Committee implemented a number of enhancements to WDC's STI design, beginning in fiscal 2024, which were responsive to perspectives and feedback shared by WDC's stockholders during WDC's year-round engagement efforts.

After assessing WDC's fiscal 2024 objectives, market conditions and considering stockholder feedback, the WDC Compensation and Talent Committee approved the following STI design for fiscal 2024:




* The Individual Modifier may not increase award payout if WDC'snon-GAAP operating income is below the minimum performance level.

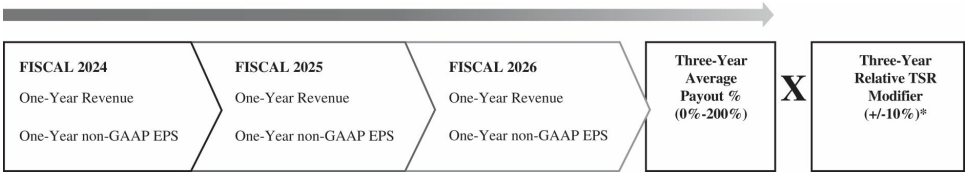
The WDC Compensation and Talent Committee eliminated the exabytes shipped metrics and the individual performance metric included in the fiscal 2023 STI and replaced them with a cash conversion cycle metric and an emissions metric. The cash conversion cycle metric measures the length of time it takes to convert WDC's working capital investments into cash, which the WDC Compensation and Talent Committee believes complements non-GAAP operating income by focusing WDC's executive officers on both profitability and managing working capital (inventory, receivables and payables) to generate cash. The emissions metric aligns WDC's executive officers' compensation to progress on WDC's Scope 1 and Scope 2 emissions reduction targets.

The individual performance modifier in the fiscal 2024 STI includes execution and leadership goals for each executive and corporate ESG goals focused on inclusion and governance. The individual performance modifier may not increase award payout (but can still decrease the payout) if WDC's non-GAAP operating income performance is below the minimum performance level for that metric.

**Fiscal 2024-2026 PSUs**

In evaluating the fiscal 2024-2026 PSU design and in direct response to stockholder feedback received, the WDC Compensation and Talent Committee removed the upside incentive tied to WDC's stock price CAGR and replaced it with a relative TSR modifier that modifies PSU payouts with a multiplier ranging from +/- 10% based on WDC's performance relative to the S&P 500 Information Technology Index constituents as of the beginning of the performance period. The modifier compares WDC's three-year TSR performance to the median company in the index based on three-year TSR performance. If WDC's TSR performance exceeds the TSR of the median company by 50 percentage points or more, the PSU payout is modified by +10%; if WDC's TSR performance is lower than the median company by 50 percentage points or more, the PSU payout is modified by -10%. Straight line interpolation will be used for performance between those points to determine the PSU payout modifier. In the event WDC's absolute TSR performance is negative, the relative TSR modifier may not increase the PSU payout and can only be used to decrease such payout.

The WDC Compensation and Talent Committee chose the S&P 500 Information Technology Index constituents for the relative TSR peer group because WDC is a member of the index, and it also includes a majority of WDC's proxy peers. The index includes companies that WDC's stockholders review in comparing WDC's relative performance and reflects input from WDC's stockholders that they prefer that WDC use an industry peer set for relative TSR versus a broad-based index such as the S&P 500 Index.




* The relative TSR modifier will not increase payout if WDC's absolute TSR is negative over the measurement period.

## SECTION 3—FISCAL 2024 DECISIONS AND OUTCOMES

### Base Salary

| Named Executive Officer | Base Salary Level (1) ($) | Increase from Fiscal 2023 |
|---|---|---|
| **David V. Goeckeler** | 1,250,000 | 0% |

(1) Table reflects annualized base salary in effect at the end of fiscal 2024 for each Spinco named executive officer.

### Short-Term Incentives

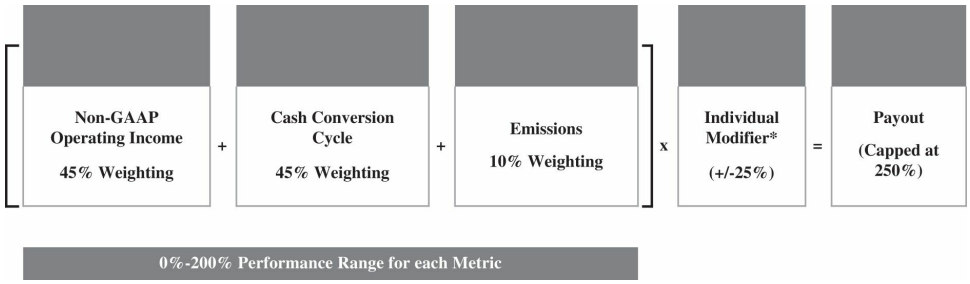
### Fiscal 2024 Target Incentive Award Opportunities

| Named Executive Officer | Annual Target Incentive Award Opportunity (1) (as Percentage of Base Salary) | Increase from Fiscal 2023 |
|---|---|---|
| **David V. Goeckeler** | 175% | 0% |

(1) Table reflects annual target incentive opportunity at the end of fiscal 2024 for each Spinco named executive officer.

### Fiscal 2024 STI Design and Performance

As discussed in more detail in the section entitled "Updates to Fiscal 2024 Executive Compensation Program," the WDC Compensation and Talent Committee updated the STI design to reflect investor feedback during WDC's prior stockholder outreach and engagement. WDC's fiscal 2024 STI design is reflected below. The individual modifier component for each named executive officer included goals tied to leadership, execution and ESG targets.



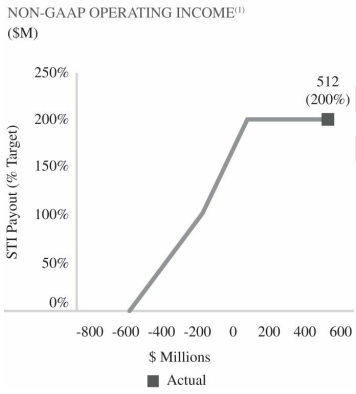

* The Individual Modifier may not increase award payout if WDC'snon-GAAP operating income is below the minimum performance level.

### Fiscal 2024 Corporate Performance

The WDC Compensation and Talent Committee approved fiscal 2024 performance targets that incentivized its executive officers to improve WDC's profitability and increase efficiency in converting working capital investments into cash. At the time the WDC Compensation and Talent Committee approved fiscal 2024 performance targets in August 2023, WDC was in the midst of a significant market downturn with uncertainty as to the timing and strength of a market recovery. In this context, the fiscal 2024 non-GAAP operating income

metric still required improvement on fiscal 2023 results for its executive officers to receive any payout on this metric. The WDC Compensation and Talent Committee also approved a robust emissions target that aligns with WDC's public commitments around Scope 1 and Scope 2 emissions, which is an important factor for WDC's largest customers that are seeking to mitigate emissions within their supply chains.

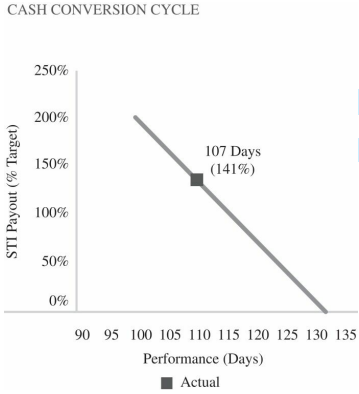
WDC exceeded expectations relative to its fiscal 2024 targets, resulting in a 173.5% STI payout on the corporate performance metrics.




**Non-GAAP Operating Income(1) (45% Weighting)**

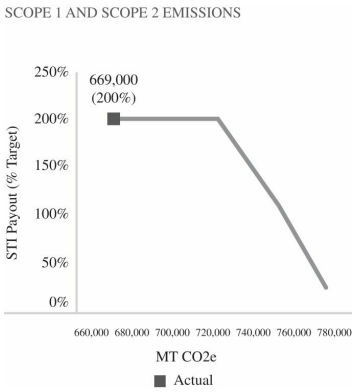
| Performance Achievement | STI Payout (% Target) | Performance ($ millions) |
|---|---|---|
| **Maximum** | 200% | $ 66 |
| **Target** | 100% | (195) |
| **Minimum** | 0% | (594) |
| **Actual** | 200% | 512 |

(1) See Appendix A to this Form 10 for a reconciliation of GAAP operating income to non-GAAP operating income.




**Cash Conversion Cycle (45% Weighting)**

| Performance Achievement | STI Payout (% Target) | Performance (Days) |
|---|---|---|
| **Maximum** | 200% | 97 |
| **Target** | 100% | 114 |
| **Minimum** | 0% | 131 |
| **Actual** | 141% | 107 |




**Scope 1 and Scope 2 Emissions (10% Weighting)**

| Performance Achievement | STI Payout (% Target) | Performance (Metric Tons of Carbon Dioxide Equivalent ("CO2e")) |
|---|---|---|
| **Maximum** | 200% | 721,000 |
| **Target** | 100% | 752,730 |
| **Threshold** | 25% | 773,000 |
| **Actual** | 200% | 669,000 |

The weighted average payout for the corporate metrics was 173.5% of the target performance levels:

| Non-GAAP Operating Income Payout % (45% Weighting) | Cash Conversion Cycle Payout % (45% Weighting) | Scope 1 and Scope 2 Emissions Payout % (10% Weighting) | Aggregate Corporate Payout % (100%) |
|---|---|---|---|
| 200% | 141% | 200% | 173.5% |

**Fiscal 2024 Individual Performance Modifier**

**Performance Goal Setting**

The individual performance modifier for each named executive officer's target incentive award opportunity was split equally between leadership, execution and ESG goals. WDC's named executive officers (other than WDC's CEO) worked with WDC's CEO to establish individual performance goals, with input from the WDC Compensation and Talent Committee. WDC's CEO separately submitted his fiscal 2024 performance goals for the WDC Compensation and Talent Committee's review, with input from the WDC Board of Directors.

**Performance Assessment**

David V. Goeckeler (+14% Individual Modifier)

- Leadership Goals and Performance
  - Exceptional leadership for WDC to deliver exceptional financial results and guiding the executive team through the Separation process
  - Clear communication of WDC's strategic vision to investors and other stakeholders, including government officials, around the globe, especially in countries with major operations
  - Maintained an effective relationship with Kioxia Corporation ("Kioxia"), our flash joint venture partner
- Execution Goals and Performance
  - Led WDC's business through challenging down-cycle to improved business performance
  - Supported financial transactions that position WDC for further financial success
- ESG Goals and Performance
  - Year-over-year increase in underrepresented talent in new-hire graduates (achieved)

- Year-over-year increase in intern conversions (not achieved)
- Year-over-year increase in employee volunteer participation (achieved)
- Ensure all employees complete ethics training on a timely basis (achieved)

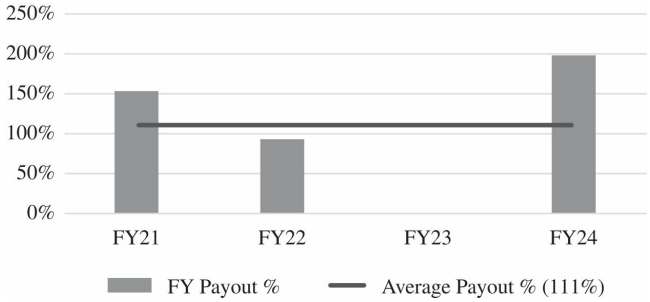
As a result of the WDC Compensation and Talent Committee's individual performance determinations, our named executive officers received the following payout amounts under the WDC STI plan:

**Fiscal 2024 STI Payouts**

| Named Executive Officer | Corporate Payout % (100% Weighting) | Modifier % (+/-25% of Corporate Payout) | STI Payout (%) | STI Payout ($) |
|---|---|---|---|---|
| **David V. Goeckeler** | 173.5% | +14% | 198% | 4,326,875 |

**Average CEO STI Payout (Four Year Payout %)**

The fiscal 2024 STI payout reflects WDC'spay-for-performance philosophy in the context of its strong fiscal 2024 performance. The chart below reflects WDC's CEO's average STI payout during the past four fiscal years, which are the four full years that our CEO led WDC.




**Long-Term Incentives: Fiscal 2024 Equity Awards**

**Fiscal 2024 LTI Awards**

Our named executive officers received LTI awards in August 2023 consisting of a mix of PSUs and RSUs. The named executive officers' RSUs are scheduled to vest with respect to 25% of the award on the first anniversary of the grant date and with respect to 6.25% of the award quarterly thereafter for three years. The vesting provisions of the PSUs are described below under the section entitled "Fiscal 2024-2026 PSU Awards".

| Named Executive Officer (1) | Total LTI Target Grant Value ($)(1) | LTI Vehicle Mix | |
|---|---|---|---|
| | | PSUs | RSUs |
| **David V. Goeckeler** | 15,000,000 | 60% | 40% |

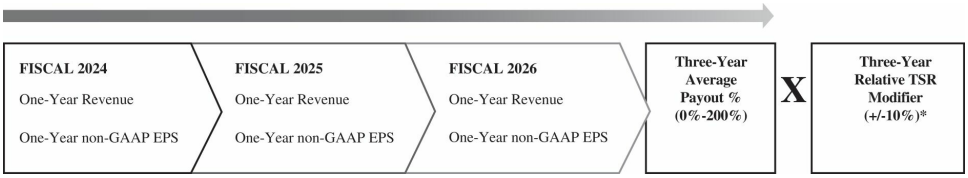
(1) The differences between the target grant values approved by the WDC Compensation and Talent Committee (as reflected in the table above) and the grant date fair values of the awards as determined for financial reporting purposes (as reflected in the "Fiscal 2024 Summary Compensation Table" and the "Fiscal 2024 Grants of Plan-Based Awards Table" below) are attributable to financial accounting rules, including the use of a Monte Carlo simulation to determine the grant date fair value of the PSUs. In addition, under financial accounting rules, the grant date fair value for a PSU award is not determined until the fiscal year in which

the performance metrics are established. The performance metrics are determined annually by the WDC Compensation and Talent Committee for each of fiscal 2024, 2025 and 2025. Accordingly, only the grant date fair value for the portion attributable to fiscal 2024 is reflected in the "Fiscal 2024 Summary Compensation Table" and the "Fiscal 2024 Grants of Plan-Based Awards Table" for this portion of the award.

**Long-Term Incentives: PSU Design and Performance**

**Fiscal 2024–2026 PSU Awards**

As discussed in more detail in the section entitled "Updates to Fiscal 2024 Executive Compensation Program," the WDC Compensation and Talent Committee updated the fiscal 2024-2026 PSU design to add a three-year relative TSR modifier. Similar to the fiscal 2023-2025 PSUs, the awards include annual financial metrics with annual payouts that are averaged to determine a three-year payout percentage. WDC's executive officers generally must remain employed through the entire three-year performance period to earn and vest in the awards.




**Fiscal 2024-2026 PSU Performance (Year One of Three)**

| Financial Metrics | Threshold (50%) ($) | Target (100%) ($) | Maximum (200%) ($) | Actual Performance ($) | Achievement Rate | Year One Payout % |
|---|---|---|---|---|---|---|
| **One-Year Revenue (50%) (in millions)** | 11,135 | 13,100 | 15,065 | 13,003 | 99% | 97% |
| **One-Year Non-GAAP EPS (50%)(1)** | (2.90) | (2.32) | (1.62) | (0.20) | 191% | 200% |
| **Weighted Payout:** | | | | | | 149% |

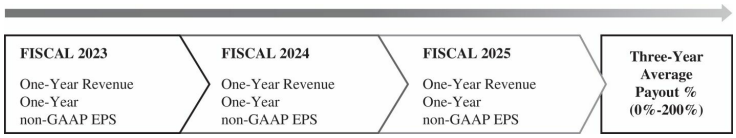
(1) See Appendix A to this Form 10 for a reconciliation of GAAP EPS to non-GAAP EPS.

| Fiscal 2024 Payout % | Fiscal 2025 Payout % | Fiscal 2026 Payout % | Three-Year Average Payout % |
|---|---|---|---|
| 149% | TBD | TBD | TBD |

**Fiscal 2023–2025 PSU Awards**

The fiscal 2023-2025 PSUs included the same annual performance period design as the fiscal 2024-2026 PSUs, with a different modifier. The fiscal 2023-2025 PSU payouts may be increased by up to 50% if WDC achieves stock-price CAGR targets over the performance period. As discussed in more detail in the section entitled "Updates to Fiscal 2024 Executive Compensation Program," the WDC Compensation and Talent Committee did not retain the absolute CAGR modifier in the fiscal 2024-2026 PSUs based on stockholder feedback.

**THREE-YEAR PERFORMANCE PERIOD**




| x | Three-Year Stock Price CAGR | Upside Incentive % |
|---|---|---|
| | 5% | 10% |
| | 10% | 20% |
| | 15% | 50% |

**Fiscal 2023-2025 PSU Performance (Year Two of Three)**

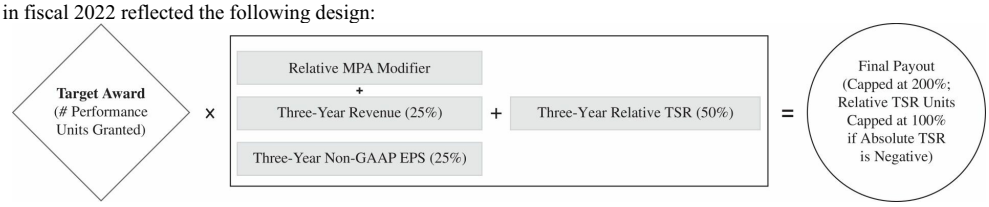
| Financial Metrics | Threshold (50%) ($) | Target (100%) ($) | Maximum (200%) ($) | Actual Performance ($) | Achievement Rate | Year Two Payout % |
|---|---|---|---|---|---|---|
| **One-Year Revenue (50%) (in millions)** | 11,135 | 13,100 | 15,065 | 13,003 | 99% | 97% |
| **One-Year Non-GAAP EPS (50%)[1]** | (2.90) | (2.32) | (1.62) | (0.20) | 191% | 200% |
| **Weighted Payout:** | | | | | | 149% |

(1) See Appendix A to this Form 10 for a reconciliation of GAAP EPS to non-GAAP EPS.

| Fiscal 2023 Payout % | Fiscal 2024 Payout % | Fiscal 2025 Payout % | Three-Year Average Payout % |
|---|---|---|---|
| 0% | 149% | TBD | TBD |

**Fiscal 2022-2024 PSU Awards: Performance and Payout**

The PSUs granted in fiscal 2022 reflected the following design:




- Financial Performance Metrics (50% Weighting)
  - The fiscal 2022–2024 PSUs included three-year performance periods for the financial metrics (revenue and non-GAAP EPS) that were subject to a pre-established, objective adjustment at the end of the performance period in a relative proportion (up or down) by which the total market for WDC's products (measured by revenue) during the period exceeded or fell short of the total market forecast approved by the WDC Compensation and Talent Committee at the time the goals were established, as reported by industry analysts. WDC refers to the relative market performance adjustment described in this CD&A as "relative MPA." The relative MPA modifier helped ensure that WDC pays for performance relative to the market demand and opportunity available to WDC.
  - The actual market for WDC's products was lower than forecast when the fiscal 2022–2024 PSU goals were established, thus applying the relative MPA modifier resulted in a reduction in both revenue and non-GAAP EPS targets.
- Relative TSR Metric (50% Weighting)
  - The fiscal 2022-2024 PSUs included a three-year TSR metric that measured WDC's stock performance relative to a TSR peer group consisting of the constituents of the S&P 500 Index as of the beginning of the performance period.

**FISCAL 2022-2024 PERFORMANCE PERIOD ACHIEVEMENT**

- Three-Year Financial Metrics

| Financial Metrics (50% Weighting) | Threshold (50%) ($) | Original Target (100%) ($) | Maximum (200%) ($) | Target After Applying Relative MPA Modifier (100%) ($) | Actual Performance ($) | Achievement Rate | Payout % |
|---|---|---|---|---|---|---|---|
| **Three-Year Revenue (25%) (in millions)** | 50,028 | 58,857 | 67,686 | 43,074 | 44,114 | 102% | 116% |
| **Three-Year Non-GAAP EPS (25%)[(1)]** | 13.19 | 17.58 | 22.85 | 3.44 | 4.61 | 134% | 200% |
| **Weighted Payout:** | | | | | | | 158% |

(1) See Appendix A to this Form 10 for a reconciliation of GAAP EPS to non-GAAP EPS.

- Three-Year Relative TSR Metric

| Relative TSR (50% Weighting) | S&P 500 Constituents Relative TSR | Relative TSR Units Payout % | WDC Three-Year Relative TSR | WDC Percentile Relative to S&P 500 Peer Group | Payout % |
|---|---|---|---|---|---|
| 75th percentile | 40.79% | 200% | | | |
| 50th percentile | 10.34% | 100% | 4.06% | 43rd percentile | 80% |
| 25th percentile | (13.62)% | 25% | | | |

**FISCAL 2022-2024 PSUs PAYOUTS**

| Fiscal 2022–2024 PSUs | Three-Year Financial Metrics | Three-Year Relative TSR | Aggregate Award Payout |
|---|---|---|---|
| Weighting | 50% | 50% | 100% |
| Payout % | 158% | 80% | 119% |

**NAMED EXECUTIVE OFFICER PAYOUTS FOR FISCAL 2022-2024 PSUs**

| Named Executive Officer | Target Payout (100%) (# of Shares) | Actual Payout (# of Shares) |
|---|---|---|
| **David V. Goeckeler** | 142,314 | 169,353 |

## SECTION 4—FISCAL 2025 DECISIONS

### Fiscal 2025 Compensation Changes

In fiscal 2024, the WDC Compensation and Talent Committee, in connection with its annual review of the WDC executive officers' compensation levels and input from its independent compensation consultant, approved fiscal 2025 compensation changes for our named executive officers effective on June 29, 2024 to reflect market compensation levels and to recognize strong performance by the executive team while continuing to align executive compensation with long-term stockholder interests.

Mr. Goeckeler's base salary was increased to $1,300,000, and his target LTI award was increased to $16,250,000.

### Fiscal 2025 LTI Awards

The WDC Compensation and Talent Committee granted the following LTI awards to our named executive officers in fiscal 2025, as part of WDC's annual LTI program:

| Named Executive Officer | Total LTI Target Grant Value ($) | LTI Vehicle Mix | |
|---|---|---|---|
| | | PSUs | RSUs |
| **David V. Goeckeler** | 16,250,000 | 60% | 40% |

### Treatment of LTI Awards upon theSpin-Off

The employee matters agreement will govern the treatment of LTI awards held by Spinco employees upon thespin-off, including each of our named executive officers. See "The Separation and Distribution—General—Treatment of Equity Incentive Arrangements."

## SECTION 5—OTHER PROGRAM FEATURES AND POLICIES

**Perquisites**

WDC provides its executive officers with limited perquisites and other personal benefits, consisting principally of a $5,000 annual allowance for financial planning services (net of taxes) and, in very limited circumstances, tax gross-ups for certain payments. Any tax gross-ups paid to our named executive officers are disclosed in our "Fiscal 2024 Summary Compensation Table."

WDC policy permits Mr. Goeckeler (in his capacity as its CEO) to use private aircraft, in which WDC has a fractional ownership interest, for personal travel to maximize his business availability and productivity. Mr. Goeckeler is required to reimburse the company for the aggregate incremental cost incurred by the company in connection with any such personal use in excess of $250,000 per fiscal year. He is fully responsible for all personal income taxes associated with such personal usage.

**401(k) Plan Benefits**

WDC provides retirement benefits to its executive officers and other eligible employees under the terms of WDC's 401(k) Plan. Eligible employees may contribute up to 85% of their annual cash compensation up to a maximum amount allowed by the Internal Revenue Code, and are also eligible for any matching contributions, which were suspended in February 2023 in the context of a challenging market environment and resumed in January 2024. WDC's executive officers participate in its 401(k) Plan on substantially the same terms as its other participating employees. WDC does not maintain any defined benefit supplemental retirement plans for its executive officers.

**Deferred Compensation Opportunities**

WDC's executive officers and certain other key employees who are subject to U.S. federal income taxes are eligible to participate in WDC's Deferred Compensation Plan. Participants can elect to defer certain compensation without regard to the tax code limitations applicable to tax-qualified plans. WDC did not make any company matching or discretionary contributions to its Deferred Compensation Plan on behalf of participants in fiscal 2024.

**Severance Protections**

Outside a change in control context, WDC views severance protections as only appropriate in the event the employment of an executive officer is involuntarily terminated without "cause." These severance payments and benefits are appropriate considering severance protections available to executive officers in the companies in WDC's proxy peer group and are an important component of each executive officer's overall compensation.

**Change in Control Protections**

A transaction involving a change in control of WDC creates uncertainty regarding the continued employment of its executive officers. To encourage its executive officers to remain employed with WDC during an important time when their prospects for continued employment following the transaction are often uncertain, WDC provides its executive officers with additional severance protections under WDC's Change in Control Severance Plan. WDC also provides these severance protections to help ensure that its executive officers can objectively evaluate change in control transactions that may be in the best interests of its stockholders despite the potential negative consequences such transactions may have on them personally. Benefits under WDC's Change in Control Severance Plan require a "double-trigger" (qualifying termination in connection with a change in control) for payment and the plan does not provide any tax gross-up payments for participants.

Please see the section entitled "Executive Compensation Tables and Narratives—Potential Payments upon Termination or Change in Control" for a description and quantification of the potential payments that may be made to its named executive officers in connection with their termination of employment or a change in control of WDC. The spin-off transaction will not constitute a change in control of WDC under WDC's Change in Control Severance Plan.

**Employment Agreements**

None of WDC's executive officers is currently party to an employment agreement.

**Compensation Recovery (Clawback) Policy**

The WDC Board of Directors has adopted a compensation recovery (clawback) policy consistent with the requirements of Rule 10D-1 under the Securities Exchange Act of 1934, as amended (the "Exchange Act") and NASDAQ listing standards, a copy of which is publicly filed with its fiscal 2024 Annual Report on Form 10-K.

**Misconduct Policies**

WDC maintains several policies relating to employee misconduct. In the event an executive officer's employment is terminated for cause due to their misconduct or violation of company policy, among other reasons, they will forfeit all outstanding incentives, including unearned or unvested LTI and STI awards. In addition, the executive officer would not be eligible for severance payments or benefits.

**Policies Prohibiting Hedging, Pledging and Short Sale or Derivative Transaction**

WDC's insider trading policy prohibits its executive officers (as well as its other employees and members of the WDC Board of Directors) from engaging in hedging transactions or speculative transactions involving WDC's securities and from pledging company securities. Prohibited transactions include hedging or monetization transactions, such as prepaid variable forwards, equity swaps, collars and exchange funds that are designed to hedge or offset any decrease in the market value of WDC's securities, shorts sales, transactions in derivative securities, such as publicly traded options, related to WDC's securities and margining WDC's securities in a margin account or otherwise pledging WDC securities as collateral for a loan.

**Executive Stock Ownership Guidelines**

WDC maintains executive stock ownership guidelines covering its executive officers, including its named executive officers, to help link the interests of its stockholders with those of its executive officers. The guidelines provide that each executive officer must achieve ownership of a number of "qualifying shares" with a market value equal to the specified multiple of the officer's base salary in effect upon the date he or she first becomes subject to the guidelines shown below.

| Position | Multiple |
|---|---|
| CEO | 6 x Salary |
| CFO | 3 x Salary |
| Executive Vice Presidents | 2 x Salary |
| Senior Vice Presidents | 1 x Salary |

Each executive officer must achieve ownership of the required market value of shares within three years of becoming subject to the guidelines. Common stock, RSUs, PSUs, deferred stock units and common stock beneficially owned by the executive officer all count towards the requirement, but shares the officer has a right to acquire through exercising stock options (whether or not vested) are not counted. All of WDC's executive officers who are subject to these guidelines had achieved their required ownership level as of the date of WDC's 2024 Proxy Statement.

## EXECUTIVE COMPENSATION TABLES AND NARRATIVES

### Fiscal 2024 Summary Compensation Table

The following table presents information regarding compensation earned for fiscal 2024 by our named executive officers.

| Name and Principal Position | Fiscal Year | Salary ($) | Bonus ($) | Stock Awards ($)(1) | Non-Equity Incentive Plan Compensation ($)(2) | All Other Compensation ($)(3) | Total ($) |
|---|---|---|---|---|---|---|---|
| **David V. Goeckeler** | | | | | | | |
| Chief Executive Officer | 2024 | 1,245,192 | — | 12,033,939 | 4,326,875 | 84,766 | 17,690,772 |

(1) The amounts shown reflect the aggregate grant date fair value of stock awards granted in the applicable fiscal year computed in accordance with ASC Topic 718. These amounts were calculated based on the assumptions described in Note 12 in the Notes to Consolidated Financial Statements included in WDC's 2024 Annual Report on Form 10-K. For PSU awards, amounts include the grant date fair value of the 2024-2026 PSUs and the 2023-2025 PSUs, in each case, as related to the fiscal 2024 performance period because only the annual targets for such performance periods were established in fiscal 2024, and thus, such portions of the awards are deemed granted for financial accounting purposes during fiscal 2024. The grant date fair value of the remaining PSUs under the 2024-2026 and 2023-2025 PSU awards will be reflected in the Summary Compensation Table after the spin-off in a manner consistent with their conversion to RSUs.

The following amounts represent the grant date fair value of PSU awards granted to our named executive officers during fiscal 2024 assuming the probable outcome of the awards on the grant date and assuming maximum performance under the awards deemed granted during fiscal 2024. We considered the probable outcome of the awards based on the target level of performance for PSUs except for PSUs that are subject to relative TSR or stock price CAGR conditions, which were determined using a Monte Carlo simulation. As stated above, for the 2024-2026 and 2023-2025 PSUs, the grant date fair values for the fiscal 2024 performance period of such PSUs have been included because such portions of the awards are deemed granted in fiscal 2024 for financial accounting purposes. The dollar value of the awards included in the Summary Compensation Table for the year of grant is based on the probable outcome of the awards on the grant date and do not reflect actual payouts.

| Named Executive Officer | Grant Date Fair Value of PSU Awards Based on Probable Outcome on the Grant Date for: 2024 ($) | | Grant Date Fair Value of PSU Awards at Maximum Performance for: 2024 ($) | |
|---|---|---|---|---|
| | 2023-2025 PSUs 2024 Performance Period | 2024-2026 PSUs 2024 Performance Period | 2023-2025 PSUs 2024 Performance Period | 2024-2026 PSUs 2024 Performance Period |
| **David V. Goeckeler** | 2,931,373 | 3,102,574 | 8,794,118 | 6,825,663 |

(2) Reflects each named executive officer's STI payout for the corresponding fiscal year.

(3) The table below summarizes the amounts reported in the "All Other Compensation" column for each of the named executive officers for fiscal 2024:

| Name | Perquisites ($) | 401(k) Plan Company Matching Contributions ($) |
|---|---|---|
| **David V. Goeckeler** | 74,866(a) | 9,900 |

(a) The amount shown reflects personal travel on an aircraft, in which WDC owns a fractional interest, with the aggregate incremental cost incurred by WDC of $74,866. Pursuant to WDC policy, as CEO, Mr. Goeckeler

will reimburse WDC for the amount of aggregate incremental cost in excess of $250,000 per fiscal year in connection with any personal use of such aircraft. Incremental cost for a personal flight is calculated based on the full amount of the direct variable operating cost charged to WDC for the applicable flight. Variable operating cost covers fees and costs related to, if applicable, aircraft use, fuel, flight fees, landing fees, cleaning, catering and taxes. Mr. Goeckeler is responsible for all personal income taxes associated with such personal usage.

**Fiscal 2024 Grants of Plan-Based Awards Table**

The following table presents information regarding all grants of plan-based awards made to our named executive officers during fiscal 2024.

| Name | Award Type | Grant Date | Estimated Possible Payouts Under Non-Equity Incentive Plan Awards | | | Estimated Future Payouts Under Equity Incentive Plan Awards | | | All Other Stock Awards: Number of Shares of Stock or Units (#) | Grant Date Fair Value of Stock and Option Awards ($)[1] |
|---|---|---|---|---|---|---|---|---|---|---|
| | | | Threshold ($) | Target ($) | Maximum ($) | Threshold (#) | Target (#) | Maximum (#) | | |
| **David V. Goeckeler** | STI | | 54,688 | 2,187,500 | 5,468,750 | — | — | — | — | — |
| | 2023-2025 PSUs[2] | 8/22/23 | — | — | — | 31,466 | 62,932 | 188,796 | — | 2,931,373 |
| | 2024-2026 PSUs[3] | 8/25/23 | — | — | — | 37,985 | 75,969 | 167,132 | — | 3,102,574 |
| | RSUs[4] | 8/25/23 | — | — | — | — | — | — | 151,937 | 5,999,992 |

(1) The amounts shown reflect the grant date fair value of the award computed in accordance with ASC 718. These amounts were calculated based on the assumptions described in Note 12 in the Notes to Consolidated Financial Statements included in WDC's 2024 Annual Report on Form 10-K. The grant date fair value for the PSU awards, at the probable outcome, is based on the value of WDC's common stock on (i) August 22, 2023 for the 2024 performance period under the 2023-2025 PSUs using a Monte Carlo simulation, which resulted in a simulated award value of $46.58 per share, and (ii) August 25, 2023 for the 2024 performance period under the 2024-2026 PSUs using a Monte Carlo simulation, which resulted in a simulated award value of $40.84 per share based on certain assumptions.

(2) Represents the 2024 annual performance period portion of the PSU award granted to the named executive officer for the three-year performance period covering fiscal 2023 through 2025, subject to cliff vesting on August 20, 2025, based on WDC's achievement of specified revenue and non-GAAP EPS performance goals and absolute stock price CAGR that correspond to specific payout percentages ranging between 0% and 300% of the target number of stock units subject to the award. Under financial accounting rules, an award is not deemed granted and the grant date fair value for a PSU award is not determined until the fiscal year in which the performance metrics are established. The performance metrics are annually determined by the WDC Compensation and Talent Committee for each of fiscal years 2023, 2024 and 2025. Accordingly, the grant date fair value for the portion attributable to fiscal 2024 annual targets of such award is reflected.

(3) Represents the 2024 annual performance period portion of the LTI PSU award granted to the named executive officer for the three-year performance period covering fiscal 2024 through 2026, subject to cliff vesting on August 25, 2026, based on WDC's achievement of specified revenue and non-GAAP EPS performance goals and relative TSR modifier that correspond to specific payout percentages ranging between 0% and 220% of the target number of stock units subject to the award. Under financial accounting rules, an award is not deemed granted and the grant date fair value for a PSU award is not determined until the fiscal year in which the performance metrics are established. The performance metrics are annually

determined by the WDC Compensation and Talent Committee for each of fiscal years 2024, 2025 and 2026. Accordingly, only the grant date fair value for the portion attributable to fiscal 2024 annual targets is reflected.

(4) Represents an annual LTI RSU award granted to the named executive officer, which is scheduled to vest with respect to 25% on the first anniversary of the grant date and 6.25% quarterly thereafter for three years.

**Description of Compensation Arrangements for Named Executive Officers**

**Non-Equity Incentive Plan Compensation and Awards**

In connection with the spin-off, we expect that the Spinco Board of Directors will adopt our Executive Short-Term Incentive Plan (the "Spinco STI Plan") to become effective in connection with the consummation of the spin-off. Our named executive officers will be eligible to receive cash incentive awards on an annual basis under the Spinco STI Plan (as described below), which generally mirrors the WDC STI Plan, except as otherwise determined by the Compensation and Talent Committee. See the section entitled "Executive Compensation—Compensation Discussion and Analysis" for a more detailed description of the WDC STI Plan.

**Spinco Executive Short-Term Incentive Plan**

The purpose of Spinco STI Plan is to promote the success of Spinco by (i) compensating and rewarding participating executives with incentive awards for the achievement of performance goals, (ii) motivating such executives by giving them opportunities to receive incentive awards directly related to performance, and (iii) retaining executives by offering them an opportunity to share in the Company's success.

*Administration*

The Spinco STI Plan will be administered by the Compensation and Talent Committee.

*Incentive Awards*

As the administrator, the Compensation and Talent Committee has the sole discretion to determine the performance goals and criteria for each award under the Spinco STI Plan. The Compensation and Talent Committee will establish the formula to be used to determine any incentive award payable under the Spinco STI Plan, and whether all or any portion of the amount so calculated will be paid, subject in all cases to the terms, conditions and limits of the plan.

Any incentive award earned and payable in accordance with the plan will be paid in cash (subject to tax withholding) as soon as reasonably practicable following the determination of such incentive award amount, but in no event later than (a) March 15 of the calendar year following the calendar year in which the applicable performance period ends, or (b) if later, the last day of the period ending on the 15th day of the third month following the end of the Company's fiscal year in which the applicable performance period ends.

*Adjustments*

The Compensation and Talent Committee has sole discretion to adjust the performance measures, performance goals, relative weights of the measures and other provisions of then-outstanding awards under the Spinco STI Plan to reflect items related to, among other things, a change in accounting principle, acquisitions, disposal of a business, discontinued operations and other events or changes in applicable law or business conditions.

*Corporate Transactions*

The Compensation and Talent Committee will have discretion to settle or terminate, as the Compensation and Talent Committee may determine in its sole discretion and (in the case of a settlement) in such amount (if any) as

the Compensation and Talent Committee may determine to be appropriate in its sole discretion, any award granted under the Spinco STI Plan in connection with any merger, reorganization or other corporation transaction.

*Clawback Provisions*

All awards and any incentive award paid under the Spinco STI Plan will be subject to the provisions of any clawback or similar policy implemented by the Company from time to time, including, without limitation, any clawback or similar policy adopted to comply with the requirements of applicable law, such as the Dodd-Frank Wall Street Reform and Consumer Protection Act and any rules or regulations promulgated thereunder, to the extent set forth in such clawback.

**Equity-Based Awards**

Each RSU and PSU award reported in the "Fiscal 2024 Grants of Plan-Based Awards Table" was granted by the WDC Compensation and Talent Committee under, and is subject to, the terms of the WDC 2021 Long-Term Incentive Plan.

Our named executive officers are not entitled to voting rights with respect to their WDC stock units (PSUs and RSUs). However, if WDC pays an ordinary cash dividend on WDC's outstanding shares of common stock, the named executive officer will have the right to receive a dividend equivalent with respect to any unpaid stock unit (whether vested or not) held as of the record date for the dividend payment, which will not be payable until the award vests.

Additional information regarding the vesting acceleration provisions applicable to equity awards granted to our named executive officers is included in the section entitled "Potential Payments upon Termination or Change in Control" below.

The LTI awards held by our named executive officers that are converted into Spinco LTI awards will be assumed under the 2025 LTIP (defined below) as further described under "The Separation and Distribution—General—Treatment of Equity Incentive Arrangements."

**Spinco 2025 Long-Term Incentive Plan**

In connection with the spin-off, we expect that our board will adopt, and WDC as our sole stockholder will approve, our 2025 Long-Term Incentive Plan (the "2025 LTIP") to become effective in connection with the consummation of the spin-off. The following summary is qualified in its entirety by the full text of the 2025 LTIP, which will be included as an exhibit to an amendment to this Form 10 filed with the SEC.

*Purpose*

The 2025 LTIP, through the granting of awards, is intended to help Spinco secure and retain the services of eligible award recipients, provide incentives for such persons to exert maximum efforts for the success of our company and any affiliate and provide a means by which the eligible award recipients may benefit from increases in the value of our common stock.

*Administration*

Our Board has the authority to administer the 2025 LTIP, including the powers to: (i) determine who will be granted awards and what type of award, when and how each award will be granted, the provisions of each award (which need not be identical), the number of shares or cash value subject to an award and the fair market value applicable to an award; (ii) construe and interpret the 2025 LTIP and awards granted thereunder and establish,

amend and revoke rules and regulations for administration of the 2025 LTIP and awards, including the ability to correct any defect, omission or inconsistency in the 2025 LTIP or any award document; (iii) settle all controversies regarding the 2025 LTIP and awards granted thereunder; (iv) accelerate or extend, in whole or in part, the time during which an award may be exercised or vested or at which cash or shares may be issued; (v) amend or terminate the 2025 LTIP; (vi) submit any amendment to the 2025 LTIP for stockholder approval; (vii) approve forms of award documents for use under the 2025 LTIP and amend the terms of any one or more outstanding awards; (viii) generally exercise such powers and perform such acts as our Board may deem necessary or expedient to promote the best interests of our company and that are not in conflict with the provisions of the 2025 LTIP or any award documents; and (ix) adopt procedures and sub-plans as are necessary or appropriate.

Subject to the provisions of the 2025 LTIP, our Board may delegate all or some of the administration of the 2025 LTIP to a committee of one or more directors and may delegate to one or more officers the authority to designate employees who are not officers to be recipients of options and stock appreciation rights (and, to the extent permitted by applicable law, other stock awards) and, to the extent permitted by applicable law, to determine the terms of such awards and the number of shares of common stock to be subject to such stock awards granted to such employees. Unless otherwise provided by our Board, delegation of authority by our Board to a committee or an officer will not limit the authority of our Board. All determinations, interpretations and constructions made by our Board (or another authorized committee or officer exercising powers delegated by our Board) in good faith will be final, binding and conclusive on all persons.

*No Repricing*

Neither an option nor a stock appreciation right may be modified to reduce the exercise price thereof nor may a new option, stock appreciation right or other award at a lower price be substituted or exchanged for a surrendered option or stock appreciation right (other than certain capitalization adjustments or substitutions in accordance with the 2025 LTIP), unless such action is approved by our stockholders.

*Eligibility*

Persons eligible to receive awards under the 2025 LTIP include officers and employees of our company or any of our subsidiaries, members of our Board and certain consultants and advisors. Effective as of the spin-off, approximately [●] of our officers and employees (including all of our named executive officers), each of our non-employee directors and approximately [●] consultants, will be considered eligible to receive awards under the 2025 LTIP.

*Aggregate Share Limit*

The maximum number of shares of our common stock that may be issued or transferred pursuant to awards under the 2025 LTIP, effective as of the spin-off, is [●], subject to adjustment as set forth in the 2025 LTIP.

*Additional Share Limits*

The following other limits are also contained in the 2025 LTIP. These limits are in addition to, and not in lieu of, the share limit for the 2025 LTIP described above.

- The maximum number of shares that may be delivered pursuant to options qualified as incentive stock options granted under the 2025 LTIP is [●]. The maximum number of shares subject to stock options and stock appreciation rights that may be granted during any calendar year to any individual under the 2025 LTIP is [●].
- The value of the shares subject to awards granted under the 2025 LTIP, together with any cash compensation awarded to any one non-employee director in any one “grant year” may not exceed $[●].

This limit would not apply as to any award granted to an individual for services in a capacity other than as a non-employee director, even if such individual is, was or becomes a non-employee director.

To the extent that an award granted under the 2025 LTIP is settled in cash or a form other than shares, the shares that would have been delivered had there been no such cash or other settlement will not be counted against the shares available for issuance under the 2025 LTIP. In the event that shares are delivered in respect of a dividend equivalent right granted under the 2025 LTIP, only the actual number of shares delivered with respect to the award shall be counted against the share limits of the 2025 LTIP. To the extent that shares are delivered pursuant to the exercise of a stock appreciation right or stock option, the number of underlying shares as to which the exercise relates shall be counted against the applicable share limits, as opposed to only counting the shares actually issued. Shares that are subject to or underlying awards granted under the 2025 LTIP that are not paid or delivered (whether due to expiration, cancellation, termination, forfeiture, failure to vest or any other reason) will again be available for subsequent awards under the 2025 LTIP. In addition, the 2025 LTIP generally provides that shares issued in connection with awards that are granted by or become obligations of our company through the assumption of awards (or in substitution for awards) in connection with an acquisition of another company will not count against the shares available for issuance under the 2025 LTIP.

Shares that are reacquired or withheld by us as full or partial payment in connection with a full-value award under the 2025 LTIP, as well as shares reacquired or withheld by us to satisfy the tax withholding obligations related to a full-value award under the 2025 LTIP, will not count against the share limit of and will be available for new award grants under the 2025 LTIP. Shares that are reacquired or withheld by us in connection with the exercise of stock options, the settlement of stock appreciation rights or the payment of required withholding taxes on stock options or stock appreciation rights are not, however, available for new award grants.

*Types of Awards*

The 2025 LTIP authorizes stock options, stock appreciation rights, restricted stock, restricted stock units, performance stock awards, cash awards and other stock-based awards. The 2025 LTIP retains flexibility to offer competitive incentives and to tailor benefits to specific needs and circumstances. Any award may be paid or settled in cash.

*Minimum Vesting Requirements*

Except pursuant to any required accelerated vesting in connection with a change in control event or in connection with retirement, death or disability, or as described below, the 2025 LTIP provides that each award granted under the 2025 LTIP will be subject to a minimum vesting period of one year. Awards may, however, be granted under the 2025 LTIP with minimum vesting requirements of less than one year, or no vesting requirements, provided that the total number of shares of our common stock subject to such awards will not exceed 5% of the aggregate share limit. This minimum vesting requirement under the 2025 LTIP does not limit or restrict the administrator's discretion to accelerate or provide for the acceleration of vesting of any award in any circumstances it determines to be appropriate.

*Deferrals*

The administrator may provide for the deferred payment of awards, and may determine the other terms applicable to deferrals. The administrator may provide that deferred settlements include the payment or crediting of interest or other earnings on the deferred amounts, or the payment or crediting of dividend equivalents where the deferred amounts are denominated in shares.

*Change in Control*

Unless provided otherwise in an award agreement or other agreement between a participant and Spinco or a subsidiary or expressly provided by our Board at the time of grant, then in the event of a change in control, our Board will take one or more of the following actions with respect to each outstanding award, contingent upon the closing or completion of the change in control:

- Arrange for the surviving corporation or acquiring corporation (or the surviving or acquiring corporation's parent company) to assume or continue the award or to substitute a similar stock award for the award (including, but not limited to, an award to acquire the same consideration per share paid to our stockholders pursuant to the change in control)
- Arrange for the assignment of any reacquisition or repurchase rights held by our company in respect of common stock issued pursuant to the award to the surviving corporation or acquiring corporation (or the surviving or acquiring corporation's parent company)
- Accelerate the vesting, in whole or in part, of the award (and, if applicable, the time at which the award may be exercised) to a date prior to the effective time of such change in control as determined by our Board, with such award terminating if not exercised (if applicable) at or prior to the effective time of the change in control, and with such accelerated vesting (and if applicable, such exercise) reversed if the change in control does not become effective
- Arrange for the lapse, in whole or in part, of any reacquisition or repurchase rights held by our company with respect to the award
- Cancel or arrange for the cancellation of the award, to the extent not vested or not exercised prior to the effective time of the change in control, in exchange for such cash consideration, if any, as our Board, in its reasonable determination, may consider appropriate as an approximation of the value of the canceled award
- Cancel or arrange for the cancellation of the award, to the extent not vested or not exercised prior to the effective time of the change in control, in exchange for a payment equal to the excess, if any, of (A) the value in the change in control of the property the participant would have received upon the exercise of the award immediately prior to the effective time of the change in control, over (B) any exercise price payable by such holder in connection with such exercise

Our Board need not take the same action or actions with respect to all awards or portions thereof or with respect to all participants and may take different actions with respect to the vested and unvested portions of an award.

In the absence of any affirmative determination by our Board at the time of a change in control, each outstanding award will be assumed or an equivalent award will be substituted by such applicable successor corporation, unless the successor corporation does not agree to assume the award or to substitute an equivalent award, in which case the vesting of such award will accelerate in its entirety (along with, if applicable, the time at which the award may be exercised) to a date prior to the effective time of such change in control as our Board will determine (or, if our Board does not determine such a date, to the date that is five days prior to the effective date of the change in control), with such award terminating if not exercised (if applicable) at or prior to the effective time of the change in control, and with such exercise reversed if the change in control does not become effective. However, the holder of a stock option or stock appreciation right will be given reasonable advance notice of the impending termination and a reasonable opportunity to exercise his or her outstanding vested stock options and stock appreciation rights (after giving effect to any accelerated vesting required in the circumstances) in accordance with their terms before the termination of such awards (except that in no case shall more than ten days' notice of the impending termination be required and any acceleration of vesting and any exercise of any portion of an award that is so accelerated may be made contingent upon the actual occurrence of the event).

*Transfer Restrictions*

Subject to certain exceptions contained in the 2025 LTIP, awards generally are not transferable by the recipient other than by will or the laws of descent and distribution and are generally exercisable, during the recipient's lifetime, only by the recipient. Any amounts payable or shares issuable pursuant to an award generally will be paid only to the recipient or the recipient's beneficiary or representative. In addition, the 2025 LTIP provides that an award of restricted stock may not be transferred to any financial institution without prior stockholder approval.

*Adjustments*

Each share limit and the number and kind of shares available under the 2025 LTIP and any outstanding awards, as well as the exercise or purchase prices of awards, are subject to adjustment in the event of certain corporate events. These events include reclassifications, recapitalizations, stock splits (including a stock split in the form of a stock dividend) or reverse stock split, mergers, combinations, consolidations, other reorganization, spin-off, split-up, similar extraordinary dividend distribution in respect of our common stock, exchange of common stock or other securities of our company, or other similar, unusual or extraordinary corporate events in respect of our common stock.

*Termination of or Changes to the 2025 LTIP*

Our Board may amend or terminate the 2025 LTIP at any time and in any manner. Stockholder approval for an amendment will be required only to the extent then required by applicable law or deemed necessary or advisable by our Board. No awards will be granted after the tenth anniversary of the 2025 LTIP's initial effective date. Outstanding awards, as well as the administrator's authority with respect thereto, generally will continue following the expiration or termination of the 2025 LTIP.

*Specific Benefits under the 2025 LTIP*

We have not approved any awards under the 2025 LTIP, other than the assumed awards as described in the section titled "Treatment of Equity Incentive Arrangements" above. The number and type of awards that we may grant in the future under the 2025 LTIP is not determinable.

We will grant RSUs under the 2025 LTIP to each of ournon-employee directors immediately following the first Annual Meeting. These annual grants will be made under our Non-Employee Director Restricted Stock Unit Grant Program (as further described below in the section tiled"Non-Employee Director Equity Awards") and determined based on the closing price of our common stock on the Nasdaq Stock Market on the grant date. The actual number of shares that we may issue to our non-employee directors under our Non-Employee Director Restricted Stock Unit Grant Program depends on, among other future variables, the number of our non-employee directors from time to time, when anon-employee director serves as Chair of the Board or Lead Independent Director, the price of our common stock on the applicable grant date that is used to convert the applicable grant-date value into a number of shares, and whether our Board changes the applicable grant date values or other aspects of our non-employee director compensation program in the future.

**Spinco 2025 Employee Stock Purchase Plan**

In connection with the spin-off, we expect that our board will adopt, and WDC as our sole stockholder will approve, our 2025 Employee Stock Purchase Plan (the "2025 ESPP") to become effective in connection with the consummation of the spin-off. The following summary is qualified in its entirety by the full text of the 2025 ESPP, which will be included as an exhibit to an amendment to this Form 10 filed with the SEC.

*Purpose*

The purpose of the 2025 ESPP is to provide an incentive for present and future eligible employees of our company and our participating subsidiaries to acquire a proprietary interest (or increase an existing proprietary interest) in our company through the purchase of common stock.

*Operation of the 2025 ESPP*

The 2025 ESPP operates in a series of periods referred to as "Offering Periods." We will establish the duration of each Offering Period in advance of that Offering Period. However, an Offering Period may not be longer than 24 months. We may provide for a new Offering Period to start before an Offering Period in progress has ended, but no one participant may participate in more than one Offering Period at the same time.

On the first day of each Offering Period (referred to as the "Enrollment Date"), each eligible employee who has timely filed a valid election to participate in the 2025 ESPP for that Offering Period is granted an option to purchase shares of our common stock. Participants may designate in their election the percentage of their compensation to be withheld from their pay during that Offering Period for the purchase of stock under the 2025 ESPP. Participants contributions under the 2025 ESPP are credited to a bookkeeping account in their name. Participants generally may elect to terminate their contributions to the 2025 ESPP at any time during an Offering Period. Participants also generally may elect to increase or decrease the rate of their contributions to the 2025 ESPP up to four times in a calendar year. Amounts contributed to the 2025 ESPP constitute general corporate assets of our company and may be used for any corporate purpose.

An Offering Period may consist of one or more periods referred to as "Exercise Periods." The last day of each Exercise Period is referred to as an "Exercise Date." Each option granted under the 2025 ESPP for an Offering Period is automatically exercised on each Exercise Date that occurs within that Offering Period. The number of shares acquired by participants upon exercise of their option is determined by dividing the participant's account balance under the 2025 ESPP as of the Exercise Date by the Exercise Price for that Offering Period. We establish the methodology for setting the Exercise Price in an Offering Period in advance of that Offering Period. The administrator of the 2025 ESPP may set the Exercise Price at any price, except that in no event may the Exercise Price be lower than the lesser of (i) 85% of the fair market value of a share of our common stock on the applicable Enrollment Date, or (ii) 85% of the fair market value of a share of our common stock on the applicable Exercise Date. Participant accounts are reduced upon exercise of their options by the amount used to pay the Exercise Price of the shares acquired by the participant. No interest is paid to any participant or credited to any account under the 2025 ESPP.

*Eligibility*

Only certain employees are eligible to participate in the 2025 ESPP. To be eligible to participate in an Offering Period, on the Enrollment Date of that period an individual must:

- be employed by our company or one of our subsidiaries that has been designated as a participating subsidiary; and
- be customarily employed for more than twenty hours per week and more than five months in a calendar year.

An employee who is a citizen or resident of a foreign jurisdiction to whom the grant of an option under the 2025 ESPP would be prohibited under the laws of such foreign jurisdiction, or compliance with the laws of such foreign jurisdiction would cause the 2025 ESPP to violate the requirements of Section 423 of the Internal Revenue Code, would not be eligible to participate in the 2025 ESPP.

As of the date of the spin-off, approximately [●] employees of our company and our subsidiaries, including all of the named executive officers, will be eligible to participate in the 2025 ESPP.

*Limits on Authorized Shares; Limits on Contributions*

Effective as of the spin-off, a total of [●] shares of our common stock will be available for issuance under the 2025 ESPP.

Participation in the 2025 ESPP is also subject to the following limits:

- Participants cannot contribute more than 10% of their compensation to the purchase of stock under the 2025 ESPP in any one payroll period.
- Participants cannot be granted an option under the 2025 ESPP for an offering period with respect to a number of shares of our common stock that exceeds five times the number of shares determined by dividing (i) $40,000 by (ii) the fair market value of a share of our common stock on the Enrollment Date multiplied by 85% (or the applicable percentage used to calculate the Exercise Price for that offering period).
- Participants cannot purchase more than $25,000 of stock (valued at the start of the applicable Offering Period and without giving effect to any discount reflected in the purchase price for the stock) under the 2025 ESPP for each calendar year in which such option is outstanding.
- Participants will not be granted an option under the 2025 ESPP if it would cause the participant to own stock and/or hold outstanding options to purchase stock representing 5% or more of the total combined voting power or value of all classes of stock of our company or one of our subsidiaries or to the extent it would exceed certain other limits under the Internal Revenue Code.

Our company has the flexibility to change the 10% contribution limit referred to above and the maximum limit on the number of shares that may be acquired by any individual during an Offering Period or Exercise Period under the 2025 ESPP referred to above from time to time without stockholder approval. However, we cannot increase the aggregate number of shares available for delivery under the 2025 ESPP without stockholder approval, other than to reflect stock splits and similar adjustments as described below. The $25,000 and the 5% ownership limitations referred to above are required under the Internal Revenue Code.

*Adjustments*

The number and kind of shares available under the 2025 ESPP, as well as purchase prices and share limits under the 2025 ESPP, are subject to adjustment in the case of certain corporate events. These events include reclassifications, recapitalizations, stock splits (including a stock split in the form of a stock dividend) or reverse stock split, mergers, combinations, consolidations, other reorganization, spin-off, split-up, similar extraordinary dividend distribution in respect of our common stock, exchange of common stock or other securities of our company, or other similar, unusual or extraordinary corporate events in respect of our common stock.

*Termination of Participation*

A participant's election to participate in the 2025 ESPP will generally continue in effect for all Offering Periods until the participant files a new election that takes effect or the participant ceases to participate in the 2025 ESPP. A participant's participation in the 2025 ESPP generally will terminate if, prior to the applicable Exercise Date, the participant ceases to be employed by our company or one of our participating subsidiaries or the participant is no longer scheduled to work more than twenty hours per week or more than five months in a calendar year. If a participant's participation in the 2025 ESPP terminates during an Offering Period for any of the reasons discussed in the preceding paragraph, he or she will no longer be permitted to make contributions to the 2025 ESPP for that Offering Period and, subject to limited exceptions, his or her option for that Offering Period will automatically terminate and his or her account balance will be paid to him or her in cash without interest. However, a participant's termination from participation will not have any effect upon his or her ability to participate in any succeeding Offering Period, provided that the applicable eligibility and participation requirements are again then met.

*Transfer Restrictions*

Participants rights with respect to options or the purchase of shares under the 2025 ESPP, as well as contributions credited to their accounts, may not be transferred, assigned, pledged or otherwise disposed of in any way except by will or the laws of descent and distribution.

*Administration*

The 2025 ESPP is administered by our Board or by a committee appointed by our Board. Our Board intends to appoint the Compensation and Talent Committee as the administrator of the 2025 ESPP. The administrator has full power and discretion to adopt, amend or rescind any rules and regulations for carrying out the 2025 ESPP, to determine which (if any) of our company's subsidiaries may be participating subsidiaries whose employees may participate in the 2025 ESPP, and to construe and interpret the 2025 ESPP. The administrator also may adopt rules, procedures or sub-plans applicable to particular subsidiaries or locations (for example and without limitation, as to participants employed in a particular jurisdiction outside of the U.S. who are subject to other applicable laws and regulations), which sub-plans may be designed to be outside of the scope of Section 423 of the Internal Revenue Code and need not comply with the otherwise applicable provisions of the 2025 ESPP. Decisions of the administrator with respect to the 2025 ESPP are final and binding on all persons.

*No Limit on Other Plans*

The 2025 ESPP does not limit the ability of our Board or any committee of our Board to grant awards or authorize any other compensation, with or without reference to our common stock, under any other plan or authority.

*Amendments*

Our Board generally may amend or suspend the 2025 ESPP at any time and in any manner. No amendment, suspension or termination of the 2025 ESPP may have a material adverse effect on the then-existing rights of any participant during an Exercise Period without the participant's written consent, but our Board may amend, suspend or terminate the 2025 ESPP as to any outstanding options granted under the 2025 ESPP for an Offering Period, effective as of any Exercise Date within that Offering Period, without the consent of the participants to whom such options were granted. Stockholder approval for an amendment to the 2025 ESPP will only be required to the extent required by law or applicable stock exchange rules, or as necessary to meet the requirements of Section 423 of the Internal Revenue Code in order to preserve the intended tax consequences of the 2025 ESPP.

*Termination*

Our Board may terminate the 2025 ESPP at any time. The 2025 ESPP will also terminate earlier if all of the shares authorized under the 2025 ESPP have been purchased.

*Specific Benefits under the 2025 ESPP*

The benefits that will be received by or allocated to eligible employees under the 2025 ESPP cannot be determined at this time because whether an eligible employee will participate, and the amount of contributions set aside to purchase shares of our common stock under the 2025 ESPP (subject to the limitations discussed above) as to an eligible employee who elects to participate in the 2025 ESPP, is entirely within the discretion of each individual participant.

**Spinco Deferred Compensation Plan**

Our named executive officers will be eligible to participate in our deferred compensation plan, which we generally expect will mirror WDC's deferred compensation plan ("the WDC Deferred Compensation Plan"),

unless otherwise determined by the Spinco Board of Directors. Our executive officers and certain other key employees who are subject to U.S. federal income taxes will be eligible to participate in our deferred compensation plan. Participants will be able to elect to defer certain compensation without regard to the tax code limitations applicable to tax-qualified plans. Under the plan, each participant may elect to defer up to 80% of his or her eligible compensation that may be earned during the following year. Amounts may be deferred until a specified date, disability or death. Emergency hardship withdrawals will also be permitted under the plan.

**Spinco Executive Severance Plan**

Our named executive officers will be eligible to participate in our executive severance plan (the "Spinco Executive Severance Plan"), which we generally expect will mirror WDC's executive severance plan, unless otherwise determined by the Spinco Board of Directors.

The Spinco Executive Severance Plan will be administered by the Compensation and Talent Committee. Each NEO will be designated by the Compensation and Talent Committee as a "Tier 1 Executive" under the Spinco Executive Severance Plan. An executive who participates in the Spinco Executive Severance Plan will receive the following severance benefits in the event the Company terminates the executive's employment without cause (other than in anticipation of, or within 12 months following, a change in control that would entitle the executive to greater benefits under the Spinco CIC Severance Plan (as defined below)):

(i) a lump sum payment equal to the executive's monthly base salary multiplied by 24;

(ii) a lump sum payment for any incentive that was earned through a prior incentive cycle but has not yet been paid;

(iii) a lump sum payment equal to a pro-rata portion of the executive's incentive opportunity for the incentive cycle in which the executive's date of termination occurs (determined based on the number of days in the applicable incentive cycle during which the executive was employed and assuming 100% of the performance goals are achieved regardless of performance);

(iv) for RSUs, accelerated vesting of a prorated number of RSUs;

(v) for PSUs, a pro-rata portion of the target number of PSUs subject to the award will remain outstanding and eligible to vest, if at all, based on actual achievement of the performance goals over the performance period;

(vi) outplacement services provided by a vendor chosen by the Company and at the Company's expense for 12 months following the executive's termination of employment; and

(vii) a lump sum payment equal to the applicable COBRA premium rate for Company-provided medical, dental and/or vision coverage existing as of the executive's termination date multiplied by 18 months, payable in a lump sum cash payment.

Payment of severance benefits under the Spinco Executive Severance Plan is conditioned upon the executive's execution of a valid and effective release of claims. In addition, no executive is entitled to a duplication of benefits under the Spinco Executive Severance Plan and any other severance plan, including the Spinco CIC Severance Plan (as defined below).

**Spinco Change in Control Severance Plan**

Our named executive officers will be eligible to participate in our change in control severance plan (the "Spinco CIC Severance Plan"), which we generally expect will mirror WDC's change in control severance plan, unless otherwise determined by the Spinco Board of Directors.

The Spinco CIC Severance Plan provides the following benefits upon a termination of employment by the Company or by the executive for good reason, in either case, within 12 months following a change in control or within 6 months prior to a change in control (such 18-month period, the "change in control period"):

(i) a lump sum payment equal to two times the sum of (A) the participant's annual base compensation plus (B) the target incentive opportunity under the incentive program under which the participant participates for the incentive cycle in which the date of termination occurs, plus (C) the participant's annual car allowance (in each case, based on the rates as in effect immediately prior to the change in control or as in effect on the date of notice of termination of the executive's employment, whichever is higher);

(ii) a payment for any incentive that was earned through a prior incentive cycle but has not yet been paid;

(iii) 100% vesting of any unvested outstanding time-based equity awards;

(iv) with respect to any PSU for which the applicable performance period has not ended as of the date of the participant's termination of employment or the change in control (whichever occurs later), the number of shares of common stock of the Company that vest will be equal to the greater of: (x) the target number of shares of common stock of the Company subject to the award; or (y) the number of shares of common stock of the Company subject to that award that would vest based on the treatment set forth in the definitive agreement providing for the change in control with PSUs vesting at the target level of performance (or such greater level as provided in the definitive agreement providing for the change in control). Any credited dividend equivalent rights will also become proportionally vested;

(v) with respect to any such award for which the applicable performance period has ended as of the date of the participant's termination of employment or the change in control (whichever occurs later), vesting will be based on the actual achievement of the applicable performance goal(s); and

(vi) a lump sum payment equal to the applicable COBRA premium payments (as reasonably determined by the Compensation and Talent Committee) that would be payable by the participant to continue the participant's company-provided medical, dental and/or vision coverage existing as of the participant's termination date for a period of 24 months following such participant's termination of employment. For purposes of clarity, such cash payment will be made regardless of whether the participant actually elects coverage under COBRA and will be determined as of the participant's termination of employment and not impacted by, or adjusted for, events occurring after such date (including, without limitation, changes in coverage or premiums).

Any health and welfare benefits will be reduced to the extent of the receipt of substantially equivalent coverage by the executive from any successor employer. The Board or the Compensation and Talent Committee may amend, suspend and/or terminate the Spinco CIC Severance Plan at any time in its discretion, except during a change in control period or with respect to a participant who is already entitled to payment under the Spinco CIC Severance Plan.

Commencing on the date a change in control occurs and for 12 months thereafter (or for such shorter period of time as the participant remains employed following such change in control), the Spinco CIC Severance Plan provides that executives will receive the following from the Company upon a change in control and for so long as they are employed thereafter: (i) a salary that is at least equal to the salary provided prior to the change in control; (ii) participation in and benefits under employee benefit plans or arrangements made available to executives of the Company generally; and (iii) reimbursement for all reasonable travel or other business expenses.

If the payments and benefits provided to an executive constitutes "parachute payments" within the meaning of Section 280G of the Code and are subject to the excise tax imposed by section 4999 of the Code (the "Excise Tax"), then the payments and benefits will be either (i) reduced (but not below zero) so that the present value of such total payments and benefits will be $1.00 less than three times the executive's "base amount" (within the

meaning of Section 280G of the Code) and no portion will be subject to the Excise Tax or (ii) paid in full, whichever produces the better net after-tax position to the executive (taking into account any applicable Excise Tax and any other applicable taxes).

**Offer Letters**

*Luis Felipe Visoso Lomelin*

WDC entered into an offer letter with Mr. Visoso Lomelin, dated July 1, 2024, to serve as its Executive Vice President and Chief Administrative Officer. The offer letter provides that Mr. Visoso Lomelin's employment with WDC will transfer to Spinco and that Mr. Visoso Lomelin is ultimately intended to serve as Chief Financial Officer of Spinco following the spin-off. The offer letter provides for at-will employment. The offer letter provides that Mr. Visoso Lomelin's initial base salary is $825,000 (US Dollars) and that during his employment with WDC, he is eligible to participate in the WDC Executive Short-Term Incentive Plan, with an individual target award of 150% of his eligible wages earned during the performance period.

In addition to a sign-on RSU award with a target value of $20,000,000 (US Dollars) that vests with respect to one half of the award on each of the first two anniversaries of the date of grant, Mr. Visoso Lomelin is also eligible to receive a fiscal 2025 award under the WDC 2021 Long-Term Incentive Plan with a target value of $10,000,000 (US Dollars) consisting of 100% RSUs (the "2025 LTI Award"). The target value of Mr. Visoso Lomelin's annual LTI award in future fiscal years will be $9,000,000 (US Dollars), consisting of a combination of performance and time-vested awards. The offer letter further provides that if Mr. Visoso Lomelin's employment with WDC (and, following the spin-off, with Spinco) terminates without "cause" (as defined in the WDC CIC Severance Plan), any then-unvested portion of the sign-on RSU award and 2025 LTI Award will vestpro-rata based on his service.

The offer letter additionally provides that Mr. Visoso Lomelin is eligible to receive asign-on cash award of $7,150,000 (US Dollars), with $4,000,000 (US Dollars) payable within 30 days of his start date and $3,150,000 (US Dollars) payable within 30 days of the six-month anniversary of his start date. The offer letter provides that if Mr. Visoso Lomelin's employment with WDC (and, following the spin-off, with Spinco), terminates prior to the second anniversary of his start date, any portion of the sign-on cash award received prior to such termination will be subject to repayment, and Mr. Visoso Lomelin will forfeit any unpaid portion of such award. The offer letter further provides that notwithstanding the foregoing, Mr. Visoso Lomelin will not be required to repay the sign-on cash award if his employment is terminated without "cause" (as defined in the WDC CIC Severance Plan or the Spinco Executive Severance Plan) and he provides a satisfactory release of claims to WDC or Spinco, as applicable.

The offer letter provides that as a condition of his employment, Mr. Visoso Lomelin is required to sign an Employee Inventions and Confidentiality Agreement governing inventions, proprietary information and such other subject matter, which WDC considers vital to protect its operation.

The offer letter further provides that Mr. Visoso Lomelin is eligible to participate in the WDC 401(k) Plan and other employee benefits, including additional benefits provided exclusively to executives of his level, such as Financial Counseling Reimbursement and company paid life insurance up to $1,000,000 (US Dollars) (which may require evidence of insurability).

**Employee Benefit Plans**

We intend to adopt various employee benefit plans that mirror the WDC 401(k) Plan and other employee benefit plans and programs, including additional benefits provided exclusively to senior executives as described in our named executive officers' offer letters.

**Outstanding Equity Awards at Fiscal 2024 Year-End Table**

The following table presents information regarding the current holdings of stock options and stock awards (and corresponding dividend equivalents) held by each of our named executive officers as of June 28, 2024. The amount shown for the market value of the stock awards is based on the closing price of WDC's common stock on June 28, 2024 ($75.77).

| | | Option Awards | | | | Stock Awards | | | |
|---|---|---|---|---|---|---|---|---|---|
| Name | Grant Date | Number of Securities Underlying Unexercised Options (#) Exercisable | Number of Securities Underlying Unexercised Options (#) Unexercisable | Option Exercise Price ($) | Option Expiration Date | Number of Shares or Units of Stock That Have Not Vested (#) | Market Value of Shares or Units of Stock That Have Not Vested ($) | Equity Incentive Plan Awards: Number of Unearned Shares, Units or Other Rights That Have Not Vested (#) | Equity Incentive Plan Awards: Market or Payout Value of Unearned Shares, Units or Other Rights That Have Not Vested ($) |
| **David V. Goeckeler** | 9/3/2020 | — | — | — | — | 31,821(1) | 2,411,077 | — | — |
| | 8/27/2021 | — | — | — | — | 29,646(2) | 2,246,277 | — | — |
| | | | | | | 169,353(3) | 12,831,877 | — | — |
| | 8/25/2022 | — | — | — | — | 70,797(2) | 5,364,289 | 188,797(4) | 14,305,149 |
| | 8/25/2023 | — | — | — | — | 151,937(2) | 11,512,266 | 501,389(5) | 37,990,245 |

(1) These RSU awards are scheduled to vest in substantially equal annual installments over four years.

(2) This RSU award is scheduled to vest as to 25% of the underlying shares on the first anniversary of the grant date, and as to an additional 6.25% of the underlying shares at the end of each three-month period thereafter until the award is fully vested on the fourth anniversary of the grant date.

(3) Reflects the portion of a PSU award that has been credited based on achievement of the performance goals but remained subject to a service requirement through August 27, 2024.

(4) This PSU award is scheduled to vest on August 20, 2025 based on achievement of revenue andnon-GAAP EPS annual targets set for the three-year performance period covering fiscal 2023 through 2025. The awards will be payable in shares of WDC's common stock on the vesting date based on WDC's achievement of the specified goals that correspond to specific payment percentages ranging between 0% and 300% of the target number of stock units subject to the awards. Although the fiscal 2025 performance targets were not set during or prior to fiscal 2024 (and thus such portion was not deemed granted yet as of the end of fiscal 2024), the stock units relating to such portions have been included above. The numbers above reflect payment at target level, which is 100% of the target number of stock units of the full award, based on the trending performance as of the end of fiscal 2024. Because the performance metrics for fiscal 2025 was not set as of the end of fiscal 2024, the numbers above reflect the trending performance based solely on achievement of the fiscal 2023 and 2024 targets.

(5) This PSU award is scheduled to vest on August 25, 2026 based on achievement of revenue andnon-GAAP EPS annual targets set for the three-year performance period covering fiscal 2024 through 2026. The awards will be payable in shares of WDC's common stock on the vesting date based on WDC's achievement of the specified goals that correspond to specific payment percentages ranging between 0% and 220% of the target number of stock units subject to the awards. Although the fiscal 2025 and 2026 performance targets were not set during fiscal 2024 (and thus such portions were not deemed granted during fiscal 2024), the stock units relating to such portions have been included above. The numbers above reflect payment at maximum performance, which is 220% of the target number of stock units of the full award, based on the trending performance as of the end of fiscal 2024. Because the performance metrics for fiscal 2025 and 2026 were not set during fiscal 2024, the numbers above reflect the trending performance based solely on achievement of the fiscal 2024 targets.

**Fiscal 2024 Option Exercises and Stock Vested Table**

The following table presents information regarding the amount realized upon the exercise of stock options and the vesting of stock unit awards for our named executive officers during fiscal 2024. There were no stock option award exercises in fiscal 2024.

| | Stock Awards | |
|---|---|---|
| Name | Number of Shares Acquired on Vesting (#) | Value Realized on Vesting ($)[1] |
| **David V. Goeckeler** | 272,326 | 15,062,728 |

(1) The value realized on the vesting of stock awards (and corresponding dividend equivalents) is based on the closing price of WDC's common stock on the applicable vesting date (or, for PSUs, the applicable payment date) of the awards.

**Fiscal 2024 Non-Qualified Deferred Compensation Table**

WDC permits its named executive officers and other key employees to elect to receive a portion of their compensation reported in the "Fiscal 2024 Summary Compensation Table" on a deferred basis under the WDC Deferred Compensation Plan. Under the plan, each participant may elect to defer up to 80% of his or her eligible compensation that may be earned during the following year. Amounts may be deferred until a specified date, retirement, disability or death. Emergency hardship withdrawals are also permitted under the plan.

The following table presents information regarding the contributions to, investment earnings, distributions and total value of our named executive officers' balances under the WDC Deferred Compensation Plan during fiscal 2024, including as to RSUs that vested but as to which payment was deferred.

| Name | Executive Contributions in 2024 ($) | Registrant Contributions in 2024 ($) | Aggregate Earnings in 2024 ($)[1] | Aggregate Withdrawals/ Distributions ($) | Aggregate Balance at June 28, 2024 ($)[2] |
|---|---|---|---|---|---|
| **David V. Goeckeler** | — | — | — | — | — |

(1) The amounts reported are not considered to be at above-market rates under applicable SEC rules and were therefore not included in the "Fiscal 2024 Summary Compensation Table" above.
(2) The balances reported represent compensation already reported in the "Fiscal 2024 Summary Compensation Table" above and its equivalent table in prior years' proxy statements, except for the earnings on contributions that are not considered to be at above-market rates and for amounts earned while the individual was not a named executive officer.

**Potential Payments upon Termination or Change in Control**

**Change in Control—Termination without Cause or For Good Reason**

As discussed above, our named executive officers may be entitled to severance benefits under the Spinco CIC Severance Plan which generally mirrors WDC's change in control severance plan (the "WDC CIC Severance Plan"). Under the WDC CIC Severance Plan, the severance benefits are payable if WDC terminates the named executive officer's employment without "cause" or the named executive officer voluntarily terminates employment for "good reason" within 12 months after a change in control.

For these purposes:

- "Change in control" generally means an acquisition by any person or group of more thanone-third of WDC stock, certain majority changes in its Board of Directors over a period of not more than two years, mergers and similar transactions that result in a 50% or greater change in its ownership, and certain liquidations and dissolutions of WDC
- "Cause" generally means the commission of certain crimes by the executive officer, the executive officer's willful engagement in fraud or dishonest conduct, refusal or failure to perform certain duties, breach of fiduciary duty or breach of certain other violations of WDC policy
- "Good reason" generally means a material diminution in the executive officer's authority, duties or responsibilities, a material diminution in the executive officer's base compensation, certain relocations of the executive's employment or a material breach by WDC (or its successor) with respect to its obligations under the WDC CIC Severance Plan

For each of our named executive officers, the severance benefits generally consist of the following as a "Tier 1" participant:

- A lump sum payment equal to two times the sum of the executive officer's annual base compensation plus the target STI as in effect immediately prior to the change in control or as in effect on the date of notice of termination of the executive officer's employment with us, whichever is higher, plus any earned but not yet paid STI payments in respect of completed performance periods
- 100% vesting of any unvested outstanding equity awards granted to the executive officer by us, with any performance-based equity awards as to which the applicable performance period has not ended becoming vested at the target level (or, if more favorable, as otherwise provided in the agreement providing for a change in control)
- A lump sum payment equal to the applicable COBRA premium payments for a period of 24 months following the executive officer's termination

**Involuntary Termination without Cause—No Change in Control**

As discussed above, our named executive officers may be entitled to severance benefits under the Spinco Executive Severance Plan which generally mirrors WDC's executive severance plan (the "WDC Executive Severance Plan"). The WDC Executive Severance Plan provides the following severance benefits to its named executive officers as Tier 1 participants in the event their employment is terminated without "cause" (generally as defined above).

- A lump sum cash payment of the executive officer's monthly base salary multiplied by 24 months
- Any earned but not yet paid STI payments in respect of completed performance periods and a pro rata STI payment based on the number of days in the applicable performance period during which the executive officer was employed at target performance
- For PSU awards, a prorated portion of the PSUs subject to the award will remain outstanding and vest, if at all, based on actual achievement of the performance goals over the entire performance period
- For RSU awards, acceleration of vesting of a prorated amount of RSUs
- Outplacement services at our expense for 12 months following the executive officer's termination of employment
- A lump sum payment equal to the applicable COBRA premium payments for a period of 18 months following the executive officer's termination

Payment of severance benefits under the WDC CIC Severance Plan and the WDC Executive Severance Plan is conditioned upon the executive officer's execution of a valid and effective release of claims. In addition, no executive officer is entitled to a duplication of benefits under the WDC Executive Severance Plan and any other severance plan, including the WDC CIC Severance Plan.

**Qualified Retirement**

In the event a WDC executive officer meets certain retirement criteria, a pro rata portion of the target number of PSUs will remain outstanding and eligible to vest based on actual achievement of the performance goals over the performance period. There is no corresponding benefit for RSUs upon a qualified retirement.

To be eligible for retirement, the executive officer must have five years of credited service with WDC and must also be at least age 55 at the time of retirement and his or her age plus total years of credited service must be at least 70.

**Death**

In the event of a WDC executive officer's death, the vesting of a pro rata portion of the RSUs will accelerate and a pro rata portion of the target number of PSUs will remain outstanding and eligible to vest based on actual achievement of the performance goals over the performance period. For RSUs, beginning with WDC's fiscal 2025 annual grant, 50% of the outstanding RSUs will accelerate upon an executive officer's death. The executive officer would also be eligible for a pro rata STI payout based on the number of days in the applicable performance period during which the executive officer was employed, subject to actual corporate performance and no individual modification.

**Termination for Cause/Misconduct**

In the event a WDC executive officer's employment is terminated for cause due to, among other reasons, the WDC executive officer's misconduct or violation of company policy, the WDC executive officer will forfeit all outstanding incentives, including unearned or unvested LTI and STI awards. In addition, the WDC executive officer would not be eligible for severance benefits.

**Calculation of Potential Payments upon Termination or Change in Control**

The table below presents WDC's estimate of the benefits payable to our named executive officers, under the arrangements described above based on the following assumptions:

- Qualifying termination of employment and/or change in control occurred on June 28, 2024
- The price per share of WDC common stock is equal to the closing price of our common stock on June 28, 2024 ($75.77), the last trading day in fiscal 2024
- In the case of a change in control, WDC does not survive the change in control, and all outstanding incentive awards are cashed out and terminated in the transaction
- Not included in the table below are payments each named executive officer earned or accrued prior to termination, such as the balances under the WDC Deferred Compensation Plan and previously vested equity and non-equity incentive awards, which are more fully described and quantified in the tables and narratives above

| Name | Compensation Element | Change in Control-No Termination (Awards Not Assumed) ($)[1] | Change in Control-With Termination Without Cause or For Good Reason ($) | Involuntary Termination Without Cause-No Change in Control ($)[2] | Qualified Retirement ($)[3] | Death ($)[2] |
|---|---|---|---|---|---|---|
| **David V. Goeckeler** | Cash Severance | — | 6,875,000 | 4,687,500 | — | — |
| | RSU Acceleration[4] | 21,533,910 | 21,533,910 | 4,797,945 | — | 4,797,945 |
| | PSU Acceleration[5] | 42,356,642 | 42,356,642 | 26,039,355 | — | 26,039,355 |
| | Continuation of Benefits[6] | — | 50,499 | 33,887 | — | — |
| | Value of Outplacement Services | — | — | 3,200 | — | — |
| | **TOTAL** | 63,890,552 | 70,816,051 | 35,561,887 | — | 30,837,300 |

(1) None of our named executive officers' equity awards will automatically vest because a change in control event occurs. The amounts shown represent the estimated value of the acceleration of outstanding equity incentive compensation under our incentive compensation plans in connection with a change in control (regardless of whether a termination of employment also occurs) assuming that the awards were to be terminated in connection with the change in control and the WDC Compensation and Talent Committee had not provided for the assumption, substitution or other continuation of the awards.

(2) For the PSU awards, where applicable, the amounts are prorated and assume achievement at 100% of the target level of performance for the performance period or, if applicable, the credited amount.

(3) As of June 28, 2024, none of our named executive officers met the requirements for a "qualified retiree" with respect to PSUs.

(4) The amounts shown are based on the intrinsic value of the portion of the RSU award that would have accelerated as of June 28, 2024. These intrinsic values were based on the closing price of our common stock on June 28, 2024 ($75.77).

(5) The amounts shown represent the target number of PSUs subject to the award that would have remained outstanding and eligible to vest in connection with the termination event and are based on the intrinsic value of those stock units as of June 28, 2024. These intrinsic values were calculated by multiplying (i) the closing price of our common stock on June 28, 2024 ($75.77), by (ii) the target number of PSUs or, if applicable, the credited amount, that would have remained outstanding and eligible to vest as of June 28, 2024.

(6) For purposes of the calculation for these amounts, expected costs have not been adjusted for any actuarial assumptions related to mortality, likelihood that the named executive officer will find other employment or discount rates for determining present value.

# DIRECTOR COMPENSATION

## INTRODUCTION

The initial Spinco non-employee director compensation program will be designed to provide competitive compensation that is necessary to attract and retain qualified non-management directors. It is anticipated that the Spinco annual non-employee director compensation program will initially consist of a cash retainer and equity compensation. Management directors will not receive compensation for their service as director. Following the spin-off, the initial Spinco non-employee director compensation program will be subject to the review and approval of the Spinco Board of Directors or a committee thereof.

Except as described below, the initial Spinco non-employee director compensation program is expected to be similar in structure to the existing WDC director compensation program described below.

## WDC DIRECTOR COMPENSATION PROGRAM

WDC believes that it is important to attract and retain exceptional and experienced directors who understand its business, and to offer compensation opportunities that further align the interests of its non-employee directors with those of its stockholders. The WDC Compensation and Talent Committee, with the assistance of its independent compensation consultant, regularly reviews its non-employee director compensation and market trends in director compensation (including non-employee director compensation practices at a group of peer companies) and evaluates the competitiveness and reasonableness of the compensation program in light of general trends and practices. The WDC Compensation and Talent Committee makes recommendations based on such review to the WDC Board of Directors, which determines whether any changes should be made to its non-employee director compensation program.

WDC established a compensation program for fiscal 2024 for each of itsnon-employee directors that generally consisted of a combination of annual cash retainers RSUs. As a part of its most recent review of the non-employee director compensation program, the WDC Compensation and Talent Committee reviewed an analysis of competitive market data and determined that its non-employee director compensation was near the median of WDC's peers in terms of the average total direct compensation amount.

The following section describes the elements and other features of its director compensation program for fiscal 2024 fornon-employee directors. WDC did not make any changes compared to the fiscal 2023 director compensation program and there are currently no planned changes to the non-employee director compensation program for fiscal 2025.

### Non-Employee Director Cash Retainer Fees

Cash retainer fees are paid to WDC's non-employee directors based on WDC Board of Directors and committee service from annual meeting to annual meeting and are paid in a lump sum immediately following the annual meeting marking the start of the year. The following table sets forth the schedule of annual cash retainer and committee membership fees for its non-employee directors for fiscal 2024.

| Type of Fee | Current Annual Fee ($) |
|---|---|
| Annual Retainer | 85,000 |
| Additional Non-Employee Chair of the Board Retainer | 100,000 |
| Additional Committee Member Retainers: | |
| Audit Committee | 15,000 |
| Compensation and Talent Committee | 12,500 |
| Governance Committee | 10,000 |
| Additional Committee Chair Retainers: | |
| Audit Committee | 25,000 |
| Compensation and Talent Committee | 22,500 |
| Governance Committee | 15,000 |

A non-employee director serving as Chair of the Board committee receives both the Additional Committee Chair Retainer and the Additional Committee Member Retainer for that committee. Non-employee directors who are appointed to the WDC Board of Directors, a WDC Board of Directors committee, or to one of the Chair positions noted above during the year are paid a pro rata amount of the annual retainer fees for that position based on service to be rendered for the remaining part of the year after appointment. With respect to the initial slate of Spinco non-employee directors, members of the WDC Board of Directors who are appointed to the Spinco Board of Directors will receive a pro rata amount of the annual retainer fees based on service to be rendered for the remaining part of the year after appointment and other non-employee directors who are appointed to the Spinco Board of Directors will receive full annual cash retainer fees.

Non-employee directors do not receive a separate fee for each board or committee meeting they attend. WDC reimburses itsnon-employee directors for reasonable out-of-pocket expenses incurred to attend each board or committee meeting.

**Non-Employee Director Equity Awards**

Under the WDC Non-Employee Director Restricted Stock Unit Grant Program, each of its non-employee directors automatically received for fiscal 2024 an award of RSUs equal in value to $240,000 (or, in the case of its non-employee director serving as Chair of the Board, $290,000, or, in the case of our Lead Independent Director, $280,000). Non-employee directors receive the awards immediately following the annual meeting of stockholders if he or she has been re-elected as a director at that meeting. In the case of anon-employee director who is newly elected or appointed after the date of the annual meeting, WDC grants a prorated award of RSUs for the year in which he or she is elected or appointed. Pursuant to its Non-Employee Director Restricted Stock Unit Grant Program, a non-employee director who is serving on the WDC Board pursuant to an investor's contractual right will receive a cash award in lieu of RSUs. The amount of a cash award granted in lieu of RSUs will be equal to the value of RSUs that the recipient would otherwise have been entitled to receive. The RSUs and cash awards granted in fiscal 2024 vest 100% upon the earlier of: (i) November 15, 2024 (the first anniversary of the grant date); and (ii) immediately prior to the first annual meeting of stockholders held after the grant date. With respect to the initial slate of Spinco non-employee directors, each director will receive a prorated RSU award.

**Fiscal 2024 Non-Employee Director Equity Awards and Cash Retainers**

On the date of WDC's 2023 Annual Meeting (November 15, 2023), eachnon-employee director serving on the WDC Board was automatically granted 5,213 RSUs (6,300 RSUs for its Chair of the Board and 6,082 RSUs for its Lead Independent Director) with these awards being received by directors in fiscal 2024. The closing price of WDC common stock on the Nasdaq Stock Market on November 15, 2023, was $46.03.

Each of our non-employee directors serving on the WDC Board of Directors in fiscal 2024 also received cash retainer fees in the amounts set forth above under the section titled "Non-Employee Director Cash Retainer Fees".

**Deferred Compensation Plan for Non-Employee Directors**

WDC permits each non-employee director to defer payment of up to 80% of his or her annual cash compensation in accordance with the WDC Deferred Compensation Plan. WDC also permits non-employee directors to defer payment of any RSUs awarded under itsNon-Employee Director Restricted Stock Unit Grant Program beyond the vesting date of the award. RSUs and other amounts deferred in cash by a director are generally credited and payable in the same manner as amounts deferred by its executive officers and other participants in its Deferred Compensation Plan as further described in the "Fiscal 2024 Non-Qualified Deferred Compensation Table."

**Director Stock Ownership Guidelines**

Under WDC's director stock ownership guidelines, directors are generally prohibited from selling any shares of WDC common stock unless they own "qualifying shares" with a market value of at least $375,000, which include common stock, RSUs, deferred stock units and common stock beneficially owned by the director by virtue of being held in a trust, by a spouse or by the director's minor children. Shares the director has a right to acquire through the exercise of stock options (whether or not vested) do not count towards the stock ownership requirement. All of WDC's non-employee directors complied with its director stock ownership guidelines.

**Treatment of Equity Incentive Arrangements in Connection with the Spin-off**

Our directors' RSU awards that were granted under WDC's Non-Employee Director Restricted Stock Unit Grant Program prior to the spin-off will be treated as follows upon the spin-off:

- Spinco directors who will continue to serve as WDC directors following the spin-off (as dual service directors) will have their RSU awards converted into post-separation WDC RSU awards and Spinco RSU awards. The number of shares of WDC common stock subject to each post-separation WDC RSU award will be equal to the same number of shares that were subject to the pre-separation RSU award, and the number of shares of Spinco common stock subject to each post-separation Spinco RSU award will be equal to the number of shares of Spinco common stock an individual holder of WDC common stock will receive in the distribution calculated based on the number of WDC shares of common stock subject to the pre-separation award.
- Spinco directors who were previously WDC directors, but who will only serve as Spinco directors following the spin-off, will have their RSU awards converted into Spinco RSU awards, with adjustments intended to preserve the aggregate value of the equity award based on a ratio that takes into account the pre-separation per share closing trading price of WDC common stock on the trading day prior to the separation and the average post-separation per share closing trading price of Spinco common stock over 5 trading days following the separation.
- Any Spinco directors who elected to defer payment of their WDC RSU awards will continue to retain the deferred payment of such awards pursuant to WDC's plans and programs following the spin-off, with adjustments intended to preserve the aggregate value of the equity award based on a ratio that takes into account the pre-separation per share closing trading price of WDC common stock on the trading day prior to the separation and the average post-separation per share closing trading price of WDC common stock over 5 trading days following the separation.

## Non-GAAP Financial Measures

We have disclosed in this Form 10 financial measures that are not in accordance with U.S. generally accepted accounting principles ("GAAP"). These non-GAAP measures are not an alternative for measures prepared in accordance with GAAP and may be different from non-GAAP measures used by other companies. These measures should be considered in addition to financial measures prepared in accordance with GAAP, but should not be considered a substitute for, or superior to, GAAP results. The presentation of these non-GAAP measures, when shown in conjunction with the corresponding GAAP measures, provides useful information to investors for measuring our performance and comparing it against prior periods. These non-GAAP measures are used by management for assessing financial performance and as a measurement of performance for incentive compensation purposes, but should not be considered a substitute for, or superior to, GAAP results.

WDC's Compensation and Talent Committee used non-GAAP operating income as a pre-established performance goal under the STI plan for fiscal 2024 and non-GAAP diluted income per common share (which we also refer to as non-GAAP EPS) as a pre-established performance goal under the fiscal 2022-2024, fiscal 2023-2025 and fiscal 2024-2026 PSU awards. In accordance with the pre-established terms of the STI and PSU awards, these non-GAAP performance measures excluded certain material or unusual items that WDC believes are not indicative of the underlying performance of its business as detailed below

### Reconciliations of Non-GAAP Financial Measures

The following non-GAAP measures (namely, non-GAAP operating income or loss and non-GAAP diluted income or loss per common share) exclude certain expenses, gains and losses that WDC believes are not indicative of its core operating results or because they are consistent with the financial models and estimates published by many analysts who follow WDC and WDC's peers. As further detailed below, the expenses, gains and losses excluded from the following non-GAAP measures consist of stock-based compensation expense; litigation matter; employee termination, asset impairment and other charges; business separation costs; amortization of acquired intangible assets; contamination related charges; recovery from contamination incident; recovery related to a power outage incident; strategic review; non-cash economic interest and other; and income tax adjustments.

The following tables present reconciliations of WDC's GAAP operating loss to its non-GAAP operating income/ (loss) and WDC's GAAP diluted income/(loss) per common share to its non-GAAP diluted income/(loss) per common share:

| (in millions, except per share information, unaudited) | Year Ended June 28, 2024 | Year Ended June 30, 2023 |
|---|---|---|
| **Revenue** | $ 13,003 | $ 12,318 |
| **Reconciliation of non-GAAP operating income (loss)** | | |
| GAAP operating loss | $ (317) | $ (1,285) |
| Stock-based compensation expense | 295 | 318 |
| Amortization of acquired intangible assets | 3 | 133 |
| Recovery from contamination incident | (37) | — |
| Litigation matter | 291 | — |
| Employee termination, asset impairment and other charges | 139 | 193 |
| Strategic review | 37 | 42 |
| Business separation costs | 97 | — |
| Other | 4 | 5 |
| Non-GAAP operating income (loss) | $ 512 | $ (594) |

| | Year Ended June 28, 2024 | Year Ended June 30, 2023 | Year Ended July 1, 2022 |
|---|---|---|---|
| **Reconciliation of non-GAAP net income (loss) and earnings per share:** | | | |
| GAAP net income (loss) | $ (798) | $ (1,684) | $ 1,546 |
| Stock-based compensation expense | 295 | 318 | 326 |
| Litigation matter | 291 | — | — |
| Employee termination, asset impairment and other charges | 139 | 193 | 43 |
| Business separation cost | 97 | — | — |
| Amortization of acquired intangible assets | 3 | 133 | 221 |
| Contamination related charges | — | — | 207 |
| Recovery from contamination incident | (37) | — | — |
| Recovery related to a power outage incident | — | — | (7) |
| Strategic review | 37 | 42 | — |
| Non-cash economic interest and Other | (57) | (8) | 8 |
| Income tax adjustments | 19 | (103) | 301 |
| Non-GAAP net income (loss) | (11) | (1,109) | 2,645 |
| Less: cumulative dividends allocated to preferred shareholders | 54 | 24 | — |
| Non-GAAP net income (loss) attributable to common shareholders | $ (65) | $ (1,133) | $ 2,645 |
| **Diluted weighted average shares outstanding** | | | |
| GAAP | 326 | 318 | 316 |
| Non-GAAP | 326 | 318 | 316 |
| **Diluted income (loss) per common share:** | | | |
| GAAP | $ (2.61) | $ (5.37) | $ 4.89 |
| Non-GAAP | $ (0.20) | $ (3.56) | $ 8.37 |

**Explanations of Adjustments to Non-GAAP Measures**

As detailed above, WDC excludes the following items from itsnon-GAAP financial measures:

Stock-based compensation expense. Because of the variety of equity awards used by companies, the varying methodologies for determining stock-based compensation expense, the subjective assumptions involved in those determinations and the volatility in valuations that can be driven by market conditions outside WDC's control, WDC believes excluding stock-based compensation expense enhances the ability of management and investors to understand and assess the underlying performance of its business over time and compare it against WDC's peers, a majority of whom also exclude stock-based compensation expense from their non-GAAP results.

Litigation matter. WDC accrues expenses in the fiscal fourth quarter associated with a recent judgment in a patent litigation matter, which is discussed more fully in WDC's Annual Report on Form 10-K filed with the SEC on August 20, 2024. WDC believes these charges do not reflect its operating results and that they are not indicative of the underlying performance of its business.

Employee termination, asset impairment and other charges. From time-to-time, in order to realign its operations with anticipated market demand or to achieve cost synergies from the integration of acquisitions, WDC may terminate employees and/or restructure its operations. From time-to-time, WDC may also incur charges from the impairment of intangible assets and other long-lived assets. In addition, WDC may record credits related to gains upon sale of property due to restructuring or reversals of charges recorded in prior periods. In addition, in fiscal 2024, WDC has taken actions to reduce the amount of capital invested in facilities, including the sale-leaseback of facilities. These charges or credits are inconsistent in amount and frequency, and WDC believes they are not indicative of the underlying performance of its business.

Business separation cost. WDC incurred expenses associated with this separation of its HDD and Flash business units to create two independent, public companies. WDC believes these charges do not reflect its operating results and that they are not indicative of the underlying performance of its business.

Amortization of acquired intangible assets. WDC incurs expenses from the amortization of acquired intangible assets over their economic lives. Such charges are significantly impacted by the timing and magnitude of WDC's acquisitions and any related impairment charges.

Contamination related charges. In February 2022, a contamination of certain materials used in WDC's manufacturing process occurred and affected production operation at the flash-based memory manufacturing facilities in Yokkaichi and Kitakami, Japan, which are operated through its joint business ventures with Kioxia. The contamination resulted in scrapped inventory and rework costs, decontamination and other costs needed to restore the facilities to normal capacity, and under absorption of overhead costs, which are expensed as incurred. These charges are inconsistent in amount and frequency, and WDC believes these charges are not part of the ongoing production operation of its business.

Recovery from contamination incident. In February 2022, a contamination of certain materials used in WDC's manufacturing process occurred and affected production operations at the flash-based memory manufacturing facilities in Yokkaichi and Kitakami, Japan, which are operated through its joint business ventures with Kioxia. The contamination resulted in scrapped inventory and rework costs, decontamination and other costs needed to restore the facilities to normal capacity, and under absorption of overhead costs which were expensed as incurred. During the quarters ended December 29, 2023, and March 29, 2024, WDC received recoveries of these losses from other parties. The contamination charges and related recoveries were inconsistent in amount and frequency, and WDC believes they were not part of the ongoing production operation of its business.

Recovery related to a power outage incident. In June 2019, an unexpected power outage incident occurred at the flash-based memory manufacturing facilities operated through WDC's joint venture with Kioxia in Yokkaichi, Japan. The power outage incident resulted in costs associated with the repair of damaged tools and the write-off of damaged inventory and unabsorbed manufacturing overhead costs which are expensed as incurred. During fiscal 2021 and 2022, WDC received recoveries of these losses from other parties. The recoveries are inconsistent in amount and frequency, and WDC believes they are not part of the ongoing production operation of its business.

Strategic review. WDC incurred expenses associated with its ongoing review of strategic alternatives that resulted in the planned separation of its HDD and Flash business units to create two independent, public companies. WDC believes these charges do not reflect its operating results and that they are not indicative of the underlying performance of its business.

Non-cash economic interest. WDC have excluded non-cash economic interest expense associated with its convertible notes recognized in periods prior to its adoption of the Financial Accounting Standards Board Accounting Standards Update No. 2020-06, "Debt—Debt with Conversion and Other Options (Subtopic 470-20) and Derivatives and Hedging—Contracts in Entity's Own Equity (Subtopic 815-40): Accounting for Convertible Instruments and Contracts in an Entity's Own Equity", which WDC adopted at the beginning of its fiscal year ending June 30, 2023. The exclusion of such amounts from prior periods facilitates a comparison of WDC's prior period results to the current period presentation.

Other adjustments. From time-to-time, WDC sell or impair investments or other assets which are not considered necessary to its business operations or incur other charges or gains that WDC believes are not a part of the ongoing operation of its business. The resulting expense or benefit is inconsistent in amount and frequency.

Income tax adjustments. Income tax adjustments include the difference between income taxes based on a forecasted annualnon-GAAP tax rate and a forecasted annual GAAP tax rate as a result of the timing of certain non-GAAP pre-tax adjustments. The income tax adjustments also include adjustments to estimates related to the current status of the rules and regulations governing the transition to the Tax Cuts and Jobs Act and the re-measurement of certain unrecognized tax benefits primarily related to tax positions taken in prior periods, including interest. These adjustments are excluded because WDC believes that they are not indicative of the underlying performance of its ongoing business.

## CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS

### Procedures for Approval of Related Person Transactions

The Spinco Board of Directors will establish a Related Person Transaction Policy prior to completion of the spin-off. The purpose of this policy is to describe the procedures used to identify, review, approve and disclose, if necessary, any transaction, arrangement or relationship (or any series of similar transactions, arrangements or relationships) in which: (i) Spinco was, is or will be a participant; (ii) the aggregate amount involved exceeds or is expected to exceed $120,000 in any fiscal year; and (iii) a related person has or will have a direct or indirect material interest. For purposes of the policy, a related person is: (i) any person who is, or at any time since the beginning of our last fiscal year was, one of our directors or executive officers or a nominee to become a director; (ii) any person who is known to be the beneficial owner of more than 5% of our common stock (or any other class of voting securities); or (iii) any immediate family member of any of the foregoing persons.

Under the policy, once a related person transaction has been identified, the Audit Committee will review the transaction for approval or ratification. In determining whether to approve or ratify a related person transaction, the committee is to consider all relevant facts and circumstances of the related person transaction available to the committee. The committee may approve only those related person transactions that are in, or not inconsistent with, our best interests and the best interests of our stockholders, as the committee determines in good faith. No member of the committee will participate in any consideration of a related party transaction with respect to which that member or any member of his or her immediate family is a related person.

### Related Party Transactions

[●]

### The Distribution from WDC

The distribution will be accomplished by WDC distributing 80.1% of its shares of Spinco common stock to holders of WDC common stock entitled to such distribution, as described in the section of this information statement entitled “The Separation and Distribution.” Completion of the distribution will be subject to satisfaction or waiver by WDC of the conditions to the distribution, as described in the section of this information statement entitled “The Separation and Distribution—Conditions to the Distribution.”

### Material Agreements with WDC

Following the completion of the spin-off, WDC and Spinco will be independent companies. WDC will own 19.9% of our common stock for a period of up to 12 months following the distribution and we expect that the relationship between WDC and Spinco will be governed by the ancillary agreements. These agreements will provide for the allocation between Spinco and WDC of WDC and Spinco’s assets, employees, liabilities and obligations (including employee benefits and tax-related assets and liabilities) attributable to periods prior to, at and after Spinco’s spin-off from WDC.

The material agreements described below are filed as exhibits to the registration statement on Form 10 of which this information statement is a part, and the summaries below set forth the current terms of the agreements that Spinco believes are material. These summaries are qualified in their entireties by reference to the full text of the applicable agreements, which are incorporated by reference into this information statement. The terms of the agreements described below that will be in effect following the spin-off have not yet been finalized; changes to these agreements, some of which may be material, may be made prior to Spinco’s spin-off from WDC.

***The Separation and Distribution Agreement***

The separation and distribution agreement will set forth Spinco's agreement with WDC regarding the principal transactions necessary to separate Spinco from WDC. It will also set forth other agreements that govern certain aspects of Spinco's relationship with WDC after the completion of the distribution. The parties intend to enter into the separation and distribution agreement immediately before the distribution of Spinco common stock to WDC stockholders.

*Transfer of Assets and Assumption of Liabilities.* The separation and distribution agreement will identify assets to be transferred to or retained by, liabilities to be assumed or retained by, and contracts to be assigned to each of Spinco and WDC as part of the reorganization of WDC, and will describe when and how these transfers, assumptions and assignments will occur, although many of the transfers, assumptions, and assignments will have already occurred prior to the parties' entering into the separation and distribution agreement. In particular, the separation and distribution agreement will provide that, subject to the terms and conditions contained in the separation and distribution agreement:

- All assets constituting "Flash Assets" will be retained by or transferred to Spinco or one of Spinco's subsidiaries. Flash Assets consist of, among other things, assets primarily related to the Flash Business (except as otherwise set forth in the separation and distribution agreement), all rights to causes of action to the extent related to the Flash Business or any assets or liabilities allocated to Spinco and certain owned and leased real properties designated as Flash Assets. All other assets of WDC that are not Flash Assets will be retained by or transferred to WDC. These retained assets include, among others, certain owned and leased real property and all rights to causes of action to the extent that they do not relate to the Flash Business or any assets or liabilities allocated to Spinco. WDC may reduce the amount of cash and cash equivalents in Spinco and its subsidiaries in excess of $1,000 million at the time of the distribution.
- WDC will transfer to Spinco, and Spinco will assume, certain liabilities, whether arising prior to, at or after the distribution, regardless of when and where such liabilities arose or where, or against whom, such liabilities are asserted or determined, including, among others, liabilities to the extent relating to the conduct and operation of the Flash Business and/or the ownership, operation or use of any Flash Assets (other than liabilities of a business that has been divested or discontinued prior to the distribution) and certain environmental liabilities arising from owned or leased real properties designated as Flash Assets. WDC will retain all liabilities not assumed by Spinco.
- Except as otherwise provided in the separation and distribution agreement or any ancillary agreement, WDC will be responsible for all costs and expenses incurred on or prior to the distribution by WDC or Spinco in connection with the preparation, execution, delivery and implementation of the separation and distribution agreement or any ancillary agreement, and each party shall bear its own direct and indirect costs and expenses incurred from and after the distribution in connection with the preparation, execution, delivery and implementation of the separation and distribution agreement or any ancillary agreement.

The allocation of liabilities with respect to taxes, except for payroll taxes and reporting and other tax matters expressly covered by the employee matters agreement, are solely covered by the tax matters agreement.

Except as may expressly be set forth in the separation and distribution agreement or any ancillary agreement, all assets will be transferred on an "as is," "where is" basis and the respective transferees will bear the economic and legal risks that any conveyance will prove to be insufficient to vest in the transferee good title, free and clear of any security interest, that any necessary consents or governmental approvals are not obtained, and that any requirements of laws or judgments are not complied with.

Information in this information statement with respect to the assets and liabilities of the parties following the separation is presented based on the allocation of such assets and liabilities pursuant to the separation and

distribution agreement, unless the context otherwise requires. Certain of the liabilities and obligations to be assumed by one party or for which one party will have an indemnification obligation under the separation and distribution agreement and the other agreements relating to the separation may be, and following the separation may continue to be, the legal or contractual liabilities or obligations of another party. Each such party that continues to be subject to such legal or contractual liability or obligation will rely on the applicable party that assumed the liability or obligation or the applicable party that undertook an indemnification obligation with respect to the liability or obligation, as applicable, under the separation and distribution agreement, to satisfy the performance and payment obligations or indemnification obligations with respect to such legal or contractual liability or obligation.

*The Distribution*. The separation and distribution agreement will also govern the rights and obligations of the parties regarding the proposed distribution. The separation and distribution agreement provides that prior to the distribution, Spinco shall issue to WDC, as a stock dividend, such number of shares of common stock of Spinco such that the number of shares of common stock of Spinco then outstanding shall be equal to the number of shares of common stock of Spinco necessary to effect the distribution. WDC will cause its agent to distribute to WDC stockholders that hold shares of WDC's common stock as of the applicable record date for the distribution 80.1% of the outstanding shares of Spinco's common stock. WDC will have the sole and absolute discretion to determine (and change) the terms of, and whether to proceed with, the distribution and, to the extent it determines to so proceed, to determine the date of the distribution.

*Conditions*. The separation and distribution agreement will provide that the distribution is subject to several conditions that must be satisfied or waived by WDC in its sole discretion. For further information regarding the conditions relating to Spinco's separation from WDC, see the section entitled "The Separation and Distribution—Conditions to the Distribution."

*Releases and Indemnifications.* Except as otherwise provided in the separation and distribution agreement or any ancillary agreement, each party will release and forever discharge the other party and its subsidiaries and affiliates and all persons who are or have been stockholders, directors, partners, managers, managing members, officers, agents or employees of the other party or any of their respective subsidiaries, as applicable (in each case, in their respective capacities as such) (excluding any shareholder of WDC or Spinco) (the "Indemnified Parties"), from all liabilities existing or arising from any acts or events occurring or failing to occur or alleged to have occurred or to have failed to occur or any conditions existing or alleged to have existed on or before the distribution, whether or not known as of the distribution, including in connection with the transactions and all other activities to implement the separation or the distribution. The releases will not extend to obligations from and after the separation under or relating to any agreement between the parties that is not to terminate as of the distribution. In addition, the separation and distribution agreement will provide for cross-indemnities that, except as otherwise provided in the separation and distribution agreement, are principally designed to place financial responsibility for the obligations and liabilities of the Flash Business with Spinco and financial responsibility for the obligations and liabilities of WDC's business with WDC. Specifically, each party will, and will cause its subsidiaries to, indemnify, defend and hold harmless the other party and the applicable Indemnified Parties for any losses that proximately results from:

- the liabilities each such party assumed or retained pursuant to the separation and distribution agreement, including failure of a party to pay, perform or otherwise promptly discharge any liability assumed or retained, as applicable, pursuant to the separation and distribution agreement in accordance with their respective terms; and
- any breach of, or failure to perform, by such party or its subsidiaries of any covenants or obligations to be performed from and after the separation by such persons pursuant to the separation and distribution agreement or any ancillary agreement, unless such ancillary agreement expressly provides for separate indemnification therein, in which case any such indemnification claims will be made thereunder.

Each party's aforementioned indemnification obligations will be uncapped,*provided* that the amount of each party's indemnification obligations will be subject to reduction by any insurance proceeds (net of premium

increases) received by the party being indemnified. The separation and distribution agreement will also specify procedures with respect to claims subject to indemnification and related matters. Indemnification with respect to taxes will be governed solely by the tax matters agreement.

*Insurance*. Spinco will generally be responsible for obtaining and maintaining Spinco's own insurance coverage and will no longer be an insured party under WDC's insurance policies following the separation.

*Non-Compete*. Under the separation and distribution agreement, and subject to certain exceptions, for a period of forty (40) months following the separation, WDC will not develop, manufacture, market or sell standalone SSDs.

*Dispute Resolution*. Subject to certain exceptions, if a dispute arises with WDC out of, in connection with, or in relation to the separation and distribution agreement or any ancillary agreement or the transactions contemplated thereby, then such representatives, as the parties may designate, will negotiate to resolve any disputes for a period of time not exceeding thirty (30) days. If the parties are unable to resolve the dispute in this manner, either party may demand that the dispute be brought and determined exclusively in the Delaware Court of Chancery and any state appellate court therefrom within the State of Delaware for final determination.

*Other Matters Governed by the Separation and Distribution Agreement.* Other matters governed by the separation and distribution agreement include access to information, confidentiality, treatment of shared contracts, any transfers to be completed following the distribution and the receipt of any related third-party consents, access to insurance policies and treatment of outstanding guarantees.

***Transition Services Agreement***

WDC and Spinco will enter into a transition services agreement (the "TSA") which will govern the provision of transition services from WDC to Spinco and from Spinco to WDC, in each case, for a transitional period after the closing of the spin-off to provide for an ordinary transition in connection with the spin-off. The TSA will specify the terms under which the transition services will be provided, including the services standard, fees and allocation of risk, and contains mechanisms for adding, extending and terminating services as well as for governance and dispute resolution. The charges for such services are generally intended to allow the service provider to recover its direct and indirect costs, generally without profit. Services are anticipated to be provided in the following areas: (i) quality assurance, (ii) procurement, (iii) information technology, (iv) logistics management, (v) finance, (vi) human resources, (vii) engineering, (viii) corporate marketing, (ix) central operations, (x) sales operations, (xi) manufacturing and (xii) research and development. The term of such services is expected to be no longer than eighteen (18) months.

***Tax Matters Agreement***

In connection with the spin-off, WDC and Spinco will enter into a tax matters agreement that will govern the parties' respective rights, responsibilities and obligations with respect to tax liabilities and benefits, tax attributes, the preparation and filing of tax returns, the control of audits and other tax proceedings and other matters regarding taxes.

The tax matters agreement will provide special rules that allocate tax liabilities in the event the distribution or certain related transactions fail to qualify as transactions that are tax-free for U.S. federal income tax purposes (other than any cash that WDC stockholders receive in lieu of fractional shares). Under the tax matters agreement, Spinco will generally agree to indemnify WDC and its affiliates against any and all tax-related liabilities incurred by them relating to the distribution and certain related transactions, to the extent caused by any representation by Spinco being incorrect or an acquisition of Spinco's stock or assets or by any other action undertaken or failure to act by Spinco. This indemnification will apply even if WDC has permitted Spinco to take an action that would otherwise have been prohibited under the tax-related covenants described below.

Pursuant to the tax matters agreement, Spinco will agree to certain covenants that contain restrictions intended to preserve the tax-free status of the distribution and certain related transactions. Spinco may take certain actions prohibited by these covenants only if Spinco obtains and provides to WDC an opinion from a U.S. tax counsel or accountant of recognized national standing or a favorable private letter ruling from a taxing authority, in each case satisfactory to WDC, to the effect that such action would not affect the tax-free status of these transactions, or if Spinco obtains prior written consent of WDC, in its sole and absolute discretion, waiving such requirement. Spinco will be barred from taking any action, or failing to take any action, including any action or failure to take any action that would be inconsistent with the Tax Opinion, where such action or failure to take any action adversely affects the tax-free status of these transactions. In addition, during the period ending two years after the date of the distribution, these covenants will include specific restrictions on Spinco's: (i) discontinuing the active conduct of Spinco's trade or business; (ii) issuance or sale of stock or other securities (including securities convertible into Spinco stock, but excluding certain compensatory arrangements); (iii) liquidating, merging or consolidating with any other person; (iv) amending Spinco's charter (or other organizational documents) or taking any other action, whether through a stockholder vote or otherwise, affecting the voting rights of Spinco common stock; (v) sales of assets outside the ordinary course of business; and (vi) entering into any other corporate transaction which would cause Spinco to undergo a 50% or greater change in its stock ownership or otherwise be expected to result in the failure to preserve the tax-free treatment of these transactions.

***Employee Matters Agreement***

WDC and Spinco will enter into an employee matters agreement in connection with the spin-off to allocate liabilities and responsibilities relating to employment matters, employee compensation and benefit plans and programs and other related matters. The employee matters agreement will also set forth the general principles relating to employee matters both with respect to domestic and international employees, including with respect to collective bargaining agreements, workers' compensation, payroll matters, regulatory filings, paid time off, commencing or continuing participation in employee benefit plans, and the sharing of employee information.

The employee matters agreement will provide that, unless otherwise specified, each party will assume or retain, as applicable, liabilities arising out of or in connection with the employment or termination of the employees identified as WDC or Spinco employees, as applicable, including under any employee benefit plans, whether arising before or after the distribution. Additionally, subject to certain exceptions, upon the distribution, each party has caused or will cause, as applicable, the employees identified as WDC or Spinco employees, as applicable, to commence or continue participation in employee benefit plans, similar to those in effect on or prior to the date of the distribution and will recognize prior years of service with WDC and related entities.

The employee matters agreement will also govern the treatment of equity-based awards granted by WDC prior to the distribution and the treatment of WDC's employee stock purchase plan. See "The Separation and Distribution—General—Treatment of Equity Incentive Arrangements."

***IP Cross-License Agreement***

WDC and Spinco will enter into an IP Cross-License Agreement (the "IPCLA") to facilitate freedom-to-operate with respect to non-trademark intellectual property for each company post-spin. WDC will grant a non-exclusive, worldwide, royalty-free, perpetual license to Spinco (with respect to retained non-trademark intellectual property held by WDC) within a specified field of use, and Spinco will grant a non-exclusive, worldwide, royalty-free, perpetual license to WDC (with respect to divested non-trademark intellectual property held by Spinco) within a specified field of use.

***Transitional Trademark License Agreement***

WDC and Spinco will enter into a Transitional Trademark License Agreement (the "TTLA"), pursuant to which WDC will grant a non-exclusive, worldwide, non-transferable, license to Spinco (with respect to certain retained

trademarks held by WDC), and Spinco will grant a non-exclusive, worldwide, non-transferable, license to WDC (with respect to certain divested trademarks held by Spinco). These licenses will allow each company to rebrand, as necessary, and transition away from the other company's owned trademarks post-spin, for a specified, limited transitional period.

***Stockholder and Registration Rights Agreement***

WDC and Spinco will enter into a stockholder and registration rights agreement (the "SRRA"), pursuant to which Spinco will agree that, upon the request of WDC, Spinco will use its reasonable best efforts to effect the registration under applicable federal and state securities laws of any shares of Spinco common stock retained by WDC. In addition, WDC will agree to vote any shares of Spinco common stock that it retains immediately after the separation in proportion to the votes cast by Spinco's other stockholders. In connection with such agreement, WDC will grant Spinco a proxy to vote its shares of Spinco common stock in such proportion. This proxy, however, will be automatically revoked as to any particular share upon any sale or transfer of such share from WDC to a person other than WDC, and neither the SRRA nor proxy will limit or prohibit any such sale or transfer.

## SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT

As of the date hereof, all of our outstanding shares of common stock are owned by WDC. Immediately after the distribution, WDC will own 19.9% of our common stock for a period of up to 12 months following the distribution.

The following table provides information with respect to the expected beneficial ownership of our common stock immediately after the distribution by (i) each person whom we believe will be a beneficial owner of more than five percent of our outstanding shares of common stock, (ii) each of our expected directors, director nominees and named executive officers and (iii) all expected directors and executive officers as a group.

Following the separation and distribution, Spinco expects to have an aggregate of approximately 144 million shares of our common stock outstanding based upon approximately 346 million shares of WDC common stock issued and outstanding on September 27, 2024, excluding treasury shares, assuming no exercise of any shares issued under WDC equity compensation awards and applying the distribution ratio to each share of WDC common stock. Beneficial ownership is determined in accordance with the rules of the SEC.

To the extent our directors and officers own shares of WDC common stock at the time of the spin-off, they will participate in the distribution on the same terms as other holders of shares of WDC common stock.

Unless otherwise indicated, the business address of each director, director nominee and executive officer shown in the table below is 951 Sandisk Drive, Milpitas, California 95035. None of Spinco's directors or executive officers are expected to own one percent or more of Spinco's common stock.

| Name and Address of Beneficial Owner | Shares of Spinco Common Stock to be Beneficially Owned Upon the Distribution | % of Class |
|---|---|---|
| **Greater than 5% Stockholders:** | | |
| [●]([●]) | [●] | [●]% |
| [●]([●]) | [●] | [●]% |
| [●]([●]) | [●] | [●]% |
| **Directors:** | | |
| David V. Goeckeler | [●] | [●]% |
| Kimberly E. Alexy | [●] | [●]% |
| Richard B. Cassidy | [●] | [●]% |
| Thomas Caulfield | [●] | [●]% |
| Devinder Kumar | [●] | [●]% |
| Matthew E. Massengill | [●] | [●]% |
| Necip Sayiner | [●] | [●]% |
| Ellyn J. Shook | [●] | [●]% |
| Miyuki Suzuki | [●] | [●]% |
| **Named Executive Officers:** | | |
| David V. Goeckeler | [●] | [●]% |
| Luis F. Visoso Lomelin | [●] | [●]% |
| All Directors and Current Executive Officers as a group ([●]persons)([●]) | | |

* Less than one percent (1%)

(1) Based on the information filed by stockholders of WDC on Schedules 13D and 13G, reporting beneficial ownership of WDC common stock as of the date of the event which required such filing

(2) Includes shares of Spinco common stock expected to be held, and options and RSUs expected to be held after the spin-off that will become exercisable or vest, respectively, within 60 days after [●], 2024.

(3) [●].

(4) [●].

## DESCRIPTION OF CERTAIN INDEBTEDNESS

In connection with the separation, we expect to enter into one or more credit agreements, comprising a term loan facility in an anticipated principal amount of up to $2,000 million (the "Term Loan Facility"), and a revolving credit facility in an anticipated principal amount of up to $1,500 million (the "Revolving Credit Facility" and together with the Term Loan Facility, the "Facilities").

The Term Loan Facility and the Revolving Credit Facility will each bear interest at the secured overnight financing rate ("SOFR"), plus an interest rate margin or a base rate, plus an interest rate margin. The Term Loan Facility is expected to mature seven years after the closing date thereof and will amortize at one percent per annum. The Revolving Credit Facility is expected to mature five years after the closing date thereof and will not have any amortization.

The obligations under the Facilities are expected to be guaranteed by our material U.S. wholly-owned subsidiaries, subject to certain exceptions to be agreed. The obligations under the Facilities are expected to be secured by our assets and the assets of our material U.S. wholly-owned subsidiaries, subject, in each case, to certain exceptions to be agreed.

The Facilities are expected to include certain restrictions (subject to certain exceptions to be agreed) on our ability and the ability of our subsidiaries to undertake certain activities, including to incur indebtedness and liens, merge or consolidate with other entities, dispose or transfer their assets, pay dividends or make distributions, make investments, make payments on junior or subordinated debt, enter into burdensome agreements or transact with affiliates.

We can make no assurance that we will be able to secure the Facilities on the terms outlined in this section "Description of Certain Indebtedness."

## DESCRIPTION OF CAPITAL STOCK

*The following descriptions are summaries of the material terms of theSpinco amended and restated certificate of incorporation ("Spinco Certificate of Incorporation") and the Spinco amended and restated bylaws ("Spinco Bylaws") to be in effect at the time of the distribution. These descriptions contain all information which we consider to be material but may not contain all of the information that is important to you. The summaries and descriptions below do not purport to be complete statements of the relevant provisions of the Spinco Certificate of Incorporation or of the Spinco Bylaws to be in effect at the time of the distribution and is qualified by reference to Delaware statutory and common law and the full texts of such documents. The summary is qualified in its entirety by reference to these documents, which you should read (along with the applicable provisions of Delaware law) for complete information on Spinco's capital stock at the time of the distribution. TheSpinco Certificate of Incorporation and the Spinco Bylaws that will be in effect at the time of the distribution are included as exhibits to the registration statement on Form 10, of which this information statement is a part.*

### General

Immediately following the spin-off, Spinco's authorized capital shall consist of [●] shares of common stock, par value $0.01 per share, of Spinco.

### Common Stock

Immediately following the spin-off, Spinco expects that approximately 144 million shares of its common stock will be issued and outstanding based upon approximately 346 million shares of WDC common stock outstanding as of September 27, 2024. All outstanding shares of Spinco common stock, when issued, will be validly issued, fully paid and nonassessable.

Subject to the relative rights, limitations and preferences of the holders of any then outstanding preferred stock, holders of Spinco common stock will be entitled to certain rights, including (i) to share ratably in dividends if, when and as declared by the Spinco Board of Directors out of funds legally available therefor and (ii) in the event of liquidation, dissolution or winding up of Spinco, to share ratably in the distribution of assets legally available therefor, after payment of debts and expenses. Each outstanding share of Spinco common stock will entitle the holder to one vote on all matters submitted to a vote of the stockholders, including the election of directors, and the holders of shares of Spinco common stock and Spinco preferred stock (if any), collectively, will possess the exclusive voting power. The holders of Spinco common stock will not have cumulative voting rights in the election of directors or preemptive rights to subscribe for additional shares of Spinco capital stock. The Spinco Bylaws will require that, in uncontested elections, each director be elected by the majority of votes cast with respect to such director. This means that the number of shares voted "for" a director nominee must exceed the number of votes cast "against" that nominee in order for that nominee to be elected.

Holders of shares of Spinco common stock will have no preference, conversion, exchange, sinking fund, redemption or appraisal rights. The rights, preferences and privileges of holders of Spinco common stock will be subject to the terms of any series of preferred stock which Spinco may issue in the future. All outstanding shares of the Spinco common stock are fully paid and nonassessable.

### Preferred Stock

The Spinco Board of Directors will have the authority, within the limitations and restrictions that will be stated in the Spinco Certificate of Incorporation, to authorize the issuance of shares of Spinco preferred stock, in one or more classes or series, and to fix the rights, preferences, privileges and restrictions thereof, including dividend

rights, conversion rights, voting rights, terms of redemption, liquidation preferences, preemptive rights and the number of shares constituting any series or the designation of such series. The issuance of Spinco preferred stock could have the effect of decreasing the market price of the Spinco common stock and could adversely affect the voting and other rights of the holders of Spinco common stock.

**Anti-Takeover Effect of Our Certificate of Incorporation and Bylaws and Delaware Law**

The Spinco Certificate of Incorporation and the Spinco Bylaws will include provisions, summarized below, that will be intended to discourage and prevent coercive takeover practices and inadequate takeover bids. These provisions will be designed to encourage persons seeking to acquire control of Spinco to first negotiate with the Spinco Board of Directors. They will also be intended to provide Spinco's management with the flexibility to enhance the likelihood of continuity and stability if the Spinco Board of Directors determines that a takeover is not in the best interests of their stockholders. These provisions, however, could have the effect of discouraging others from making tender offers for Spinco shares and may have the effect of deterring hostile takeovers or delaying changes in Spinco's control or management.

***Special Stockholder Meetings***

The Spinco Bylaws will provide that only the Spinco Board of Directors, the Chair of the Board or Spinco's Chief Executive Officer may call special meetings of stockholders. Stockholders will not have the authority to call a special meeting of stockholders.

***Requirements for Advance Notification of Stockholder Nominations and Proposals***

The Spinco Bylaws will provide that Spinco's stockholders must comply with advance notice procedures to bring business before or nominate directors for election at a meeting of stockholders. A stockholder (or group of up to 20 stockholders) who has held at least 3% of Spinco common stock for at least three years must also satisfy and comply with additional requirements that will be set forth in the Spinco Bylaws to nominate and have any director nominee (generally not exceeding the greater of (i) two director nominees or (ii) 20% of the number of directors on the Spinco Board of Directors, rounded down to the nearest whole number) included in our proxy materials.

***Elimination of Stockholder Action by Written Consent***

The DGCL permits stockholder action by written consent unless the corporation's certificate of incorporation provides otherwise. The Spinco Certificate of Incorporation will eliminate the right of stockholders to act by written consent without a meeting.

***No Cumulative Voting***

Under Delaware law, cumulative voting for the election of directors is not permitted unless a corporation's certificate of incorporation authorizes cumulative voting. The Spinco Certificate of Incorporation and the Spinco Bylaws will not provide for cumulative voting in the election of directors. The absence of cumulative voting will make it more difficult for a minority stockholder to gain a seat on the Spinco Board of Directors to influence the Spinco Board of Directors' decision regarding a takeover.

***Authorized but Unissued Shares***

Subject to the requirements of Nasdaq and other applicable law, authorized but unissued shares of Spinco common stock may be available for future issuance without stockholder approval. Spinco may use these additional shares for a variety of corporate purposes, including future public offerings to raise additional capital, corporate acquisitions and employee benefit plans. The existence of authorized but unissued shares of Spinco common stock could render more difficult or discourage an attempt to obtain control of Spinco by means of a proxy contest, tender offer, merger or otherwise.

***Amendment of Provisions in Certificate of Incorporation and Bylaws***

The Spinco Certificate of Incorporation will provide that the Spinco Certificate of Incorporation may be amended in accordance with Delaware law. The Spinco Bylaws will provide that the Spinco Bylaws, or any of them, may be altered, amended or repealed, and new bylaws may be adopted, (i) by the Spinco Board of Directors, by vote of a majority of the number of directors then in office as directors, acting at any duly called and held meeting of the Spinco Board of Directors, or (ii) by the stockholders; *provided* that notice of such proposed amendment, modification, repeal or adoption is given in the notice of special meeting.

***Delaware Anti-Takeover Law***

Spinco is subject to Section 203 of the DGCL, which is an anti-takeover law. In general, Section 203 prohibits a publicly held Delaware corporation from engaging in a business combination with an interested stockholder for a period of three years following the date that the person became an interested stockholder, unless the business combination or the transaction in which the person became an interested stockholder is approved in a prescribed manner. Generally, a business combination includes a merger, asset or stock sale, or another transaction resulting in a financial benefit to the interested stockholder. Generally, an interested stockholder is a person who, together with affiliates and associates, owns 15% or more of the corporation's voting stock. Under Section 203, a business combination between a corporation and an interested stockholder is prohibited unless it satisfies one of the following conditions:

- before the stockholder became interested, the board of directors approved either the business combination or the transaction which resulted in the stockholder becoming an interested stockholder;
- upon consummation of the transaction which resulted in the stockholder becoming an interested stockholder, the interested stockholder owned at least 85% of the voting stock of the corporation outstanding at the time the transaction commenced, excluding for purposes of determining the voting stock outstanding, shares owned by persons who are directors and also officers, and employee stock plans, in some instances; or
- at or after the time the stockholder became interested, the business combination was approved by the board of directors of the corporation and authorized at an annual or special meeting of the stockholders by the affirmative vote of at least two-thirds of the outstanding voting stock which is not owned by the interested stockholder.

***Exclusive Forum***

The Spinco Certificate of Incorporation will provide that, unless Spinco consents in writing to the selection of an alternative forum, (i) any derivative action or proceeding brought on Spinco's behalf, (ii) any action asserting a claim of breach of a fiduciary duty owed by any of Spinco's current or former directors, officers, other employees or stockholders to Spinco or their stockholders, (iii) any action asserting a claim arising pursuant to any provision of the DGCL, or the Spinco Certificate of Incorporation or the Spinco Bylaws or as to which the DGCL confers jurisdiction on the Court of Chancery of the State of Delaware, or (iv) any action asserting a claim governed by the internal affairs doctrine of the law of the State of Delaware will, to the fullest extent permitted by law, be exclusively brought in the Court of Chancery of the State of Delaware or, if such court does not have subject matter jurisdiction thereof, the federal district court of the State of Delaware (the "Delaware Exclusive Forum Provision"). In addition, the Spinco Certificate of Incorporation will provide that, unless Spinco consents in writing to the selection of an alternative forum, the federal district courts of the United States will be the exclusive forum for the resolution of any complaint asserting a cause of action arising under the Securities Act of 1933, as amended (the "Federal Forum Provision"). The Spinco Certificate of Incorporation will also provide that, and to the fullest extent permitted by law, any person or entity purchasing or otherwise acquiring or holding any interest in shares of Spinco capital stock is deemed to have notice of and consented to the Delaware Exclusive Forum Provision and the Federal Forum Provision.

The Delaware Exclusive Forum Provision is intended to apply to claims arising under Delaware state law and would not apply to claims brought pursuant to the Exchange Act, or the Securities Act, or any other claim for which the federal courts have exclusive jurisdiction. In addition, the Federal Forum Provision is intended to apply to claims arising under the Securities Act and would not apply to claims brought pursuant to the Exchange Act. The exclusive forum provisions that will be provided in the Spinco Certificate of Incorporation will not relieve us of our duties to comply with the federal securities laws and the rules and regulations thereunder and, accordingly, actions by our stockholders to enforce any duty or liability created by the Exchange Act or the rules and regulations thereunder must be brought in federal courts. Spinco stockholders will not be deemed to have waived Spinco's compliance with these laws, rules and regulations.

## Comparison of Rights of Holders of WDC Common Stock and Spinco Common Stock

We expect that the rights associated with owning shares of Spinco common stock will generally be the same as that of WDC.

## Limitations on Director and Officer Liability

Under the DGCL, Spinco may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation), by reason of the fact that they are or were Spinco's director, officer, employee or agent, or are or were serving at Spinco's request as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred in connection with such action, suit or proceeding if they acted in good faith and in a manner they reasonably believed to be in or not opposed to Spinco's best interests, and, with respect to any criminal action or proceeding, had no reasonable cause to believe their conduct was unlawful. In addition, Section 102(b)(7) of the DGCL provides that a certificate of incorporation may contain a provision eliminating or limiting the personal liability of a director or officer to the corporation or its shareholders for monetary damages for breach of fiduciary duty as a director or officer; *provided* that such provision shall not eliminate or limit the liability of a director or officer (i) for any breach of the director's or officer's duty of loyalty to the corporation or its shareholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the DGCL (relating to liability for unauthorized acquisitions or redemptions of, or dividends on, capital stock), or (iv) for any transaction from which the director or officer derived an improper personal benefit. Spinco's charter will contain the provisions permitted by Section 102(b)(7) of the DGCL.

## Sale of Unregistered Securities

[●]

## Transfer Agent and Registrar

We expect that the transfer agent and registrar for the shares of common stock is [●]. The transfer agent and registrar's address is [●].

## Stock Exchange Listing

We expect that Spinco's common stock will be listed on Nasdaq under the symbol "SNDK."

## WHERE YOU CAN FIND MORE INFORMATION

We have filed with the SEC a registration statement on Form 10, including exhibits and schedules filed with the registration statement of which this information statement is a part, under the Exchange Act, with respect to our common stock being distributed as contemplated by this information statement. This information statement is part of, and does not contain all of the information set forth in, the registration statement and exhibits and schedules to the registration statement. For further information with respect to Spinco and our common stock, please refer to the registration statement, including its exhibits and schedules. Statements made in this information statement relating to any contract or other document are not necessarily complete, and you should refer to the exhibits attached to the registration statement for copies of the actual contract or document.

As a result of the distribution, Spinco will become subject to the information and reporting requirements of the Exchange Act and, in accordance with the Exchange Act, we will file periodic reports, proxy statements and other information with the SEC. The SEC maintains a website, www.sec.gov, that contains periodic reports, proxy statements and information statements and other information regarding issuers, like us, that file electronically with the SEC. The registration statement, including its exhibits and schedules, and the periodic reports, proxy statements and information statements and other information that we file electronically with the SEC will be available for your review at the SEC's website.

You can also find a copy of the registration statement, and our Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K and amendments to those reports, in each case when available and when filed with or furnished to the SEC pursuant to the Exchange Act, on our website, www.sandisk.com (which we expect to be operational on or prior to the distribution date), which we will make available free of charge as soon as reasonably practicable after we electronically file such material with, or furnish it to, the SEC.

**Information contained on, or connected to, any website we refer to in this information statement does not and will not constitute a part of this information statement or the registration statement of which this information statement is a part.**

We intend to furnish holders of our common stock with annual reports containing consolidated financial statements prepared in accordance with United States generally accepted accounting principles and audited and reported on, with an opinion expressed by an independent registered public accounting firm.

You should rely only on the information contained in this information statement or to which we have referred you. We have not authorized any person to provide you with different information or to make any representation not contained in this information statement.

## INDEX TO COMBINED FINANCIAL STATEMENTS

### The Flash Business of Western Digital Corporation

**Report of Independent Registered Public Accounting Firm**

To the Stockholders and Board of Directors
Western Digital Corporation:

*Opinion on the Combined Financial Statements*

We have audited the accompanying combined balance sheets of the Flash Business of Western Digital Corporation (the Business) as of June 28, 2024 and June 30, 2023, the related combined statements of operations, comprehensive income (loss), cash flows, and changes in parent company net investment for each of the years in the three-year period ended June 28, 2024, and the related notes (collectively, the combined financial statements). In our opinion, the combined financial statements present fairly, in all material respects, the financial position of the Business as of June 28, 2024 and June 30, 2023, and the results of its operations and its cash flows for each of the years in the three-year period ended June 28, 2024, in conformity with U.S. generally accepted accounting principles.

*Basis for Opinion*

These combined financial statements are the responsibility of the Business's management. Our responsibility is to express an opinion on these combined financial statements based on our audits. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) (PCAOB) and are required to be independent with respect to the Business in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB and in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the combined financial statements are free of material misstatement, whether due to error or fraud. Our audits included performing procedures to assess the risks of material misstatement of the combined financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the combined financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the combined financial statements. We believe that our audits provide a reasonable basis for our opinion.

*Critical Audit Matter*

The critical audit matter communicated below is a matter arising from the current period audit of the combined financial statements that was communicated or required to be communicated to the audit committee and that: (1) relates to accounts or disclosures that are material to the combined financial statements and (2) involved our especially challenging, subjective or complex judgments. The communication of a critical audit matter does not alter in any way our opinion on the combined financial statements, taken as a whole, and we are not, by communicating the critical audit matter below, providing a separate opinion on the critical audit matter or on the accounts or disclosures to which it relates.

*Assessment of variable consideration for sales to resellers*

As discussed in Note 1 to the combined financial statements, the Business provides resellers with price protection for inventories held by resellers at the time of published list price reductions and other sales incentive programs. The Business records estimated variable consideration related to these items as a reduction to revenue at the time of revenue recognition. The Business uses judgment in its assessment of variable consideration in contracts to be included in the transaction price. For sales to resellers, the Business's methodology for estimating variable consideration is based on several factors, including historical pricing information, current pricing trends and channel inventory levels.

We identified the assessment of variable consideration for sales to resellers as a critical audit matter. A high degree of subjective auditor judgment was required to evaluate the Business's assumptions for historical pricing information and the level of channel inventory used to estimate variable consideration for sales to resellers as minor changes in these assumptions could cause significant changes in the estimate.

The following are the primary procedures we performed to address this critical audit matter. We evaluated the design and tested the operating effectiveness of certain internal controls related to the Business's process for estimating the variable consideration, including certain controls related to historical pricing information and the level of channel inventory assumptions. We evaluated the assumptions for historical pricing information by inspecting a sample of customer contracts with resellers and comparing the sales incentives earned during the year to the sales incentive program terms and conditions and recalculating amounts paid to the resellers. We tested the channel inventory levels by comparing the on-hand inventory amounts for a sample of resellers to information obtained from the resellers and evaluated the reasonableness of reconciling items.

We have served as the Business's auditor since 2023.

Irvine, California
October 11, 2024

**The Flash Business of Western Digital Corporation**

**COMBINED BALANCE SHEETS**
**(in millions)**

| | June 28, 2024 | June 30, 2023 |
|---|---|---|
| **ASSETS** | | |
| Current assets: | | |
| Cash and cash equivalents | $ 328 | $ 292 |
| Accounts receivable, net | 935 | 539 |
| Inventories | 1,955 | 2,269 |
| Income tax receivable | 7 | 3 |
| Other current assets | 221 | 234 |
| Notes due from Parent | 102 | 63 |
| Total current assets | 3,548 | 3,400 |
| Property, plant and equipment, net | 791 | 933 |
| Notes receivable and investments in Flash Ventures | 1,001 | 1,411 |
| Goodwill | 7,207 | 7,212 |
| Deferred tax assets | 96 | 76 |
| Income tax receivable, non-current | 11 | 9 |
| Other non-current assets | 852 | 779 |
| Total assets | $ 13,506 | $ 13,820 |
| **LIABILITIES AND EQUITY** | | |
| Current liabilities: | | |
| Accounts payable | $ 357 | $ 334 |
| Accounts payable to related parties | 313 | 292 |
| Accrued expenses | 424 | 483 |
| Income taxes payable | 20 | 48 |
| Accrued compensation | 195 | 98 |
| Notes due to Parent | 814 | 919 |
| Total current liabilities | 2,123 | 2,174 |
| Deferred tax liabilities | 15 | 28 |
| Other liabilities | 286 | 179 |
| Total liabilities | 2,424 | 2,381 |
| Commitments and contingencies (Notes 9, 10, 12 and 14) | | |
| Parent company net investment: | | |
| Parent company net investment | 11,534 | 11,782 |
| Accumulated other comprehensive loss | (452) | (343) |
| Total Parent company net investment | 11,082 | 11,439 |
| Total liabilities and Parent company net investment | $ 13,506 | $ 13,820 |

The accompanying notes are an integral part of these Combined Financial Statements.

**The Flash Business of Western Digital Corporation**

**COMBINED STATEMENTS OF OPERATIONS**
**(in millions)**

| | Year Ended | | |
|---|---|---|---|
| | June 28, 2024 | June 30, 2023 | July 1, 2022 |
| Revenue, net | $ 6,663 | $ 6,086 | $9,754 |
| Cost of revenue | 5,591 | 5,656 | 6,510 |
| **Gross profit** | 1,072 | 430 | 3,244 |
| **Operating expenses:** | | | |
| Research and development | 1,061 | 1,167 | 1,362 |
| Selling, general and administrative | 455 | 558 | 666 |
| Employee termination, asset impairment and other | (40) | 69 | 16 |
| Business separation costs | 64 | — | — |
| Goodwill impairment | — | 671 | — |
| **Total operating expenses** | 1,540 | 2,465 | 2,044 |
| **Operating income (loss)** | (468) | (2,035) | 1,200 |
| **Interest and other income (expense):** | | | |
| Interest income | 12 | 21 | 6 |
| Interest expense | (40) | (31) | (15) |
| Other income (expense), net | (7) | 43 | 43 |
| **Total interest and other income (expense), net** | (35) | 33 | 34 |
| **Income (loss) before taxes** | (503) | (2,002) | 1,234 |
| Income tax expense | 169 | 141 | 170 |
| **Net income (loss)** | $ (672) | $(2,143) | $1,064 |

The accompanying notes are an integral part of these Combined Financial Statements.

**The Flash Business of Western Digital Corporation**

**COMBINED STATEMENTS OF COMPREHENSIVE INCOME (LOSS)**
**(in millions)**

| | Year Ended | | |
|---|---|---|---|
| | June 28, 2024 | June 30, 2023 | July 1, 2022 |
| Net income (loss) | $ (672) | $(2,143) | $1,064 |
| Other comprehensive income (loss), before tax: | | | |
| Foreign currency translation adjustment | (43) | (35) | (107) |
| Net unrealized gain (loss) on derivative contracts | (87) | 128 | (245) |
| Total other comprehensive income (loss), before tax | (130) | 93 | (352) |
| Income tax benefit (expense) related to items of other comprehensive income (loss), before tax | 21 | (29) | 35 |
| Other comprehensive income (loss), net of tax | (109) | 64 | (317) |
| Total comprehensive income (loss) | $ (781) | $(2,079) | $ 747 |

The accompanying notes are an integral part of these Combined Financial Statements.

**The Flash Business of Western Digital Corporation**

**COMBINED STATEMENTS OF CASH FLOWS**
**(in millions)**

| | Year Ended | | |
|---|---|---|---|
| | June 28, 2024 | June 30, 2023 | July 1, 2022 |
| **Cash flows from operating activities** | | | |
| Net income (loss) | $ (672) | $(2,143) | $1,064 |
| Adjustments to reconcile net income (loss) to net cash provided (used in) by operations: | | | |
| Depreciation and amortization | 224 | 448 | 525 |
| Stock-based compensation | 149 | 165 | 171 |
| Deferred income taxes | (16) | (81) | (68) |
| Asset impairment | 4 | 1 | — |
| Goodwill impairment | — | 671 | — |
| (Gain) loss on disposal of assets | (60) | — | 3 |
| Gain on business divestiture | — | — | (9) |
| Gain on sale of investments | (1) | (3) | — |
| Impairment of equity investments | — | — | 6 |
| Unrealized foreign exchange (gain) loss | 13 | (37) | 31 |
| Equity (earnings) loss in investees, net of dividends received | 49 | (45) | (51) |
| Other non-cash operating activities, net | 87 | 114 | 79 |
| Changes in: | | | |
| Accounts receivable, net | (395) | 750 | (165) |
| Inventories | 314 | (277) | (56) |
| Accounts payable | 32 | (124) | 39 |
| Accounts payable to related parties | 21 | (23) | (78) |
| Accrued expenses | (51) | (104) | 160 |
| Accrued compensation | 99 | (56) | (31) |
| Other assets and liabilities, net | (106) | 31 | (469) |
| Net cash provided by (used in) operating activities | (309) | (713) | 1,151 |
| **Cash flows from investing activities** | | | |
| Purchases of property, plant and equipment | (166) | (219) | (410) |
| Proceeds from the sale of property, plant and equipment | 137 | — | 1 |
| Proceeds from disposition of business | — | — | 25 |
| Notes receivable issuances to Flash Ventures | (243) | (627) | (809) |
| Notes receivable proceeds from Flash Ventures | 482 | 641 | 718 |
| Strategic investments and other, net | — | 16 | 3 |
| Net cash provided by (used in) investing activities | 210 | (189) | (472) |
| **Cash flows from financing activities** | | | |
| Proceeds from principal repayments on Notes due from Parent | 14 | 216 | 307 |
| Proceeds from borrowings on Notes due to Parent | — | 54 | 199 |
| Repayments of Principal on Notes due to Parent | (102) | (86) | — |
| Origination of Notes due from Parent | (170) | — | (223) |
| Transfers from (to) Parent | 394 | 676 | (933) |
| Net cash provided by (used in) financing activities | 136 | 860 | (650) |
| Effect of exchange rate changes on cash | (1) | (1) | (2) |
| Net increase (decrease) in cash and cash equivalents | 36 | (43) | 27 |
| Cash and cash equivalents, beginning of year | 292 | 335 | 308 |
| Cash and cash equivalents, end of year | $ 328 | $ 292 | $ 335 |
| **Supplemental disclosure of cash flow information:** | | | |
| Non-cash transfers of property, plant and equipment from Parent | $ 11 | $ 18 | $ 13 |
| Cash paid for interest | 12 | 7 | 2 |
| Cash received for interest | 10 | 12 | 2 |
| Non-cash transfers of deferred taxes to Parent | (17) | (2) | (2) |
| Non-cash transfers of Notes due from Parent transferred to Parent | (113) | (316) | — |

The accompanying notes are an integral part of these Combined Financial Statements.

**The Flash Business of Western Digital Corporation**

**COMBINED STATEMENTS OF CHANGES IN PARENT COMPANY NET INVESTMENT**
**(in millions)**

| | Parent Company Net Investment | Accumulated Other Comprehensive Loss | Total |
|---|---|---|---|
| **Balance at July 2, 2021** | **$ 13,071** | **$ (90)** | **$ 12,981** |
| Net income | 1,064 | — | 1,064 |
| Foreign currency translation adjustment | — | (107) | (107) |
| Net unrealized loss on derivative contracts | — | (210) | (210) |
| Stock-based compensation | 171 | — | 171 |
| Net transfer to Parent | (922) | — | (922) |
| **Balance at July 1, 2022** | **13,384** | **(407)** | **12,977** |
| Net loss | (2,143) | — | (2,143) |
| Foreign currency translation adjustment | — | (35) | (35) |
| Net unrealized gain on derivative contracts | — | 99 | 99 |
| Stock-based compensation | 165 | — | 165 |
| Net transfer from Parent | 376 | — | 376 |
| **Balance at June 30, 2023** | **11,782** | **(343)** | **11,439** |
| Net loss | (672) | — | (672) |
| Foreign currency translation adjustment | — | (43) | (43) |
| Net unrealized loss on derivative contracts | — | (66) | (66) |
| Stock-based compensation | 149 | — | 149 |
| Net transfer from Parent | 275 | — | 275 |
| **Balance at June 28, 2024** | **$ 11,534** | **$ (452)** | **$ 11,082** |

The accompanying notes are an integral part of these Combined Financial Statements.

**The Flash Business of Western Digital Corporation**

**NOTES TO COMBINED FINANCIAL STATEMENTS**

## Note 1. Organization and Basis of Presentation

***Description of the Business***

The accompanying Combined Financial Statements present, on a historical cost basis, the combined assets, liabilities, revenues and expenses of the flash business of Western Digital Corporation (the "Business"), a business of Western Digital Corporation and its subsidiaries (collectively "WDC" or "Parent"). The Business is a leading developer, manufacturer and provider of data storage devices and solutions based on NAND flash technology. With a differentiated innovation engine driving advancements in storage and semiconductor technologies, our broad and ever-expanding portfolio delivers powerful flash storage solutions for everyone from students, gamers and home offices to the largest enterprises and public clouds to capture, preserve, access and transform an ever-increasing diversity of data. The Business operates primarily in the U.S. and internationally with a significant concentration in Asia Pacific. On October 30, 2023, our Parent announced that its board of directors (the "WDC Board of Directors") authorized management to pursue a plan to separate the Business into an independent public company. The completion of the separation is subject to certain conditions, including final approval by the WDC Board of Directors. Our Parent is targeting to complete the separation of the Business in the second half of calendar year 2024.

The Business's solutions include a broad range of solid-state drives, embedded products, removable cards, universal serial bus drives and wafers and components. The Business's broad portfolio of technology and products address multiple end markets of "Cloud," "Client" and "Consumer." The Business also generates license and royalty revenue from its extensive intellectual property ("IP") portfolio, which is included in each of these three end market categories.

For the avoidance of doubt, when using the terms "we," "us," or "our" throughout this report, it is in reference to the Business.

***Basis of Presentation***

Throughout the periods covered by the Combined Financial Statements, the Business was an operating segment of WDC. Consequently, stand-alone financial statements have not historically been prepared for the Business. The accompanying Combined Financial Statements have been prepared from WDC's historical consolidated financial statements and accounting records and are presented on a stand-alone basis as if the Business's operations had been conducted independently from WDC. The Combined Financial Statements include the historical results of operations, financial position and cash flows of the Business in accordance with accounting principles generally accepted in the United States ("GAAP") and the Business has adopted accounting policies and practices which are generally accepted in the industry in which it operates. As no single legal entity of the Business has a controlling financial interest in all other legal entities, Combined Financial Statements have been prepared.

Intercompany transactions have been eliminated. With the exception of balances associated with lending arrangements reflected within Notes due to (from) Parent in the Combined Balance Sheets, transactions between the Business and the Parent are generally considered to be effectively settled in the Combined Financial Statements at the time the transactions are recorded. The total net effect of the settlement of these transactions is reflected in the Combined Statements of Cash Flows as a financing activity and in the Combined Balance Sheets as Parent company net investment. General financing activities include the net impact of any cash movements resulting from the Parent's centralized treasury cash management.

The Combined Statements of Operations and Comprehensive Income (Loss) include all revenues and costs directly attributable to the Business as well as an allocation of expenses related to facilities, functions and

services provided by our Parent. Allocation of general corporate expenses from our Parent include, but are not limited to, executive management, finance, tax, legal, information technology, employee benefits administration, treasury, risk management, procurement and other shared services. These corporate expenses have been allocated to the Business based on direct usage or benefit, where identifiable, with the remainder allocated based on headcount, revenue or other relevant measures. The allocated costs are deemed to be settled between the Business and the Parent in the period in which the expense was recorded in the Combined Statements of Operations. The Combined Statements of Cash Flows present these corporate expenses as cash flows from operating activities, as these costs were incurred by our Parent on our behalf. We consider these allocations to be a reasonable reflection of the utilization of services by, or the benefits provided to, the Business. The allocations may not, however, reflect the expense the Business would have incurred as a standalone company for the periods presented. Additionally, these costs may not be indicative of the expenses that the Business will incur in the future or would have incurred if the Business had obtained these services from an unrelated third party. It is not practicable to estimate the actual costs that would have been incurred had the Business been a standalone company during the periods presented. The actual costs that may have been incurred would depend on a number of factors, including the chosen organizational structure, whether functions were outsourced or performed by employees and decisions with respect to areas such as facilities, information technology and operating infrastructure.

Our Parent maintains various stock-based compensation plans at a corporate level. Employees of the Business participate in those programs and a portion of the compensation cost associated with those plans is included in the Business's Combined Statements of Operations. Stock-based compensation expense has been included within Parent company net investment. The amounts presented in the Combined Financial Statements are not necessarily indicative of future awards and may not reflect the results that the Business would have experienced as a stand-alone entity.

Current and deferred income taxes and related tax expense have been determined based on the stand-alone results of the Business by applying Accounting Standards Codification No. 740, Income Taxes ("ASC 740"), to the Business's operations in each country as if it were a separate taxpayer (i.e., following the Separate Return Methodology).

The Combined Balance Sheets include all assets and liabilities that are specifically identifiable or otherwise attributable to the Business. Assets and liabilities shared between the Business and the Parent were included in the stand-alone financial statements to the extent the asset is primarily used by the Business. If the Business is not the primary user of the asset, it was excluded entirely from the Combined Financial Statements. The Parent has historically used a centralized approach to cash management and financing of its operations, as needed. Certain of our cash is transferred to the Parent according to centrally managed cash programs by treasury and the Parent funds our operating and investing activities as needed. Cash transfers to and from the Parent's cash management accounts are reflected as a component of Parent company net investment in the Combined Balance Sheets. Cash and cash equivalents in our Combined Balance Sheets primarily represent cash held locally by entities included in our Combined Financial Statements.

None of the debt obligations of the Parent or corresponding interest expense have been included in the accompanying Combined Financial Statements, as the Business is neither the legal obligor, nor transferee for any portion of such debt. Our Parent's debt obligations are secured by a lien on substantially all assets and properties of WDC and certain key subsidiaries, which includes assets and properties of the Business.

**The Flash Business of Western Digital Corporation**

**NOTES TO COMBINED FINANCIAL STATEMENTS – (Continued)**

***Fiscal Year***

The Business's fiscal year ends on the Friday nearest to June 30 and typically consists of 52 weeks. Approximately every five to six years, we report a 53-week fiscal year to align the fiscal year with the foregoing policy. Fiscal years 2024, 2023 and 2022 which ended on June 28, 2024, June 30, 2023, and July 1, 2022, respectively, are comprised of 52 weeks, with all quarters presented consisting of 13 weeks. Unless otherwise indicated, references herein to specific years and quarters are to fiscal years and fiscal quarters, and references to financial information are on a combined basis.

***Segment Reporting***

Operating segments are components of an enterprise for which separate financial information is available and is evaluated regularly by the company's chief operating decision maker ("CODM") in deciding how to allocate resources and in assessing performance. The Business currently operates as both a single operating and reportable segment.

***Business Separation Costs***

On October 30, 2023, our Parent announced that its Board of Directors had completed its strategic review and, after evaluating a comprehensive range of alternatives, authorized WDC to pursue a plan to separate its Hard Disk Drive ("HDD") and Flash business units to create two independent, public companies. As a result of the plan, the Business has incurred separation and transition costs and expects to incur such costs through the completion of the separation from WDC. The separation and transition costs are recorded within Business separation costs in the Combined Statements of Operations.

***Use of Estimates***

Management has made estimates and assumptions relating to the reporting of certain assets and liabilities in conformity with U.S. GAAP. These estimates and assumptions have been applied using methodologies that are consistent throughout the periods presented with consideration given to the potential impacts of current macroeconomic conditions. However, actual results could differ materially from these estimates.

***Cash Equivalents***

The Business's cash equivalents represent highly liquid investments in money market funds, which are invested in U.S. Treasury securities and U.S. Government agency securities as well as bank certificates of deposit with original maturities at purchase of three months or less. These deposits are typically in excess of U.S. insured limits. Cash equivalents are carried at cost plus accrued interest, which approximates fair value.

***Equity Investments***

The Business enters into certain strategic investments for the promotion of business and strategic objectives. The equity method of accounting is used if the Business's ownership interest is greater than or equal to 20.0% but less than a majority or where the Business has the ability to exercise significant influence over operating and financial policies. The Business's equity in the earnings or losses in equity-method investments is recognized in Other income (expense), net, in the Combined Statements of Operations. Equity earnings or losses in the Business's investments in Flash Ventures (as defined in Note 9) are reported on a three-month lag.

**The Flash Business of Western Digital Corporation**

**NOTES TO COMBINED FINANCIAL STATEMENTS – (Continued)**

If the Business's ownership interest is less than 20.0% and the Business does not have the ability to exercise significant influence over operating and financial policies of the investee, the Business accounts for these investments at fair value, or if these equity securities do not have a readily determinable fair value, these securities are measured and recorded using the measurement alternative under Accounting Standards Update ("ASU") No. 2016-01, "Financial Instruments — Overall (Subtopic 825-10): Recognition and Measurement of Financial Assets and Financial Liabilities," which is cost minus impairment, if any, plus or minus changes resulting from observable price changes. These investments are recorded within Other non-current assets in the Combined Balance Sheets and are periodically analyzed to determine whether or not impairment indicators exist.

***Variable Interest Entities***

The Business evaluates its investments and other significant relationships to determine whether any investee is a variable interest entity ("VIE"). If the Business concludes that an investee is a VIE, the Business evaluates its power to direct the activities of the investee, its obligation to absorb the expected losses of the investee and its right to receive the expected residual returns of the investee to determine whether the Business is the primary beneficiary of the investee. If the Business is the primary beneficiary of a VIE, the Business consolidates such entity and reflects the non-controlling interest of other beneficiaries of that entity. The Business does not have any investments in variable interest entities requiring consolidation.

***Fair Value of Financial Instruments***

The carrying amounts of cash equivalents, accounts receivable, accounts payable and accrued expenses approximate fair value for all periods presented because of the short-term maturity of these assets and liabilities. The carrying value of notes receivable from Flash Ventures (as defined in Note 9) also approximates fair value for all periods presented because they bear variable market rates of interest. The fair value of investments that are not accounted for under the equity method is based on appropriate market information. The carrying amounts of Notes due to Parent and Notes due from Parent approximate their fair value as the notes are due on demand.

***Inventories***

The Business values inventories at the lower of cost(first-in, first-out) or net realizable value. Inventory write-downs are recorded for the valuation of inventory at the lower of cost or net realizable value by analyzing market conditions and estimates of future sales prices as compared to inventory costs and inventory balances.

The Business evaluates inventory balances for excess quantities and obsolescence on a regular basis by analyzing estimated demand, inventory on hand, sales levels and other information and reduces inventory balances to net realizable value for excess and obsolete inventory based on this analysis. Unanticipated changes in technology or customer demand could result in a decrease in demand for one or more of the Business's products, which may require a write-down of inventory that could materially affect operating results.

***Property, Plant and Equipment***

Property and equipment are carried at cost less accumulated depreciation. The cost of property, plant and equipment is depreciated over the estimated useful lives of the respective assets. The Business's buildings and improvements are depreciated over periods ranging from fifteen to thirty years. The majority of the Business's machinery and equipment, software and furniture and fixtures, are depreciated on a straight-line basis over a period of two to seven years. Leasehold improvements are amortized over the lesser of the estimated useful lives of the assets or the related lease terms.

**The Flash Business of Western Digital Corporation**

**NOTES TO COMBINED FINANCIAL STATEMENTS – (Continued)**

***Goodwill and Other Long-Lived Assets***

Goodwill attributed to the Business represents the amount by which the purchase price of businesses acquired in a business combination exceeded the estimated fair value of acquired net assets.

Goodwill is not amortized. Instead, it is tested for impairment on an annual basis or more frequently whenever events or changes in circumstances indicate that goodwill may be impaired. The Business performs an annual impairment test as of the beginning of its fourth quarter or sooner if an indicator of impairment exists. The Business uses qualitative factors to determine whether goodwill is more likely than not impaired and whether a quantitative test for impairment is considered necessary. If the Business concludes from the qualitative assessment that goodwill is more likely than not impaired, the Business is required to perform a quantitative approach to determine the amount of impairment.

The Business is required to use judgment when applying the goodwill impairment test including the identification of reporting units, assignment of assets, liabilities and goodwill to reporting units, and determination of the fair value of each reporting unit. In addition, the estimates used to determine the fair value of reporting units may change based on results of operations, macroeconomic conditions or other factors. Changes in these estimates could materially affect the Business's assessment of the fair value and goodwill impairment.

The Business's assessment resulted in no impairment of goodwill in fiscal years 2024 and 2022. In fiscal year 2023, certain macroeconomic conditions caused the Business to perform a quantitative impairment analysis which resulted in a $671 million impairment of goodwill for the fiscal year ended June 30, 2023. See Note 5, *Supplemental Financial Statement Data*, for additional disclosures related to the goodwill impairment assessment that was performed.

Other long-lived assets are depreciated or amortized over their estimated useful lives based on the pattern in which the economic benefits are expected to be received. Long-lived assets are tested for recoverability whenever events or changes in circumstances indicate that their carrying amounts may not be recoverable. If impairment is indicated, the impairment is measured as the amount by which the carrying amount of the assets exceeds the fair value of the assets. The estimates of fair value require evaluation of future market conditions and product lifecycles as well as projected revenue, earnings and cash flow. See Note 5, *Supplemental Financial Statement Data*, for additional disclosures related to the Business's other intangible assets.

***Revenue and Accounts Receivable***

The Business recognizes revenue when it satisfies a performance obligation by transferring control over a product or service to the customer. The transaction price to be recognized as revenue is adjusted for variable consideration, such as sales incentives, and excludes amounts collected on behalf of third parties, including taxes imposed by governmental authorities. The Business's performance obligations are typically not constrained based on the Business's history with similar transactions and the fact that uncertainties are resolved in a fairly short period of time.

Substantially all of the Business's revenue is from the sale of tangible products for which the performance obligations are satisfied at a point in time, generally upon delivery. The Business's services revenue mainly includes professional service arrangements and post contract customer support, warranty as a service and maintenance contracts and was not material for the periods presented. The performance obligations for the Business's services are generally satisfied ratably over the service period based on the nature of the service provided and contract terms. Similarly, revenue from patent licensing arrangements is recognized based on

whether the arrangement provides the customer a right to use or right to access the IP. Revenue for a right to use arrangement is recognized at the time the control of the license is transferred to the customer. Revenue for a right to access arrangement is recognized over the contract period using the time lapse method. For the sales-based royalty arrangements, the Business estimates and recognizes revenue in the period in which customers' licensable sales occur.

The Business's customer payment terms are typically less than two months from the date control over the product or service is transferred to the customer. The Business uses the practical expedient and does not recognize a significant financing component for payment considerations of less than one year. The financing components of contracts with payment terms were not material.

The Business provides distributors and retailers, which we refer to collectively as resellers, with limited price protection for inventories held by resellers at the time of published list price reductions. The Business also provides resellers and original equipment manufacturers ("OEMs") with other sales incentive programs. The Business records estimated variable consideration related to these items as a reduction to revenue at the time of revenue recognition. The Business uses judgment in its assessment of variable consideration in contracts to be included in the transaction price. The Business uses the expected value method to arrive at the amount of variable consideration. The Business constrains variable consideration until the likelihood of a significant revenue reversal is not probable and believes that the expected value method is the appropriate estimate of the amount of variable consideration based on the fact that the Business has a large number of contracts with similar characteristics.

For sales to OEMs, the Business's methodology for estimating variable consideration is based on the amount of consideration expected to be earned based on the OEMs' volume of purchases from the Business or other agreed-upon sales incentive programs. For sales to resellers, the Business's methodology for estimating variable consideration is based on several factors including historical pricing information, current pricing trends and channel inventory levels. Differences between the estimated and actual amounts of variable consideration are recognized as adjustments to revenue.

Marketing development program costs are typically recorded as a reduction of the transaction price and, therefore, of revenue. The Business nets sales rebates against open customer receivable balances if the criteria to offset are met, otherwise they are recorded within other accrued liabilities.

For contracts with multiple performance obligations, the Business evaluates whether each deliverable is a distinct promise and should be accounted for as a separate performance obligation. If a promised good or service is not distinct in accordance with the revenue guidance, the Business combines that good or service with the other promised goods or services in the arrangement until a distinct bundle of goods is identified. If applicable, the Business allocates the transaction price to the performance obligations of each distinct product or service, or distinct bundle, based on their relative standalone selling prices.

The Business records an allowance for doubtful accounts by analyzing specific customer accounts and assessing the risk of loss based on insolvency or other collection issues. In addition, the Business routinely analyzes the various receivable aging categories to establish reserves based on a combination of past due receivables and expected future losses. If the financial condition of a significant customer deteriorates resulting in its inability to pay its accounts when due, or if the Business's overall loss trajectory changes significantly, an adjustment in the Business's allowance for doubtful accounts would be required, which could materially affect operating results.

**The Flash Business of Western Digital Corporation**

**NOTES TO COMBINED FINANCIAL STATEMENTS – (Continued)**

***Warranty***

The Business records an accrual for estimated warranty costs when revenue is recognized. The Business generally warrants its products for a period of one to five years, with a small number of products having a warranty ranging up to ten years or more. The warranty provision considers estimated product failure rates and trends, estimated replacement costs, estimated repair costs which include scrap costs and estimated costs for customer compensatory claims related to product quality issues, if any. For warranties ten years or greater, including lifetime warranties, the Business uses the estimated useful life of the product to calculate the warranty exposure. A statistical warranty tracking model is used to help prepare estimates and assist the Business in exercising judgment in determining the underlying estimates. The statistical tracking model captures specific details on product reliability, such as factory test data, historical field return rates and costs to repair by product type. Management's judgment is subject to a greater degree of subjectivity with respect to newly introduced products because of limited field experience with those products upon which to base warranty estimates. Management reviews the warranty accrual quarterly for products shipped in prior periods and which are still under warranty. Any changes in the estimates underlying the accrual may result in adjustments that impact current period gross profit and income. Such changes are generally a result of differences between forecasted and actual return rate experience and costs to repair and could differ significantly from the estimates.

***Litigation and Other Contingencies***

When the Business becomes aware of a claim or potential claim, the Business assesses the likelihood of any loss or exposure. The Business discloses information regarding each material claim where the likelihood of a loss contingency is probable or reasonably possible. If a loss contingency is probable and the amount of the loss can be reasonably estimated, the Business records an accrual for the loss. In such cases, there may be an exposure to potential loss in excess of the amount accrued. Where a loss is not probable but is reasonably possible or where a loss in excess of the amount accrued is reasonably possible, the Business discloses an estimate of the amount of the loss or range of possible losses for the claim if a reasonable estimate can be made, unless the amount of such reasonably possible losses is not material to the Business's financial position, results of operations or cash flows. The ability to predict the ultimate outcome of such matters involves judgments, estimates and inherent uncertainties. The actual outcome of such matters could differ materially from management's estimates. See Note 14, *Legal Proceedings,* for additional disclosures related to the Business's litigation.

***Advertising Expense***

Advertising costs are expensed as incurred and amounted to $31 million, $35 million and $47 million in 2024, 2023 and 2022, respectively. These expenses are included in Selling, general and administrative in the Combined Statements of Operations.

***Research and Development Expense***

Research and development ("R&D") expenditures are expensed as incurred.

***Income Taxes***

Income taxes are calculated as if the Business files tax returns on a stand-alone basis separate from the Parent. The Business accounts for income taxes under the asset and liability method, which provides that deferred tax assets and liabilities be recognized for temporary differences between the financial reporting basis and the tax basis of assets and liabilities and expected benefits of utilizing net operating loss ("NOL") and tax credit carryforwards. The Business records a valuation allowance when it is more likely than not that the deferred

tax assets will not be realized. Each quarter, the Business evaluates the need for a valuation allowance for its deferred tax assets and adjusts the valuation allowance so that the Business records net deferred tax assets only to the extent that it has concluded it is more likely than not that these deferred tax assets will be realized. The Business accounts for interest and penalties related to income taxes as a component of the provision for income taxes.

The Business recognizes liabilities for uncertain tax positions based on atwo-step process. To the extent a tax position does not meet a more-likely-than-not level of certainty, no benefit is recognized in the financial statements. If a position meets themore-likely-than-not level of certainty, it is recognized in the financial statements at the largest amount that has a greater than 50% likelihood of being realized upon ultimate settlement. Interest and penalties related to unrecognized tax benefits are recognized in liabilities recorded for uncertain tax positions and are recorded in the provision for income taxes. The actual liability for unrealized tax benefits in any such contingency may be materially different from the Business's estimates, which could result in the need to record additional liabilities for unrecognized tax benefits or potentially adjust previously recorded liabilities for unrealized tax benefits and may materially affect the Business's operating results.

***Stock-based Compensation Expense***

The Business's employees have historically participated in Parent's stock-based compensation programs. Stock-based compensation expense has been attributed to the Business based on the awards and terms previously granted to the Business's direct employees, as well as an allocation of Parent's corporate and shared functional employee expenses.

Certain employees of the Business have been granted restricted stock or restricted stock units under which shares of the Parent's common stock vest based on the passage of time or achievement of performance and market conditions. Under the Parent's Employee Stock Purchase Plan ("ESPP"), eligible employees may authorize payroll deductions of up to 10% of their eligible compensation. The fair value of ESPP purchase rights issued is estimated at the date of grant of the purchase rights using the Black-Scholes-Merton option-pricing model. The Black-Scholes-Merton option-pricing model requires the input of assumptions such as the expected stock price volatility and the expected period until options are exercised. Purchase rights under the ESPP are generally granted on either June 1st or December 1st of each year.

***Other Comprehensive Income (Loss), Net of Tax***

Other comprehensive income (loss), net of tax refers to gains and losses that are recorded as an element of equity but are excluded from net income (loss). The Business's other comprehensive income (loss), net of tax is primarily comprised of unrealized gains or losses on foreign exchange contracts designated as cash flow hedges and foreign currency translation.

***Derivative Contracts***

The majority of the Business's transactions are in U.S. dollars; however, some transactions are based in various foreign currencies. The Business purchases foreign exchange contracts to hedge the impact of foreign currency exchange fluctuations on certain underlying assets, liabilities and commitments for Operating expenses and product costs denominated in foreign currencies. The purpose of entering into these hedging transactions is to minimize the impact of foreign currency fluctuations on the Business's results of operations. Substantially all of these contract maturity dates do not exceed 12 months. All foreign exchange contracts are for risk management purposes only. The Business does not purchase foreign exchange contracts for speculative or

trading purposes. The Business had foreign exchange contracts with commercial banks for European euro, Canadian dollar, Japanese yen, Malaysian ringgit, Korean won and Israeli shekel, which had an aggregate notional amount of $2.9 billion and $4.2 billion at June 28, 2024 and June 30, 2023, respectively.

If the derivative is designated as a cash flow hedge and is determined to be highly effective, the change in fair value of the derivative is initially deferred in Other comprehensive income (loss), net of tax. These amounts are subsequently recognized into earnings when the underlying cash flow being hedged is recognized into earnings. Recognized gains and losses on foreign exchange contracts are reported in cost of revenue and operating expenses and presented within cash flows from operating activities. Hedge effectiveness is measured by comparing the hedging instrument's cumulative change in fair value from inception to maturity to the underlying exposure's terminal value. The Business determined the ineffectiveness associated with its cash flow hedges to be immaterial to the Combined Financial Statements for the periods presented.

A change in the fair value of undesignated hedges is recognized in earnings in the period incurred and is reported in other income (expense), net.

***Leases***

The Business leases certain domestic and international facilities under long-term,non-cancelable operating leases that expire at various dates through 2039. These leases include no material variable or contingent lease payments. Operating lease assets and liabilities are recognized based on the present value of the remaining lease payments discounted using the Business's incremental borrowing rate. Operating lease assets also include prepaid lease payments minus any lease incentives. Extension or termination options present in the Business's lease agreements are included in determining the right-of-use asset and lease liability when it is reasonably certain the Business will exercise that option. Lease expense is recognized on a straight-line basis over the lease term.

**Note 2. Recent Accounting Pronouncements**

***Accounting Pronouncements Recently Adopted***

In September 2022, the Financial Accounting Standards Board ("FASB") issued an accounting standards update ("ASU")No. 2022-04, "Liabilities-Supplier Finance Programs (Subtopic 405-50): Disclosure of Supplier Finance Program Obligations", which requires annual and interim disclosures for entities that use supplier finance programs in connection with the purchase of goods and services. The ASU requires the Business to provide disclosure of outstanding obligations to such suppliers for all balance sheet dates presented beginning with the Business's first quarter of 2024 and to provide certain rollforward information related to those obligations beginning in the Business's first fiscal quarter of 2025, with early adoption permitted. The ASU does not affect the recognition, measurement or financial statement presentation of supplier finance program obligations. The Business adopted the guidance on the first day of fiscal year 2024 and the adoption did not have a material impact on its Combined Financial Statements.

***Recently Issued Accounting Pronouncements Not Yet Adopted***

In November 2023, the FASB issued ASUNo. 2023-07, "Segment Reporting (Topic 280): Improvements to Reportable Segment Disclosures," which expands on segment reporting requirements primarily through enhanced disclosures surrounding significant segment expenses. The ASU expands on existing segment reporting requirements to require that a public entity disclose, on an annual and interim basis, significant segment expenses that are regularly provided to an entity's CODM, a description of other segment items by reportable segment, and

any additional measures of a segment's profit or loss used by the CODM when deciding how to allocate resources. These incremental disclosures will be required beginning with the Business's financial statements for the year ending June 27, 2025. The Business expects to provide any required disclosures at that time.

In December 2023, the FASB issued ASU2023-09, "Income Taxes (Topic 740): Improvements to Income Tax Disclosures." The ASU calls for enhanced income tax disclosure requirements surrounding the tabular rate reconciliation and income taxes paid. The amendments are effective for the Business's fiscal year 2026, with early adoption permitted. The Business is currently compiling the information required for these disclosures. These incremental disclosures will be required beginning with the Business's financial statements for the year ending June 27, 2025. The Business expects to provide any required disclosures at that time.

## Note 3. Geographic Information and Concentrations of Risk

***Disaggregated Revenue***

The Business's broad portfolio of technology and products addresses multiple end markets. Cloud represents a large and growing end market comprised primarily of products for public or private cloud environments and enterprise customers. Through the Client end market, the Business provides its OEM and channel customers a broad array of high-performance flash solutions across personal computer, mobile, gaming, automotive, virtual reality headsets, at-home entertainment and industrial spaces. The Consumer end market is highlighted by the Business's broad range of retail and otherend-user products, which capitalize on the strength of the Business's product brand recognition and vast points of presence around the world.

The Business's disaggregated revenue information is as follows:

| | 2024 | 2023 | 2022 |
|---|---|---|---|
| | | *(in millions)* | |
| Revenue by end market | | | |
| Cloud | $ 325 | $ 500 | $ 1,264 |
| Client | 4,069 | 3,637 | 6,038 |
| Consumer | 2,269 | 1,949 | 2,452 |
| Total revenue | $ 6,663 | $ 6,086 | $ 9,754 |

The Business's operations outside the United States include manufacturing facilities in China, Japan, Malaysia, as well as sales offices throughout the Americas, Asia Pacific, Europe and the Middle East. The following tables summarize the Business's operations by geographic area:

| | 2024 | 2023 | 2022 |
|---|---|---|---|
| | | *(in millions)* | |
| Net revenue[1] | | | |
| United States | $ 933 | $ 1,133 | $ 1,768 |
| China | 2,549 | 2,302 | 3,769 |
| Hong Kong | 1,044 | 690 | 1,324 |
| Rest of Asia | 917 | 898 | 1,391 |
| Europe, Middle East and Africa | 1,058 | 930 | 1,349 |
| Other | 162 | 133 | 153 |
| Total | $ 6,663 | $ 6,086 | $ 9,754 |

(1) Net revenue is attributed to geographic regions based on the ship-to location of the customer. License and royalty revenue is attributed to countries based upon the location of the headquarters of the licensee.

**The Flash Business of Western Digital Corporation**

**NOTES TO COMBINED FINANCIAL STATEMENTS – (Continued)**

***Disaggregated Long-lived Assets***

The Business's long-lived assets, including property, plant and equipment by geographic area, are as follows:

| | 2024 | 2023 |
|---|---|---|
| | *(in millions)* | |
| Long-lived assets[2] | | |
| United States | $ 77 | $154 |
| China | 249 | 298 |
| Malaysia | 388 | 390 |
| Rest of Asia | 4 | 4 |
| Europe, Middle East and Africa | 73 | 87 |
| Total | $791 | $933 |

(2) Long-lived assets include property, plant and equipment and are attributed to the geographic location in which they are located.

***Customer Concentration and Credit Risk***

The Business sells its products to computer manufacturers and OEMs, cloud service providers, resellers, distributors and retailers throughout the world. For fiscal year 2024, no customer accounted for more than 10% of the Business's net revenue. For fiscal year 2023, one customer accounted for 15% of the Business's net revenue. For fiscal year 2022, one customer accounted for 11% of the Business's net revenue. For 2024, 2023 and 2022, the Business's top 10 customers accounted for 41%, 47% and 47% of the Business's net revenue, respectively.

The Business performs ongoing credit evaluations of its customers' financial condition and generally requires no collateral. The Business maintains allowances for potential credit losses, and such losses have historically been within management's expectations. At any given point in time, the total amount outstanding from any one of a number of its customers may be individually significant to the Business's financial results. As of June 28, 2024, the Business had net accounts receivable of $935 million, and one customer accounted for 10% of the Business's outstanding accounts receivable. As of June 30, 2023, the Business had net accounts receivable of $539 million, and two customers accounted for 39% and 18% of the Business's outstanding accounts receivable, respectively. Reserves for potential credit losses were not material as of each period end.

The Business also has cash equivalent and investment policies that limit the amount of credit exposure to any one financial institution or investment instrument and requires that investments be made only with financial institutions or in investment instruments evaluated as highly credit-worthy.

***Supplier Concentration***

All of the Business's flash products require silicon wafers for the memory and controller components. The Business's flash memory wafers are currently supplied almost entirely from Flash Ventures (as defined in Note 9) and the Business's controller wafers are all manufactured by third-party sources. The failure of any of these sources to deliver silicon wafers could have a material adverse effect on the Business's business, financial condition and results of operations.

In addition, some key components are purchased from single-source vendors for which alternative sources are currently not available. Shortages could occur in these essential materials due to an interruption of supply or increased demand in the industry. If the Business was unable to procure certain of such materials, the Business's sales could decline, which could have a material adverse effect upon its results of operations. The Business also relies on third-party subcontractors to assemble and test a portion of its products. The Business does not have long-term contracts with some of these subcontractors and cannot directly control product delivery schedules or manufacturing processes. This could lead to product shortages or quality assurance problems that could increase the manufacturing costs of the Business's products and have material adverse effects on the Business's operating results.

## Note 4. Revenues

Contract assets represent the Business's rights to consideration where performance obligations are completed but the customer payments are not due until another performance obligation is satisfied. The Business did not have any contract assets as of June 28, 2024, or June 30, 2023. Contract liabilities relate to customers' payments in advance of performance under the contract and primarily relate to remaining performance obligations under professional service and support and maintenance contracts. Contract liabilities as of June 28, 2024, and June 30, 2023, and changes in contract liabilities during 2024 and 2023 were not material.

The Business incurs sales commissions and other direct incremental costs to obtain sales contracts. The Business has applied the practical expedient to recognize the direct incremental costs of obtaining contracts as an expense when incurred if the amortization period is expected to be one year or less or the amount is not material, with these costs charged to selling, general and administrative expenses. The Business had no direct incremental costs to obtain contracts that have an expected benefit of greater than one year.

The Business applies the practical expedients and does not disclose transaction price allocated to the remaining performance obligations for (i) arrangements that have an original expected duration of one year or less, which mainly consist of the support and maintenance contracts, and (ii) variable consideration amounts for sale-based or usage-based royalties for intellectual property license arrangements, which typically range longer than one year. Remaining performance obligations are mainly attributed to right-to-access patent license arrangements, professional service arrangements and customer support and service contracts which will be recognized over the remaining contract period. The transaction price allocated to the remaining performance obligations as of June 28, 2024, was not material.

## Note 5. Supplemental Financial Statement Data

***Goodwill***

The following table provides a summary of goodwill activity for the periods presented:

| | *(in millions)* |
|---|---|
| Balance at July 2, 2021 | $ 7,912 |
| Reduction in goodwill in connection with disposition of business | (14) |
| Foreign currency translation adjustment | (11) |
| Balance at July 1, 2022 | 7,887 |
| Impairment | (671) |
| Foreign currency translation adjustment | (4) |
| Balance at June 30, 2023 | 7,212 |
| Foreign currency translation adjustment | (5) |
| Balance at June 28, 2024 | $ 7,207 |

**The Flash Business of Western Digital Corporation**

**NOTES TO COMBINED FINANCIAL STATEMENTS – (Continued)**

The Business determined that its single operating segment was also its single reporting unit. Goodwill is not amortized. Instead, it is tested for impairment annually as of the beginning of the Business's fourth quarter, or more frequently if events or changes in circumstances indicate that goodwill may be impaired. The Business uses qualitative factors to determine whether goodwill is more-likely-than-not impaired and whether a quantitative test for impairment is considered necessary. If the Business concludes from the qualitative assessment that goodwill is more-likely-than-not-impaired, the Business is required to perform a quantitative approach to determine the amount of impairment.

Management did not identify any impairment indicators as of June 28, 2024 and did not incur any goodwill impairment charges for 2024. During fiscal year 2023, management identified several factors, including changes in industry and macroeconomic conditions, that warranted a quantitative analysis of impairment for the Business. The fair value of the operating segment was based on a weighting of two valuation methodologies: an income approach and a market approach.

The income approach was based on the present value of the projected discounted cash flows ("DCF") expected to be generated by the operating segment. Those projections required the use of significant estimates and assumptions specific to the reporting unit as well as those based on general economic conditions, which included, among other factors, revenue growth rates, gross margins, operating costs, capital expenditures, assumed tax rates and other assumptions deemed reasonable by management. The present value was based on applying a weighted average cost of capital ("WACC") which considered long-term interest rates and cost of equity based on the Business's risk profile.

The market approach was based on a guideline Business method, which analyzed market multiples of revenue for a group of comparable public companies.

The Business reconciled the aggregated estimated fair value of the operating segment to our Parent's market capitalization, including consideration of a control premium representing the estimated amount a market participant would pay to obtain a controlling interest in the Business.

Management determined that the carrying value of the reporting unit exceeded its fair value as derived from the valuation methodologies described above, resulting in recognition of a $671 million impairment charge for the fiscal year ended June 30, 2023.

The Business is required to use judgment when assessing goodwill for impairment, including evaluating the impact of industry and macroeconomic conditions and the determination of the fair value of the reporting unit. In addition, the estimates used to determine the fair value of the reporting unit as well as the actual carrying value may change based on future changes in the Business's results of operations, macroeconomic conditions or other factors. Changes in these estimates could materially affect the Business's assessment of the fair value and goodwill impairment. In addition, if negative macroeconomic conditions continue or worsen, goodwill could become further impaired, which could result in an additional impairment charge and materially adversely affect the Business's financial condition and results of operations.

In May 2022, the Business decided to exit itsRISC-V development operations and completed the sale of a portion of the business for $25 million. The sale of this business included the transfer of a small number of employees and an immaterial amount of other tangible and intangible assets as well as goodwill. The transaction resulted in a gain of approximately $9 million recorded in employee termination, asset impairment and other charges in the Combined Statements of Operations for the fiscal year ended July 1, 2022. The revenues and expenses related to this business were not material to the Combined Financial Statements and did not qualify to

be reported as a discontinued operation. The operating results of this business have been reflected in the Business's results from continuing operations in the Combined Statements of Operations through the date of disposition.

***Accounts receivable, net***

From time to time, in connection with factoring agreements, our Parent sells certain of our trade accounts receivable without recourse to third-party purchasers in exchange for cash. In 2024, 2023 and 2022 the Parent sold trade accounts receivable of the Business and received cash proceeds of $339 million, $370 million and $103 million, respectively. The discounts on the trade accounts receivable sold during the periods were not material and were recorded within other income (expense), net in the Combined Statements of Operations. No factored receivables were outstanding as of June 28, 2024, and $70 million of factored receivables remained outstanding as of June 30, 2023.

***Inventories***

| | June 28, 2024 | June 30, 2023 |
|---|---|---|
| | *(in millions)* | |
| Inventories: | | |
| Raw materials and component parts | $ 1,398 | $ 1,754 |
| Work-in-process | 237 | 182 |
| Finished goods | 320 | 333 |
| Total inventories | $ 1,955 | $ 2,269 |

***Property, plant and equipment, net***

| | June 28, 2024 | June 30, 2023 |
|---|---|---|
| | *(in millions)* | |
| Property, plant and equipment: | | |
| Land | $ 10 | $ 35 |
| Buildings and improvements | 397 | 479 |
| Machinery and equipment | 2,340 | 2,280 |
| Computer equipment and software | 123 | 121 |
| Furniture and fixtures | 16 | 15 |
| Construction-in-process | 108 | 86 |
| Property, plant and equipment, gross | 2,994 | 3,016 |
| Accumulated depreciation | (2,203) | (2,083) |
| Property, plant and equipment, net | $ 791 | $ 933 |

Depreciation expense for property, plant and equipment totaled $224 million, $315 million and $306 million in 2024, 2023 and 2022, respectively.

**The Flash Business of Western Digital Corporation**

**NOTES TO COMBINED FINANCIAL STATEMENTS – (Continued)**

***Intangible assets***

Intangibles are amortized over the estimated useful life based on the pattern in which the economic benefits are expected to be received. As of June 28, 2024 and June 30, 2023, all finite-lived intangible assets were fully amortized. During 2024, 2023 and 2022, the Business did not record any impairment charges related to finite-lived intangible assets.

Intangible asset amortization was as follows:

| | 2024 | 2023 | 2022 |
|---|---|---|---|
| | | *(in millions)* | |
| Intangible asset amortization | $— | $133 | $219 |

***Product warranty liability***

Changes in the warranty accrual were as follows:

| | 2024 | 2023 | 2022 |
|---|---|---|---|
| | | *(in millions)* | |
| Warranty accrual, beginning of period | $ 42 | $ 52 | $ 48 |
| Charges to operations | 28 | 30 | 35 |
| Utilization | (34) | (26) | (19) |
| Changes in estimate related to pre-existing warranties | 12 | (14) | (12) |
| Warranty accrual, end of period | $ 48 | $ 42 | $ 52 |

The current portion of the warranty accrual is classified in accrued expenses and the long-term portion is classified in other liabilities as noted below:

| | 2024 | 2023 |
|---|---|---|
| | *(in millions)* | |
| Warranty accrual: | | |
| Current portion (included in Accrued expenses) | $ 27 | $ 23 |
| Long-term portion (included in Other liabilities) | 21 | 19 |
| Total warranty accrual | $ 48 | $ 42 |

***Other liabilities***

Other liabilities are as follows:

| | 2024 | 2023 |
|---|---|---|
| | *(in millions)* | |
| Other liabilities: | | |
| Non-current net tax payable | $ 56 | $ 30 |
| Long-term lease liability | 171 | 88 |
| Other non-current liabilities | 59 | 61 |
| Total other liabilities | $286 | $179 |

**The Flash Business of Western Digital Corporation**

**NOTES TO COMBINED FINANCIAL STATEMENTS – (Continued)**

***Accumulated other comprehensive loss***

Accumulated other comprehensive loss ("AOCL"), net of tax refers to expenses, gains and losses that are recorded as an element of equity but are excluded from net income (loss). The following table illustrates the changes in the balances of each component of AOCL:

| | Foreign Currency Translation Adjustment | Unrealized Gain (Loss) on Derivative Contracts | Total Accumulated Comprehensive Loss |
|---|---|---|---|
| | | *(in millions)* | |
| **Balance at July 1, 2022** | (130) | (277) | (407) |
| Other comprehensive income (loss) | (35) | 128 | 93 |
| Income tax expense related to items of other comprehensive income (loss) | — | (29) | (29) |
| Net current-period other comprehensive income (loss) | (35) | 99 | 64 |
| **Balance at June 30, 2023** | (165) | (178) | (343) |
| Other comprehensive loss | (43) | (87) | (130) |
| Income tax benefit related to items of other comprehensive loss | — | 21 | 21 |
| Net current-period other comprehensive loss | (43) | (66) | (109) |
| **Balance at June 28, 2024** | $ (208) | $ (244) | $ (452) |

## Note 6. Fair Value Measurements and Investments

***Financial Instruments Carried at Fair Value***

Financial assets and liabilities that are remeasured and reported at fair value at each reporting period are classified and disclosed in one of the following three levels:

*Level 1*. Quoted prices in active markets for identical assets or liabilities.

*Level 2*. Inputs other than Level 1 that are observable, either directly or indirectly, such as quoted prices for similar assets or liabilities; quoted prices in markets that are not active; or other inputs that are observable or can be corroborated by observable market data for substantially the full term of the assets or liabilities.

*Level 3*. Inputs that are unobservable for the asset or liability and that are significant to the fair value of the assets or liabilities.

**The Flash Business of Western Digital Corporation**

**NOTES TO COMBINED FINANCIAL STATEMENTS – (Continued)**

The following tables present information about the Business's financial assets and liabilities that are measured at fair value on a recurring basis, and indicate the fair value hierarchy of the valuation techniques utilized to determine such values for the periods presented:

| | June 28, 2024 | | | |
|---|---|---|---|---|
| | Level 1 | Level 2 | Level 3 | Total |
| | *(in millions)* | | | |
| Assets: | | | | |
| Cash equivalents - Money market funds | $ 28 | $ — | $ — | $ 28 |
| Foreign exchange contracts | $ — | $ 7 | $ — | $ 7 |
| Total assets at fair value | $ 28 | $ 7 | $ — | $ 35 |
| Liabilities: | | | | |
| Foreign exchange contracts | $ — | $ 179 | $ — | $179 |
| Total liabilities at fair value | $ — | $ 179 | $ — | $179 |

| | June 30, 2023 | | | |
|---|---|---|---|---|
| | Level 1 | Level 2 | Level 3 | Total |
| | *(in millions)* | | | |
| Assets: | | | | |
| Foreign exchange contracts | $ — | $ 31 | $ — | $ 31 |
| Total assets at fair value | $ — | $ 31 | $ — | $ 31 |
| Liabilities: | | | | |
| Foreign exchange contracts | $ — | $ 171 | $ — | $171 |
| Total liabilities at fair value | $ — | $ 171 | $ — | $171 |

*Money Market Funds.* The Business's money market funds are funds invested in U.S. Treasury and U.S. Government agency securities. Money market funds are valued based on quoted market prices.

*Foreign Exchange Contracts.* The Business's foreign exchange contracts are short-term contracts to hedge the Business's foreign currency risk. Foreign exchange contracts are valued using an income approach that is based on the present value of a future cash flows model. The market-based observable inputs for the model include forward rates and credit default swap rates. For more information on the Business's foreign exchange contracts, see Note 7, *Derivative Instruments and Hedging Activities.* Derivative assets and liabilities are reflected in the Business's Combined Balance Sheets under other current assets and accrued expenses, respectively.

During 2024 and 2023, the Business had no transfers of financial assets and liabilities between levels and there were no changes in valuation techniques and the inputs used in the fair value measurement.

### Note 7. Derivative Instruments and Hedging Activities

As of June 28, 2024, the Business had outstanding foreign exchange forward contracts that were designated as either cash flow hedges or non-designated hedges. Substantially all of the contract maturity dates of these foreign exchange forward contracts do not exceed twelve months. As of June 28, 2024, the Business did not have any derivative contracts with credit-risk-related contingent features.

Changes in the fair values of the non-designated foreign exchange contracts are recognized in other income, net and are largely offset by corresponding changes in the fair values of the foreign currency denominated monetary assets and liabilities. For 2024, 2023 and 2022 total net realized and unrealized transaction and foreign exchange contract currency losses were $4 million, $5 million and $4 million, respectively.

Unrealized gains or losses on designated cash flow hedges are recognized in AOCL. For more information regarding cash flow hedges, see Note 5, *Supplemental Financial Statement Data—Accumulated other comprehensive loss.*

## Note 8. Employee Benefit Plans

### *Defined Benefit Plans*

The Business sponsors a defined benefit pension plan that is solely available for employees located in South Korea. As of June 28, 2024, and June 30, 2023, the plan had a net unfunded status of $6 million and $5 million, respectively, reported within other liabilities on the Combined Balance Sheets. Total pension expense included in cost of revenue and operating expenses in the Combined Statements of Operations was not material for each of the fiscal years ended June 28, 2024, June 30, 2023, and July 1, 2022. No employees of the Business participate in defined benefit pension plans sponsored by the Parent or its subsidiaries.

### *Defined Contribution Plans*

Our eligible employees participate in a 401(k)-matching program, Western Digital Corporation 401(k) Plan (the "Plan"), maintained by the Parent. The Plan covers substantially all domestic employees, subject to certain eligibility requirements. Eligible employees receive employer matching contributions immediately upon hire unless the individual is covered by a collective bargaining agreement, provides services as a consultant, intern, independent contractor, leased or temporary employee or otherwise is not treated as a common-law employee.

Through December 31, 2021, eligible employees were generally able to contribute up to 75% of their eligible compensation on a combined pre-tax and Roth basis, 10% on a combined pre-tax catch-up and Roth catch-up basis, and 10% on a non-Roth after-tax basis subject to Internal Revenue Service ("IRS") limitations. Eligible employees are generally able to contribute up to 85% of their eligible compensation on a combined pre-tax and Roth basis regardless of age, and 10% of their eligible compensation on an after-tax basis, all subject to IRS limitations. The Business may make a basic matching contribution equal to 50% of each eligible participant's contribution that does not exceed 6% of the eligible participant's annual compensation in the year of contribution. Furthermore, the Business's employer matching contributions vest immediately. Contributions, including the Business's matching contribution to the Plan, are recorded as soon as administratively possible after the Business makes payroll deductions from Plan participants.

Effective February 18, 2023, the Business announced its decision to suspend matching contributions through the end of the calendar year 2023. The Business later resumed matching contributions on January 1, 2024.

For 2024, 2023 and 2022, the Plan contributions attributable to the Business were $5 million, $9 million and $15 million, respectively.

**The Flash Business of Western Digital Corporation**

**NOTES TO COMBINED FINANCIAL STATEMENTS – (Continued)**

## Note 9. Related Parties and Related Commitments and Contingencies

***Flash Ventures***

The Business procures substantially all of its flash-based memory wafers from its business ventures with Kioxia Corporation ("Kioxia"), which consists of three separate legal entities: Flash Partners Ltd. ("Flash Partners"), Flash Alliance Ltd. ("Flash Alliance") and Flash Forward Ltd. ("Flash Forward"), collectively referred to as "Flash Ventures." The Business has a 49.9% ownership interest and Kioxia has a 50.1% ownership interest in each of these entities. Through Flash Ventures, the Business and Kioxia collaborate in the development and manufacture of flash-based memory wafers, which are manufactured by Kioxia at its wafer fabrication facilities located in Japan using semiconductor manufacturing equipment individually owned or leased by each Flash Ventures entity. Each Flash Ventures entity purchases wafers from Kioxia at cost and then resells those wafers to the Business and Kioxia at cost plus a markup.

***Flash Partners.*** Flash Partners was formed in 2004 in connection with the construction of Kioxia's "Y3"300-millimeter wafer fabrication facility located in Yokkaichi, Japan.

***Flash Alliance***. Flash Alliance was formed in 2006 in connection with the construction of Kioxia's "Y4"300-millimeter wafer fabrication facility located in Yokkaichi, Japan.

***Flash Forward.*** Flash Forward was formed in 2010 in connection with the construction of Kioxia's "Y5"300-millimeter wafer fabrication facility located in Yokkaichi, Japan. Y5 was built in two phases of approximately equal size.

***New Y2.*** The Business has a facility agreement with Kioxia related to the construction and operation of Kioxia's "New Y2"300-millimeter wafer fabrication facility located in Yokkaichi, Japan. New Y2 primarily provided additional clean room space to convert a portion of 2-dimensional ("2D") flash-based wafer production capacity to 3-dimensional ("3D") flash-based wafer production capacity. Production of flash-based wafers in New Y2 started in 2016.

***Y6.*** The Business also has a facility agreement with Kioxia related to the construction and operation of Kioxia's "Y6"300-millimeter wafer fabrication facility in Yokkaichi, Japan. Y6 is primarily intended to provide clean room space to continue the transition of existing 2D flash-based wafer capacity to 3D flash-based wafer production capacity. Production of flash-based wafers in Y6 started in 2018.

***K1.*** The Business also has a facility agreement with Kioxia related to the construction and operation of Kioxia's "K1"300-millimeter wafer fabrication facility in Kitakami, Japan. The primary purpose of K1 is to provide clean room space to continue the transition of existing flash-based wafer capacity to newer technology nodes. Production of flash-based wafers in K1 started in 2019.

***Y7.*** In January 2022, the Business entered into additional agreements regarding Flash Ventures' investment in a new wafer fabrication facility in Yokkaichi, Japan, referred to as "Y7". The primary purpose of Y7 is to provide clean room space to continue the transition of existing flash-based wafer capacity to newer flash technology nodes. Production of flash-based wafers in Y7 started in 2022.

***K2***. In June 2024, the Business entered into additional agreements regarding Flash Ventures' investment in a new wafer fabrication facility in Kitakami, Japan, referred to as "K2". The primary purpose of K2 is to provide clean room space to continue the transition of existing flash-based wafer capacity to newer flash technology nodes. Output from K2 is expected to begin in the first half of fiscal year 2026.

**The Flash Business of Western Digital Corporation**

**NOTES TO COMBINED FINANCIAL STATEMENTS – (Continued)**

In connection with the start-up of the K1, K2 and Y7 facilities, the Business has made prepayments over time, toward future building depreciation. During 2024, the Business made $74 million of prepayments and as of June 28, 2024, $523 million remained to be credited against future building depreciation charges.

As of June 28, 2024, the Business is committed to make additional building depreciation payments of $610 million. The additional future payments are scheduled as follows, based on Japanese yen to U.S. dollars exchange rate as of June 28, 2024: $372 million in fiscal year 2025, $29 million in fiscal year 2026, $109 million in fiscal year 2027, $87 million in fiscal year 2028, and $13 million in fiscal year 2029. As of June 28, 2024, in addition to the requirements to make building depreciation prepayments, the Business will also make payments for building depreciation of approximately $290 million at varying dates through fiscal year 2035.

The Business accounts for its ownership position of each entity within Flash Ventures under the equity method of accounting. The financial and other support provided by the Business in all periods presented was either contractually required or the result of a joint decision to expand wafer capacity, transition to new technologies or refinance existing equipment lease commitments. Entities within Flash Ventures are VIEs. The Business evaluated whether it is the primary beneficiary of any of the entities within Flash Ventures for all periods presented and determined that it is not the primary beneficiary of any of the entities within Flash Ventures because it does not have a controlling financial interest in any of those entities. In determining whether the Business is the primary beneficiary, the Business analyzed the primary purpose and design of Flash Ventures, the activities that most significantly impact Flash Ventures' economic performance, and whether the Business had the power to direct those activities. The Business concluded, based upon its 49.9% ownership, the voting structure and the manner in which the day-to-day operations are conducted for each entity within Flash Ventures, that the Business lacked the power to direct most of the activities that most significantly impact the economic performance of each entity within Flash Ventures.

The following table presents the notes receivable from, and equity investments in, Flash Ventures for the periods presented:

| | June 28, 2024 | June 30, 2023 |
|---|---|---|
| | *(in millions)* | |
| Notes receivable, Flash Partners | $ 1 | $ 37 |
| Notes receivable, Flash Alliance | 5 | 48 |
| Notes receivable, Flash Forward | 485 | 709 |
| Investment in Flash Partners | 148 | 160 |
| Investment in Flash Alliance | 219 | 274 |
| Investment in Flash Forward | 143 | 183 |
| Total notes receivable and investments in Flash Ventures | $ 1,001 | $ 1,411 |

During 2024, 2023 and 2022 the Business made net payments to Flash Ventures of $3.35 billion, $4.20 billion, $4.70 billion for purchased flash-based memory wafers and net loans.

The Business makes, or will make, loans to Flash Ventures to fund equipment investments for new process technologies and additional wafer capacity. The Business aggregates its Flash Ventures' notes receivable into one class of financing receivables due to the similar ownership interest and common structure in each Flash Venture entity. For all reporting periods presented, no loans were past due, and no loan impairments were recorded. The Business's notes receivable from each Flash Ventures entity, denominated in Japanese yen, are secured by equipment owned by that Flash Ventures entity.

**The Flash Business of Western Digital Corporation**

**NOTES TO COMBINED FINANCIAL STATEMENTS – (Continued)**

As of June 28, 2024, and June 30, 2023, the Business had accounts payable balances due to Flash Ventures of $313 million and $292 million, respectively.

The Business's maximum reasonably estimable loss exposure (excluding lost profits) as a result of its involvement with Flash Ventures, based upon the Japanese yen to U.S. dollar exchange rate at June 28, 2024, is presented below. Investments in Flash Ventures are denominated in Japanese yen, and the maximum estimable loss exposure excludes any cumulative translation adjustment due to revaluation from the Japanese yen to the U.S. dollar.

| | June 28, 2024 |
|---|---|
| | *(in millions)* |
| Notes receivable | $ 491 |
| Equity investments | 510 |
| Operating lease guarantees | 1,299 |
| Inventory and prepayments | 1,069 |
| Maximum estimable loss exposure | $ 3,369 |

As of June 28, 2024, the Business's Parent company net investment included undistributed earnings of Flash Ventures of $162 million.

The Business is obligated to pay for variable costs incurred in producing its share of Flash Ventures' flash-based memory wafer supply, based on its three-month forecast, which generally equals 50% of Flash Ventures' output. In addition, the Business is obligated to pay for half of Flash Ventures' fixed costs regardless of the output the Business chooses to purchase. The Business is not able to estimate its total wafer purchase commitment obligation beyond its rolling three-month purchase commitment because the price is determined by reference to the future cost of producing the semiconductor wafers. In addition, the Business is committed to fund 49.9% to 50.0% of capital investments that a Flash Ventures entity decided to make to the extent that Flash Ventures entity's operating cash flow is insufficient to fund these investments.

Flash Ventures has historically operated near 100% of its manufacturing capacity. During 2024 and 2023, as a result of flash business conditions, the Business temporarily reduced its utilization of its share of Flash Ventures' manufacturing capacity to an abnormally low level to more closely align the Business's flash-based wafer supply with projected demand. In 2024 and 2023, the Business incurred costs of $249 million and $286 million, respectively, associated with the reduction in utilization related to Flash Ventures, which was recorded as a charge to cost of revenue.

In February 2022, contamination of certain material used in manufacturing processes occurred at both the Yokkaichi and Kitakami, Japan fabrication facilities, resulting in damage to inventory units in production, a temporary disruption to production operations and a reduction in the Business's flash wafer availability. During 2022, the Business incurred charges of $207 million related to this contamination incident that were recorded in cost of revenue, which primarily consisted of scrapped inventory and rework costs, decontamination and other costs needed to restore the facilities to normal capacity and under absorption of overhead costs. During 2024, the Business received a recovery of $36 million related to this incident from its insurance carriers, which was recorded in cost of revenue. The Business continues to pursue recovery of its remaining losses associated with this event; however, the total amount of recovery cannot be estimated at this time.

***Inventory Purchase Commitments with Flash Ventures.***

Purchase orders placed under Flash Ventures for up to three months are binding and cannot be canceled.

***Research and Development Activities.***

The Business participates in common R&D activities with Kioxia and is contractually committed to a minimum funding level. R&D commitments are immaterial to the Combined Financial Statements.

***Off-Balance Sheet Liabilities***

Flash Ventures sells to and leases back from a consortium of financial institutions a portion of its tools and has entered into equipment lease agreements of which the Business guarantees half or all of the outstanding obligations under each lease agreement. The lease agreements are subject to customary covenants and cancellation events related to Flash Ventures and each of the guarantors. The occurrence of a cancellation event could result in an acceleration of Flash Ventures' obligations and a call on the Business's guarantees.

The following table presents the Business's portion of the remaining guarantee obligations under the Flash Ventures' lease facilities in both Japanese yen and U.S. dollar-equivalent, based upon the Japanese yen to U.S. dollar exchange rate:

| | June 28, 2024 Lease Amounts | |
|---|---|---|
| | *(Japanese yen, in billions)* | *(U.S. dollar, in millions)* |
| Total guarantee obligations | ¥ 208 | $ 1,299 |

The following table details the breakdown of the Business's remaining guarantee obligations between the principal amortization and the purchase option exercise price at the end of the term of the Flash Ventures lease agreements, in annual installments as of June 28, 2024, in U.S. dollars, based upon the Japanese yen to U.S. dollar exchange rate as of June 28, 2024:

| Annual Installments | Payment of Principal Amortization | Purchase Option Exercise Price at Final Lease Terms | Guarantee Amount |
|---|---|---|---|
| | | *(in millions)* | |
| 2025 | $ 285 | $ 74 | $ 359 |
| 2026 | 359 | 111 | 470 |
| 2027 | 164 | 95 | 259 |
| 2028 | 58 | 92 | 150 |
| 2029 | 11 | 50 | 61 |
| Total guarantee obligations | $ 877 | $ 422 | $ 1,299 |

The Business and Kioxia have agreed to mutually contribute to, and indemnify each other and Flash Ventures for, environmental remediation costs or liability resulting from Flash Ventures' manufacturing operations in certain circumstances. The Business has not made any indemnification payments, nor recorded any indemnification receivables under any such agreements. As of June 28, 2024, no amounts have been accrued in the Combined Financial Statements with respect to these indemnification agreements.

**The Flash Business of Western Digital Corporation**

**NOTES TO COMBINED FINANCIAL STATEMENTS – (Continued)**

*Unis Ventures*

WDC also has a joint venture with Unisplendour Corporation Limited and Unissoft (Wuxi) Group Co. Ltd. ("Unis"), referred to as the "Unis Venture", to market and sell the Business's products in China and to develop data storage systems for the Chinese market in the future. Pursuant to the separation and distribution agreement, it is expected that the Unis Venture will be minority owned by the Business and majority owned by Unis following the separation. The Unis Venture has not historically been managed as a component of the Business and as such the related equity method investment is not reflected within our Combined Financial Statements. For the years ended June 28, 2024, June 30, 2023, and July 1, 2022, the Business recognized approximately 1%, 2% and 1% of its combined revenue on products distributed by the Unis Venture, respectively. The outstanding accounts receivable due from the Unis Venture was 4% and 2% of Accounts receivable, net as of June 28, 2024, and June 30, 2023, respectively.

*Agreement to Sell a Majority Interest in our Parent's Subsidiary*

In March 2024, SanDisk China (an indirect wholly owned subsidiary of WDC) entered into an Equity Purchase Agreement to sell 80% of its equity interest in SanDisk Semiconductor (Shanghai) Co. Ltd. ("SDSS") (an indirect wholly-owned subsidiary of WDC which holds one of the Business's manufacturing facilities) to JCET Management Co., Ltd. ("JCET", a wholly-owned subsidiary of JCET Group Co., Ltd. a Chinese publicly listed company), thereby forming a joint venture between SanDisk China and JCET. Closing of the transaction is subject to the satisfaction or waiver of certain conditions, after which, JCET will own 80% of the equity interest in SDSS, with SanDisk China owning the remaining 20%. Following the Closing, our Parent expects to enter into various ancillary agreements, including (i) a shareholders agreement governing the joint venture relationships from and after the Closing; (ii) a supply agreement with the joint venture to supply the Business with certain flash-based products currently produced by SDSS, which may include flash memory cards, embedded flash products and flash components; and (iii) an intellectual property license agreement granting SDSS certain intellectual property rights on a royalty-free basis for use in manufacturing products on the Business's behalf for the term of and pursuant to the Supply Agreement.

***Related Party Transactions***

*Notes Due to (from) Parent*

The Business receives financing from certain of the Parent's subsidiaries in the form of borrowings under revolving credit agreements and promissory notes to fund activities primarily related to Flash Ventures. Additionally, cash generated by the Business may be lent via promissory notes to certain of the Parent's subsidiaries for use in general corporate purposes. Outstanding balances due under these financing arrangements are due on demand.

**The Flash Business of Western Digital Corporation**

**NOTES TO COMBINED FINANCIAL STATEMENTS – (Continued)**

The following presents a summary of the outstanding borrowings between the Business and subsidiaries of the Parent for the periods presented, inclusive of any associated interest receivable or interest payable:

| Notes due to (from) Parent | Interest Rate | June 28, 2024 | June 30, 2023 |
|---|---|---|---|
| **Notes due from Parent** | | | *(in millions)* |
| Revolving Credit Agreement due from Parent $101M - Oct. 3, 2019 | AFR Rate (USD) or TIBOR + .35% (YEN) | $ (102) | $ — |
| Notes due from Parent $40M - Dec. 19, 2018 | .15% through Dec. 2021, .33% through Dec. 2022 and 4.55% through Maturity Date | — | (40) |
| Notes due from Parent $10M - Mar. 29, 2019 | 1.5% through Mar 2022, .97% through Mar. 2023, and 4.5% through Maturity Date | — | (10) |
| Notes due from Parent $8M - Jul. 25, 2019 | .18% through Jul 2021, .12% through July 2022, and 2.37% through Maturity Date | — | (8) |
| Revolving Credit Agreement due from Parent $1B - Dec. 20, 2019 | AFR Rate (USD) or TIBOR + .35% (YEN) | — | (4) |
| Revolving Credit Agreement due from Parent $100M October 27, 2021 | LIBOR Rate + 150 basis points | — | (1) |
| Total Notes due from Parent | | (102) | (63) |
| **Notes due to Parent** | | | |
| Notes due to Parent $500M - Nov. 25, 2014 | 1-year swap + 2% | 475 | 467 |
| Notes Due to Parent $42B Yen - April 29, 2014 | TIBOR + .35% | 262 | 291 |
| Revolving Credit Agreement due to Parent $100M - Aug. 20, 2021 | LIBOR Rate + 150 basis points | 77 | 77 |
| Revolving Credit Agreement due to Parent $1B - Dec. 20, 2019 | AFR Rate (USD) or TIBOR + .35% (YEN) | — | 29 |
| Revolving Credit Agreement due to Parent - $1B - Dec. 20, 2019 | AFR Rate (USD) or TIBOR + .35% (YEN) | — | 24 |
| Notes Due to Parent $60M - Feb. 22 2023 | Safe Notice Rate - 6.698% | — | 31 |
| Total Notes due to Parent | | 814 | 919 |
| | Total Notes due to Parent, net | $712 | $856 |

**The Flash Business of Western Digital Corporation**

**NOTES TO COMBINED FINANCIAL STATEMENTS – (Continued)**

The following presents interest expense and interest income on notes due to (from) Parent, which have been recorded within interest expense and interest income in the Combined Statements of Operations for the periods presented:

| | Years Ended | | |
|---|---|---|---|
| | June 28, 2024 | June 30, 2023 | July 1, 2022 |
| | | *(in millions)* | |
| Interest income on notes due from Parent | $ 6 | $ 16 | $ 3 |
| Interest expense on notes due to Parent | $ (37) | $ (29) | $ (13) |

*Allocation of Corporate expenses*

The Parent has provided various corporate services to the Business in the ordinary course of business, including executive management, finance, tax, legal, information technology, employee benefits administration, treasury, risk management, procurement and other shared services. These corporate expenses have been allocated to the Business based on direct usage or benefit, where identifiable, with the remainder allocated based on headcount, revenue or other relevant measures. Management believes the basis on which the expenses have been allocated to be a reasonable reflection of the utilization of services provided to or the benefit received by us.

The table below summarizes the impact of expense allocations from WDC within the Combined Statements of Operations for the periods presented:

| | Years Ended | | |
|---|---|---|---|
| | June 28, 2024 | June 30, 2023 | July 1, 2022 |
| | | *(in millions)* | |
| Research and development | $ 723 | $ 750 | $ 884 |
| Selling, general and administrative | 418 | 452 | 470 |
| Employee termination, asset impairment and other | (40) | 61 | (2) |
| Business separation costs | 64 | — | — |
| Total allocation of Corporate expenses | $ 1,165 | $ 1,263 | $ 1,352 |

Our historical financial statements do not purport to reflect what results of operations, financial position, equity or cash flows would have been if we had operated as a stand-alone Business during the periods presented.

*Cash Management*

WDC provides funding for our operating and investing activities including pooled cash managed by WDC treasury to fund operating expenses and capital expenditures. WDC also directly collects certain of our receivables. These activities are reflected as a component of Parent company net investment, and this arrangement is not reflective of the manner in which we would operate on a standalone business separate from WDC during the periods presented.

*Parent Company Net Investment*

Parent company net investment on the Combined Balance Sheets represents WDC's historical investment in the Business, the net effect of transactions with and allocations from WDC, the Business's retained earnings and cumulative effect adjustments from the adoption of new accounting standards.

*Net Transfers from (to) Parent*

A reconciliation of Net transfers from (to) Parent on the Combined Statements of Changes in Parent Company Net Investment to the corresponding amounts on the Combined Statements of Cash Flows is as follows:

| | Years Ended | | |
|---|---|---|---|
| | June 28, 2024 | June 30, 2023 | July 1, 2022 |
| | *(in millions)* | | |
| Net transfers from (to) Parent per Combined Statement of Changes in Parent Company Net Investment | $ 275 | $ 376 | $ (922) |
| Property, plant and equipment, net transferred from Parent | (11) | (18) | (13) |
| Deferred taxes, net transferred to Parent | 17 | 2 | 2 |
| Notes due from Parent transferred to Parent | 113 | 316 | — |
| Net transfers from (to) Parent per Combined Statements of Cash Flows | $ 394 | $ 676 | $ (933) |

## Note 10. Leases and Other Commitments

***Leases***

The following table presents right-of-use-lease assets and lease liabilities included in the Business's Combined Balance Sheets:

| | June 28, 2024 | June 30, 2023 |
|---|---|---|
| | *(in millions)* | |
| Operating lease right-of-use assets (included in other non-current assets) | $ 179 | $ 93 |
| Operating lease liabilities: | | |
| Current portion of long-term operating lease liabilities (included in accrued expenses) | 11 | 13 |
| Long-term operating lease liabilities (included in other liabilities) | 172 | 87 |
| Total operating lease liabilities | $ 183 | $ 100 |

The following tables summarize supplemental disclosures of operating cost and cash flow information related to operating leases:

| | Years ended | | |
|---|---|---|---|
| | June 28, 2024 | June 30, 2023 | July 1, 2022 |
| | | *(in millions)* | |
| Cost of operating leases | $ 29 | $ 21 | $ 22 |
| Cash paid for operating leases | 30 | 14 | 10 |
| Operating lease assets obtained in exchange for operating lease liabilities | 167 | 3 | 107 |
| Decrease in operating lease liabilities and right-of-use assets due to lease remeasurement | 71 | — | — |

The weighted average remaining lease term and discount rate for the Business's operating leases were as follows:

| | 2024 | 2023 |
|---|---|---|
| Weighted average remaining lease term in years | 13.7 | 7.8 |
| Weighted average discount rate | 7.5% | 3.0% |

As of June 28, 2024, minimum lease payments were as follows:

| | Lease Amounts (in millions) |
|---|---|
| 2025 | $ 23 |
| 2026 | 22 |
| 2027 | 21 |
| 2028 | 19 |
| 2029 | 19 |
| Thereafter | 199 |
| Total future minimum lease payments | 303 |
| Less: Imputed interest | 120 |
| Present value of lease liabilities | $ 183 |

***Sale-Leaseback***

In August 2023, our Parent entered into an agreement for the sale and leaseback of its facility in Milpitas, California and received gross proceeds of $191 million in cash. A substantial majority of these assets are associated with the Business and all are included in our Combined Balance Sheet as of June 30, 2023. As a result, $134 million of consideration from the sale-leaseback transaction has been allocated to us on a relative square footage basis and reflected as a cash inflow from investing activities within the Combined Statements of Cash Flows for fiscal year 2024. In connection with the sale and leaseback, the Business recorded a gain of $60 million upon closing of the transaction in September 2023. For more information, see Note 13, *Employee Termination, Asset Impairment and Other*.

The property is being leased back at an annual rate of $16 million for the first year and increasing by 3% per year thereafter through January 1, 2039. The lease includes three 5-year renewal options and one 4-year renewal option for the ability to extend through December 2057. The full amount of the associated operating lease liability and right of use asset for this facility has been included in the Combined Balance Sheet as of June 28, 2024. This facility is utilized in the Business's operations and a portion of the total annual lease expense will be allocated to the Business in future periods based on the continued usage of the facility.

***Purchase Agreements and Other Commitments***

In the normal course of business, the Business enters into purchase orders with suppliers for the purchase of components used to manufacture its products. These purchase orders generally cover forecasted component supplies needed for production during the next quarter, are recorded as a liability upon receipt of the components, and generally may be changed or canceled at any time prior to shipment of the components. The Business also enters into long-term agreements with suppliers that contain fixed future commitments, which are contingent on

certain conditions such as performance, quality and technology of the vendor's components. As of June 28, 2024, the Business had the following minimum long-term commitments:

| | Long-term commitments |
|---|---|
| | *(in millions)* |
| Fiscal year: | |
| 2025 | $ 43 |
| 2026 | 51 |
| 2027 | 32 |
| 2028 | 20 |
| 2029 | 20 |
| Thereafter | 110 |
| Total | $ 276 |

**Note 11. Stock-based Compensation Expense**

Certain of our employees participate in our Parent's equity-based incentive plans. Under the Western Digital Corporation 2021 Equity Incentive Plan (the "2021 Plan") and the Western Digital Corporation Amended and Restated 2017 Performance Incentive Plan (the "2017 Plan"), our employees were awarded stock-based incentive awards in a number of forms, including nonqualified stock options. Upon the effective date of the 2021 Plan, no new awards were granted under the 2017 Plan. The types of awards that may be granted under the 2021 Plan include stock options, stock appreciation rights ("SARs"), RSUs, PSUs, restricted stock and other forms of awards granted or denominated in the Parent's common stock or units of the Parent's common stock, as well as cash awards. Awards granted to our employees under the incentive plans generally vest over periods ranging from two to four years. We measure stock-based compensation for all stock-based incentive awards at fair value on the grant date. Stock-based compensation expense is generally recognized on a straight-line basis over the requisite service periods of the awards. Compensation costs associated with our employees' participation in the incentive plans have been specifically identified for employees who exclusively support our operations and are allocated to us as part of the cost allocations from our Parent. We include the related expense in operating expense (research and development and selling, general and administrative) and cost of revenue on our Combined Statements of Operations, depending on the nature of the employee's role in our operations.

The table below summarizes total costs charged to the Business related to the Business's employees' participation in our Parent's incentive plan during the years ended June 28, 2024, June 30, 2023, and July 1, 2022:

| | 2024 | 2023 | 2022 |
|---|---|---|---|
| | | *(in millions)* | |
| Cost of revenue | $ 20 | $ 19 | $ 18 |
| Research and development | 71 | 88 | 94 |
| Selling, general and administrative | 58 | 58 | 59 |
| Total | $149 | $165 | $171 |

Total unrecognized stock-based compensation expense associated with our employees was $142 million as of June 28, 2024. We may receive additional allocations of share-based compensation expense associated with employees of our Parent who are engaged in corporate support functions.

## Note 12. Income Tax Expense

### *Income (loss) Before Taxes*

The domestic and foreign components of Income (loss) before taxes were as follows:

| | 2024 | 2023 | 2022 |
|---|---|---|---|
| | | *(in millions)* | |
| Foreign | $(543) | $(2,253) | $ 276 |
| U.S. | 40 | 251 | 958 |
| Income (loss) before taxes | $(503) | $(2,002) | $1,234 |

### *Income Tax Expense*

The components of the income tax expense were as follows:

| | 2024 | 2023 | 2022 |
|---|---|---|---|
| | | *(in millions)* | |
| Current: | | | |
| Foreign | $158 | $138 | $ 84 |
| U.S. - Federal | 20 | 76 | 141 |
| U.S. - State | 7 | 8 | 13 |
| | 185 | 222 | 238 |
| Deferred: | | | |
| Foreign | 7 | (15) | 24 |
| U.S. - Federal | (19) | (65) | (82) |
| U.S. - State | (4) | (1) | (10) |
| | (16) | (81) | (68) |
| Total income tax expense (benefit) | $169 | $141 | $170 |

The Tax Cuts and Jobs Act (the "2017 Act"), enacted on December 22, 2017, includes a broad range of tax reform proposals affecting businesses. Our Parent completed its accounting for the tax effects of the enactment of the 2017 Act during the second quarter of 2019. However, the U.S. Treasury and the IRS have issued tax guidance on certain provisions of the 2017 Act since the enactment date, and the Business anticipates the issuance of additional regulatory and interpretive guidance. The Parent applied a reasonable interpretation of the 2017 Act along with the then-available guidance in finalizing its accounting for the tax effects of the 2017 Act. Any additional regulatory or interpretive guidance would constitute new information, which may require further refinements to the Business's estimates in future periods.

On August 16, 2022, President Biden signed into law the Inflation Reduction Act of 2022, which contained significant law changes related to tax, climate, energy and health care. The tax measures include, among other things, a corporate alternative minimum tax ("CAMT") of 15% on corporations with three-year average annual adjusted financial statement income ("AFSI") exceeding $1.00 billion. The Business is not subject to the CAMT of 15% for fiscal year 2024 as its average annual AFSI did not exceed $1.00 billion for the preceding three-year period.

**The Flash Business of Western Digital Corporation**

**NOTES TO COMBINED FINANCIAL STATEMENTS – (Continued)**

***Deferred Taxes***

Temporary differences and carryforwards, which give rise to a significant portion of deferred tax assets and liabilities were as follows:

| | June 28, 2024 | June 30, 2023 |
|---|---|---|
| | *(in millions)* | |
| **Deferred tax assets:** | | |
| Sales related reserves and accrued expenses not currently deductible | $ 45 | $ 56 |
| Accrued compensation and benefits not currently deductible | 17 | 7 |
| Other current accruals | 17 | 19 |
| Net operating loss carryforward | 19 | 15 |
| Share based compensation | 17 | 17 |
| Long-lived assets | 15 | 28 |
| Lease liability | 45 | 28 |
| Unrealized gain (loss) | 67 | 44 |
| Other | 8 | 1 |
| Total deferred tax assets | 250 | 215 |
| **Deferred tax liabilities:** | | |
| Intangible assets | (3) | (13) |
| Foreign withholding tax | (86) | (93) |
| Right-of-use asset | (43) | (26) |
| Deferred income | (8) | (3) |
| Other | (2) | (6) |
| Total deferred tax liabilities | (142) | (141) |
| Valuation allowances | (27) | (26) |
| Deferred tax assets, net | $ 81 | $ 48 |

Deferred tax assets and deferred tax liabilities are shown on the Combined Balance Sheets netted on a jurisdictional basis.

The assessment of valuation allowances against deferred tax assets requires estimations and significant judgment. The Business continues to assess and adjust its valuation allowance based on operating results and market conditions. After weighing both the positive and negative evidence available, including, but not limited to, earnings history, projected future outcomes, industry and market trends, and the nature of each of the deferred tax assets, the Business determined that it is able to realize most of its deferred tax assets with the exception of certain loss and credit carryforwards.

The Business is permanently reinvested with respect to certain foreign earnings. There is no unrecognized deferred tax liability associated with the repatriation of these foreign undistributed earnings as it can be achieved without additional federal tax consequences.

***Effective Tax Rate***

Reconciliation of the U.S. federal statutory rate to the Business's effective tax rate is as follows:

| | 2024 | 2023 | 2022 |
|---|---|---|---|
| Tax at federal statutory tax rate | 21.0% | 21.0% | 21.0% |
| Tax rate differential on international incomes | (42.3) | (28.7) | 0.4 |
| Foreign withholding tax | (10.8) | (1.7) | 2.9 |
| Change in valuation allowance | (2.2) | (0.4) | 1.4 |
| Tax effect of U.S foreign income inclusion | (1.2) | (0.4) | 5.8 |
| Tax effect of U.S foreign derived intangible income | 1.9 | 3.1 | (7.6) |
| Tax effect of permanent differences | (1.4) | (0.5) | (0.1) |
| Tax effect of goodwill impairment | — | (7.0) | — |
| Tax effect of intangible assets | 0.9 | 4.3 | (6.5) |
| Tax rate change | 0.6 | 0.1 | — |
| Unremitted earnings of certain non-U.S. entities | 2.2 | 0.4 | — |
| Change in uncertain tax positions | (11.4) | 0.6 | 0.5 |
| Return to provision adjustment | (1.3) | (0.2) | (0.5) |
| Foreign income tax credits | 5.1 | 1.4 | (2.4) |
| R&D tax credits | 2.7 | 1.0 | (2.1) |
| Tax effect of share-based compensation | (1.1) | (0.5) | 0.9 |
| Federal audit settlements | 3.3 | — | — |
| Other | 0.4 | 0.5 | 0.1 |
| Effective income tax rate | (33.6)% | (7.0)% | 13.8% |

***Tax Holidays and Carryforwards***

A substantial portion of the Business's manufacturing operations in Malaysia operate under various tax holidays and tax incentive programs, which will expire in whole or in part at various dates during 2028 through 2031. Certain of the holidays may be extended if specific conditions are met.

As of June 28, 2024, the Business does not have federal and state NOL/tax credit carryforwards. As of June 28, 2024, the Business had varying amounts of foreign NOL carryforwards that do not expire or, if not used, expire in various years, depending on the country. The major jurisdictions within which the Business receives foreign NOL carryforwards and the related amounts and expiration dates of these NOL carryforwards are as follows:

| Jurisdiction | NOL Carryforward Amount | Expiration |
|---|---|---|
| | *(in millions)* | |
| Malaysia | $ 44 | 2028 |
| Netherlands | 12 | 2026 |

***Uncertain Tax Positions***

With the exception of certain unrecognized tax benefits that are directly associated with the tax position taken, unrecognized tax benefits are presented gross in the Combined Balance Sheets.

**The Flash Business of Western Digital Corporation**

**NOTES TO COMBINED FINANCIAL STATEMENTS – (Continued)**

The following is a tabular reconciliation of the total amounts of unrecognized tax benefits excluding accrued interest and penalties:

| | 2024 | 2023 | 2022 |
|---|---|---|---|
| | | *(in millions)* | |
| Unrecognized tax benefit, beginning balance | $ 25 | $ 17 | $ 11 |
| Gross increases related to current year tax positions | 15 | 10 | 7 |
| Gross increases related to prior year tax positions | 10 | 1 | — |
| Gross decreases related to prior year tax positions | (3) | (3) | (1) |
| Settlements | — | — | — |
| Unrecognized tax benefit, ending balance | $ 47 | $ 25 | $ 17 |

As of June 28, 2024, June 30, 2023, and July 1, 2022, the portion of the gross unrecognized tax benefits, if recognized, that would affect the effective tax rate is $47 million, $25 million and $17 million, respectively. Interest and penalties related to unrecognized tax benefits are recognized in liabilities recorded for uncertain tax positions and are recorded in the provision for income taxes. Accrued interest and penalties included in the Business's liability related to unrecognized tax benefits as of June 28, 2024, June 30, 2023, and July 1, 2022 was $9 million, $5 million and $5 million, respectively. As of June 28, 2024, June 30, 2023, and July 1, 2022 the Business's payables related to unrecognized tax benefits, including accrued interest and penalties, were $56 million, $30 million and $22 million, respectively. The remaining payables related to unrecognized tax benefits are included in other liabilities on the Combined Balance Sheets.

The Business's Parent files U.S. Federal, U.S. state and foreign tax returns. For both federal and state tax returns, with few exceptions, our Parent is subject to examination from 2013 through 2022. Our Parent is no longer subject to examination by the IRS for periods prior to 2012, although carry forwards generated prior to those periods may still be adjusted upon examination by the IRS or state taxing authority if they either have been or will be used in a subsequent period. In the major foreign jurisdictions where there is no tax holiday, our Parent could be subject to examination as noted below:

| Jurisdiction | Period Subject to Examination |
|---|---|
| China (calendar) | 2014-2023 |
| Ireland (fiscal) | 2020-2023 |
| India (fiscal) | 2009-2023 |
| Israel (fiscal) | 2014-2023 |
| Japan (fiscal) | 2017-2023 |
| Malaysia (fiscal) | 2017-2023 |
| Singapore (fiscal) | 2020-2023 |
| United Kingdom (fiscal) | 2022-2023 |

The Business believes that adequate provision has been made for any adjustments that may result from any other tax examinations. However, the outcome of such tax examinations cannot be predicted with certainty. If any issues addressed in the Business's tax examinations are resolved in a manner not consistent with management's expectations, the Business could be required to adjust its provision for income taxes in the period such resolution occurs. As of June 28, 2024, and June 30, 2023, with the exception of the tentative settlement, it was not possible to estimate the amount of change, if any, in the unrecognized tax benefits that is reasonably possible within the next twelve months. Any significant change in the amount of the Business's liability for unrecognized tax benefits would most likely result from additional information relating to the examination of the Business's tax returns.

**The Flash Business of Western Digital Corporation**

**NOTES TO COMBINED FINANCIAL STATEMENTS – (Continued)**

## Note 13. Employee Termination, Asset Impairment and Other

***Business Realignment***

The Business periodically incurs charges to realign its operations with anticipated market demand, primarily consisting of organization rationalization designed to streamline its business, reduce its cost structure and focus its resources. The Business may also record credits related to gains upon the sale of property in connection with these activities. The Business recognized a loss of $5 million related to asset impairment and other charges and a gain of $60 million related to the sale and leaseback of the Milpitas facility for the fiscal year ended June 28, 2024, a loss of $1 million on the disposal of assets associated with these activities for the fiscal year ended June 30, 2023, and a gain of $9 million related to business divestitures partially offset by a $3 million loss on the disposal of assets associated with these activities for the fiscal year ended July 1, 2022.

The Business recorded the following charges related to these actions:

| | 2024 | 2023 | 2022 |
|---|---|---|---|
| | | *(in millions)* | |
| Employee termination benefits | $ 15 | $ 68 | $ 22 |
| Other charges (gains): | | | |
| Asset impairments and other charges (gains) | 5 | 1 | (6) |
| Gain on sale-leaseback of facility (see Note 10) | (60) | — | — |
| Total employee termination, asset impairment and other | $(40) | $ 69 | $ 16 |

The following table presents an analysis of the components of the activity against the reserve, which consisted entirely of employee termination benefits, during the year ended June 28, 2024.

| | Employee Termination Benefits |
|---|---|
| | *(in millions)* |
| Accrual balance at June 30, 2023 | $ 3 |
| Charges | 15 |
| Cash payments | $ (18) |
| Accrual balance at June 28, 2024 | $ — |

## Note 14. Legal Proceedings

In the normal course of business, the Business is subject to legal proceedings, lawsuits and other claims. Although the ultimate aggregate amount of probable monetary liability or financial impact with respect to these other matters is subject to many uncertainties, management believes that any monetary liability or financial impact to the Business from these matters, individually and in the aggregate, would not be material to the Business's financial condition, results of operations or cash flows. However, any monetary liability and financial impact to the Business from these matters could differ materially from the Business's expectations.

## Note 15. Summarized Financial Information

Pursuant to Rule 4-08(g) of Regulation S-X under the Securities Act, the Business presents summarized financial information for the combined accounts of its non-consolidated joint ventures, which are accounted for using the equity method. This includes the portions attributable to both the Business and Kioxia. Flash Ventures

has a fiscal year-end of March 31. The Summarized Financial Information below shows the financial position and results of operations for Flash Ventures on a three-month lag.

Summarized financial information for equity method investments in Flash Ventures is as follows:

| | June 28, 2024 | June 30, 2023 |
|---|---|---|
| | *(in millions)* | |
| Current assets | $ 777 | $ 666 |
| Non-current assets | 5,783 | 7,585 |
| Total assets | 6,560 | 8,251 |
| Current liabilities | 2,225 | 2,716 |
| Non-current liabilities | 3,312 | 4,297 |
| Total liabilities | 5,537 | 7,013 |
| Total net equity of investees | $ 1,023 | $ 1,238 |

| | June 28, 2024 | June 30, 2023 | July 1, 2022 |
|---|---|---|---|
| | *(in millions)* | | |
| Net sales | $ 2,252 | $ 2,788 | $3,368 |
| Gross profit (loss) | (51) | 138 | 240 |
| Net income (loss) | $ (9) | $ 89 | $ 102 |

**Note 16. Subsequent Events**

We have evaluated subsequent events after the balance sheet date of June 28, 2024, through October 11, 2024, which was the date these Combined Financial Statements were available to be issued.

On September 28, 2024, SanDisk China closed on the Transaction to sell 80% of its equity interest in SDSS to JCET. Proceeds net from the sale are expected to be approximately $624 million, subject to certain working capital adjustments and payment of withholding taxes.

**The Flash Business of Western Digital Corporation**

**CONDENSED COMBINED BALANCE SHEETS**
**(in millions)**
**(Unaudited)**

| | September 27, 2024 | June 28, 2024 |
|---|---|---|
| **ASSETS** | | |
| Current assets: | | |
| Cash and cash equivalents | $ 322 | $ 328 |
| Accounts receivable, net | 1,037 | 935 |
| Inventories | 2,069 | 1,955 |
| Income tax receivable | 7 | 7 |
| Other current assets | 300 | 221 |
| Notes due from Parent | 1 | 102 |
| Assets held for sale | 652 | — |
| Total current assets | 4,388 | 3,548 |
| Property, plant and equipment, net | 552 | 791 |
| Notes receivable and investments in Flash Ventures | 1,066 | 1,001 |
| Goodwill | 6,932 | 7,207 |
| Deferred tax assets | 56 | 96 |
| Income tax receivable, non-current | 12 | 11 |
| Other non-current assets | 884 | 852 |
| Total assets | $ 13,890 | $13,506 |
| **LIABILITIES AND EQUITY** | | |
| Current liabilities: | | |
| Accounts payable | $ 297 | $ 357 |
| Accounts payable to related parties | 352 | 313 |
| Accrued expenses | 236 | 424 |
| Income taxes payable | 12 | 20 |
| Accrued compensation | 169 | 195 |
| Notes due to Parent | 296 | 814 |
| Liabilities held for sale | 110 | — |
| Total current liabilities | 1,472 | 2,123 |
| Deferred tax liabilities | 18 | 15 |
| Other liabilities | 274 | 286 |
| Total liabilities | 1,764 | 2,424 |
| Commitments and contingencies (Notes 9, 10, 12 and 14) | | |
| Parent company net investment: | | |
| Parent company net investment | 12,369 | 11,534 |
| Accumulated other comprehensive loss | (243) | (452) |
| Total Parent company net investment | 12,126 | 11,082 |
| Total liabilities and Parent company net investment | $ 13,890 | $13,506 |

The accompanying notes are an integral part of these Condensed Combined Financial Statements

**The Flash Business of Western Digital Corporation**

**CONDENSED COMBINED STATEMENTS OF OPERATIONS**
**(in millions)**
**(Unaudited)**

| | Three Months Ended | |
|---|---|---|
| | September 27, 2024 | September 29, 2023 |
| Revenue, net | $ 1,883 | $ 1,533 |
| Cost of revenue | 1,157 | 1,721 |
| **Gross profit (loss)** | 726 | (188) |
| **Operating expenses:** | | |
| Research and development | 283 | 240 |
| Selling, general and administrative | 130 | 118 |
| Employee termination, asset impairment and other | 2 | (59) |
| Business separation costs | 20 | — |
| **Total operating expenses** | 435 | 299 |
| **Operating income (loss)** | 291 | (487) |
| **Interest and other income (expense):** | | |
| Interest income | 3 | 3 |
| Interest expense | (2) | (11) |
| Other income (expense), net | (25) | 1 |
| **Total interest and other income (expense), net** | (24) | (7) |
| **Income (loss) before taxes** | 267 | (494) |
| Income tax expense | 56 | 24 |
| **Net income (loss)** | $ 211 | $ (518) |

The accompanying notes are an integral part of these Condensed Combined Financial Statements.

**The Flash Business of Western Digital Corporation**

**CONDENSED COMBINED STATEMENTS OF COMPREHENSIVE INCOME (LOSS)**
**(in millions)**
**(Unaudited)**

| | Three Months Ended | |
|---|---|---|
| | September 27, 2024 | September 29, 2023 |
| Net income (loss) | $ 211 | $ (518) |
| Other comprehensive income (loss), before tax: | | |
| Foreign currency translation adjustment | 43 | (16) |
| Net unrealized gain (loss) on derivative contracts | 211 | (49) |
| Total other comprehensive income (loss), before tax | 254 | (65) |
| Income tax benefit (expense) related to items of other comprehensive income (loss), before tax | (45) | 10 |
| Other comprehensive income (loss), net of tax | 209 | (55) |
| Total comprehensive income (loss) | $ 420 | $ (573) |

The accompanying notes are an integral part of these Condensed Combined Financial Statements.

**The Flash Business of Western Digital Corporation**

**CONDENSED COMBINED STATEMENTS OF CASH FLOWS**
**(in millions)**
**(Unaudited)**

| | Three Months Ended | |
|---|---|---|
| | September 27, 2024 | September 29, 2023 |
| **Cash flows from operating activities** | | |
| Net income (loss) | $ 211 | $ (518) |
| Adjustments to reconcile net income (loss) to net cash used in operations: | | |
| Depreciation and amortization | 54 | 57 |
| Stock-based compensation | 41 | 40 |
| Deferred income taxes | (5) | 6 |
| Gain on disposal of assets | — | (60) |
| Unrealized foreign exchange (gain) loss | (8) | 3 |
| Equity loss in investees, net of dividends received | 10 | 1 |
| Other non-cash operating activities, net | 6 | 15 |
| Settlement of accrued interest on Notes due to Parent | (96) | 2 |
| Changes in: | | |
| Accounts receivable, net | (102) | (91) |
| Inventories | (149) | 393 |
| Accounts payable | 33 | 63 |
| Accounts payable to related parties | 39 | (15) |
| Accrued expenses | (172) | (10) |
| Accrued compensation | (13) | 2 |
| Other assets and liabilities, net | 20 | (57) |
| Net cash used in operating activities | (131) | (169) |
| **Cash flows from investing activities** | | |
| Purchases of property, plant and equipment | (67) | (24) |
| Proceeds from the sale of property, plant and equipment | — | 134 |
| Notes receivable issuances to Flash Ventures | (14) | (121) |
| Notes receivable proceeds from Flash Ventures | 62 | 134 |
| Strategic investments and other, net | — | (1) |
| Net cash provided by (used in) investing activities | (19) | 122 |
| **Cash flows from financing activities** | | |
| Proceeds from principal repayments on Notes due from Parent | 101 | — |
| Repayments of Principal on Notes due to Parent | (76) | (30) |
| Origination of Notes due from Parent | — | (84) |
| Transfers from Parent | 189 | 71 |
| Net cash provided by (used in) financing activities | 214 | (43) |
| Effect of exchange rate changes on cash | 1 | — |
| Changes in cash and cash equivalents classified as assets held for sale | (71) | — |
| Net decrease in cash and cash equivalents | (6) | (90) |
| Cash and cash equivalents, beginning of year | 328 | 292 |
| Cash and cash equivalents, end of period | $ 322 | $ 202 |
| **Supplemental disclosure of cash flow information:** | | |
| Non-cash transfers of property, plant and equipment (to) from Parent | $ 3 | $ (1) |
| Non-cash transfers of strategic investments from Parent | 6 | — |
| Cash paid for interest | 98 | 3 |
| Cash received for interest | 1 | 5 |
| Non-cash transfers of deferred taxes from Parent | 7 | 7 |
| Non-cash transfers of Notes due from Parent transferred to Parent | — | (58) |
| Non-cash transfers of Notes due to Parent transferred from Parent | 378 | — |

The accompanying notes are an integral part of these Condensed Combined Financial Statements.

**The Flash Business of Western Digital Corporation**

**CONDENSED COMBINED STATEMENTS OF CHANGES IN PARENT COMPANY NET INVESTMENT**
**(in millions)**
**(Unaudited)**

| | Parent Company Net Investment | Accumulated Other Comprehensive Loss | Total |
|---|---|---|---|
| **Balance at June 28, 2024** | **$ 11,534** | **$ (452)** | **$11,082** |
| Net income | 211 | — | 211 |
| Foreign currency translation adjustment | — | 43 | 43 |
| Net unrealized gain on derivative contracts | — | 166 | 166 |
| Stock-based compensation | 41 | — | 41 |
| Net transfer from Parent | 583 | — | 583 |
| **Balance at September 27, 2024** | **$ 12,369** | **$ (243)** | **$12,126** |

| | Parent Company Net Investment | Accumulated Other Comprehensive Loss | Total |
|---|---|---|---|
| **Balance at June 30, 2023** | **$ 11,782** | **$ (343)** | **$11,439** |
| Net loss | (518) | — | (518) |
| Foreign currency translation adjustment | — | (16) | (16) |
| Net unrealized loss on derivative contracts | — | (39) | (39) |
| Stock-based compensation | 40 | — | 40 |
| Net transfer to Parent | 19 | — | 19 |
| **Balance at September 29, 2023** | **$ 11,323** | **$ (398)** | **$10,925** |

The accompanying notes are an integral part of these Condensed Combined Financial Statements.

**The Flash Business of Western Digital Corporation**

**NOTES TO CONDENSED COMBINED FINANCIAL STATEMENTS**
**(Unaudited)**

## Note 1. Organization and Basis of Presentation

***Description of the Business***

The accompanying Condensed Combined Financial Statements present, on a historical cost basis, the combined assets, liabilities, revenues and expenses of the flash business of Western Digital Corporation (the "Business"), a business of Western Digital Corporation and its subsidiaries (collectively "WDC" or "Parent"). The Business is a leading developer, manufacturer and provider of data storage devices and solutions based on NAND flash technology. With a differentiated innovation engine driving advancements in storage and semiconductor technologies, our broad and ever-expanding portfolio delivers powerful flash storage solutions for everyone from students, gamers and home offices to the largest enterprises and public clouds to capture, preserve, access and transform an ever-increasing diversity of data. The Business operates primarily in the U.S. and internationally with a significant concentration in Asia Pacific. On October 30, 2023, our Parent announced that its board of directors (the "WDC Board of Directors") authorized management to pursue a plan to separate the Business into an independent public company. The completion of the separation is subject to certain conditions, including final approval by the WDC Board of Directors. Our Parent is targeting to complete the separation of the Business in the first quarter of calendar year 2025.

The Business's solutions include a broad range of solid-state drives, embedded products, removable cards, universal serial bus drives and wafers and components. The Business's broad portfolio of technology and products address multiple end markets of "Cloud," "Client" and "Consumer." The Business also generates license and royalty revenue from its extensive intellectual property ("IP") portfolio, which is included in each of these three end market categories.

For the avoidance of doubt, when using the terms "we," "us," or "our" throughout this report, it is in reference to the Business.

The accounting policies followed by the Business are set forth in Note 1, Organization and Basis of Presentation, of the Notes to the Combined Financial Statements of the Business for the year ended June 28, 2024. In the opinion of management, all adjustments necessary to fairly state the Condensed Combined Financial Statements have been made. All such adjustments are of a normal, recurring nature. Certain information and footnote disclosures normally included in the Combined Financial Statements prepared in accordance with accounting principles generally accepted in the United States ("U.S. GAAP") have been condensed or omitted pursuant to the rules and regulations of the Securities and Exchange Commission ("SEC"). These Condensed Combined Financial Statements should be read in conjunction with the Business's Combined Financial Statements and the notes thereto for the year ended June 28, 2024. The results of operations for interim periods are not necessarily indicative of results to be expected for the full year.

***Basis of Presentation***

Throughout the periods covered by the Condensed Combined Financial Statements, the Business was an operating segment of WDC. Consequently, stand-alone interim financial statements have not historically been prepared for the Business. The accompanying Condensed Combined Financial Statements have been prepared from WDC's historical consolidated interim financial statements and accounting records and are presented on a stand-alone basis as if the Business's operations had been conducted independently from WDC. The Condensed Combined Financial Statements include the historical results of operations, financial position and cash flows of the Business in accordance with accounting principles generally accepted in the United States ("GAAP") and the Business has adopted accounting policies and practices which are generally accepted in the industry in which it

**The Flash Business of Western Digital Corporation**

**NOTES TO CONDENSED COMBINED FINANCIAL STATEMENTS – (Continued)**
**(Unaudited)**

operates. As no single legal entity of the Business has a controlling financial interest in all other legal entities, Condensed Combined Financial Statements have been prepared.

Intercompany transactions have been eliminated. With the exception of balances associated with lending arrangements reflected within Notes due to (from) Parent in the Condensed Combined Balance Sheets, transactions between the Business and the Parent are generally considered to be effectively settled in the Condensed Combined Financial Statements at the time the transactions are recorded. The total net effect of the settlement of these transactions is reflected in the Condensed Combined Statements of Cash Flows as a financing activity and in the Condensed Combined Balance Sheets as Parent company net investment. General financing activities include the net impact of any cash movements resulting from the Parent's centralized treasury cash management.

The Condensed Combined Statements of Operations and Comprehensive Income (Loss) include all revenues and costs directly attributable to the Business as well as an allocation of expenses related to facilities, functions and services provided by our Parent. Allocation of general corporate expenses from our Parent include, but are not limited to, executive management, finance, tax, legal, information technology, employee benefits administration, treasury, risk management, procurement and other shared services. These corporate expenses have been allocated to the Business based on direct usage or benefit, where identifiable, with the remainder allocated based on headcount, revenue or other relevant measures. The allocated costs are deemed to be settled between the Business and the Parent in the period in which the expense was recorded in the Condensed Combined Statements of Operations. The Condensed Combined Statements of Cash Flows present these corporate expenses as cash flows from operating activities, as these costs were incurred by our Parent on our behalf. We consider these allocations to be a reasonable reflection of the utilization of services by, or the benefits provided to, the Business. The allocations may not, however, reflect the expense the Business would have incurred as a standalone company for the periods presented. Additionally, these costs may not be indicative of the expenses that the Business will incur in the future or would have incurred if the Business had obtained these services from an unrelated third party. It is not practicable to estimate the actual costs that would have been incurred had the Business been a standalone company during the periods presented. The actual costs that may have been incurred would depend on a number of factors, including the chosen organizational structure, whether functions were outsourced or performed by employees and decisions with respect to areas such as facilities, information technology and operating infrastructure.

Our Parent maintains various stock-based compensation plans at a corporate level. Employees of the Business participate in those programs and a portion of the compensation cost associated with those plans is included in the Business's Condensed Combined Statements of Operations. Stock-based compensation expense has been included within Parent company net investment. The amounts presented in the Condensed Combined Financial Statements are not necessarily indicative of future awards and may not reflect the results that the Business would have experienced as a stand-alone entity.

Current and deferred income taxes and related tax expense have been determined based on the stand-alone results of the Business by applying Accounting Standards Codification No. 740, Income Taxes ("ASC 740"), to the Business's operations in each country as if it were a separate taxpayer (i.e., following the Separate Return Methodology).

The Condensed Combined Balance Sheets include all assets and liabilities that are specifically identifiable or otherwise attributable to the Business. Assets and liabilities shared between the Business and the Parent were included in the stand-alone financial statements to the extent the asset is primarily used by the Business. If the

Business is not the primary user of the asset, it was excluded entirely from the Condensed Combined Financial Statements. The Parent has historically used a centralized approach to cash management and financing of its operations, as needed. Certain of our cash is transferred to the Parent according to centrally managed cash programs by treasury and the Parent funds our operating and investing activities as needed. Cash transfers to and from the Parent's cash management accounts are reflected as a component of Parent company net investment in the Condensed Combined Balance Sheets. Cash and cash equivalents in our Condensed Combined Balance Sheets primarily represent cash held locally by entities included in our Condensed Combined Financial Statements.

None of the debt obligations of the Parent or corresponding interest expense have been included in the accompanying Condensed Combined Financial Statements, as the Business is neither the legal obligor, nor transferee for any portion of such debt. Our Parent's debt obligations are secured by a lien on substantially all assets and properties of WDC and certain key subsidiaries, which includes assets and properties of the Business.

***Fiscal Year***

The Business's fiscal year ends on the Friday nearest to June 30 and typically consists of 52 weeks. Approximately every five to six years, we report a 53-week fiscal year to align the fiscal year with the foregoing policy. Fiscal year 2025, which will end on June 27, 2025, and fiscal year 2024, which ended on June 28, 2024, are each comprised of 52 weeks, with all quarters presented consisting of 13 weeks. Unless otherwise indicated, references herein to specific years and quarters are to fiscal years and fiscal quarters, and references to financial information are on a combined basis.

***Segment Reporting***

Operating segments are components of an enterprise for which separate financial information is available and is evaluated regularly by the Business's Chief Operating Decision Maker ("CODM") in deciding how to allocate resources and in assessing performance. The Business currently operates as both a single operating and reportable segment.

***Business Separation Costs***

On October 30, 2023, our Parent announced that its Board of Directors had completed its strategic review and, after evaluating a comprehensive range of alternatives, authorized WDC to pursue a plan to separate its Hard Disk Drive ("HDD") and Flash business units to create two independent, public companies. As a result of the plan, the Business has incurred separation and transition costs and expects to incur such costs through the completion of the separation from WDC. The separation and transition costs are recorded within Business separation costs in the Condensed Combined Statements of Operations.

***Use of Estimates***

Management has made estimates and assumptions relating to the reporting of certain assets and liabilities in conformity with U.S. GAAP. These estimates and assumptions have been applied using methodologies that are consistent throughout the periods presented with consideration given to the potential impacts of current macroeconomic conditions. However, actual results could differ materially from these estimates.

**The Flash Business of Western Digital Corporation**

**NOTES TO CONDENSED COMBINED FINANCIAL STATEMENTS – (Continued)**
**(Unaudited)**

## Note 2. Recent Accounting Pronouncements

***Accounting Pronouncements Recently Adopted***

In September 2022, the Financial Accounting Standards Board ("FASB") issued an accounting standards update ("ASU")No. 2022-04, "Liabilities-Supplier Finance Programs (Subtopic 405-50): Disclosure of Supplier Finance Program Obligations", which requires annual and interim disclosures for entities that use supplier finance programs in connection with the purchase of goods and services. The ASU requires the Business to provide disclosure of outstanding obligations to such suppliers for all balance sheet dates presented beginning with the Business's first quarter of 2024 and to provide certain annual rollforward information related to those obligations beginning in the Business's first fiscal quarter of 2025, with early adoption permitted. The ASU does not affect the recognition, measurement or financial statement presentation of supplier finance program obligations. The Business adopted the guidance on the first day of fiscal year 2024 and the adoption did not have a material impact on its Condensed Combined Financial Statements.

***Recently Issued Accounting Pronouncements Not Yet Adopted***

In November 2023, the FASB issued ASUNo. 2023-07, "Segment Reporting (Topic 280): Improvements to Reportable Segment Disclosures," which expands on segment reporting requirements primarily through enhanced disclosures surrounding significant segment expenses. The ASU expands on existing segment reporting requirements to require that a public entity disclose, on an annual and interim basis, significant segment expenses that are regularly provided to an entity's CODM, a description of other segment items by reportable segment, and any additional measures of a segment's profit or loss used by the CODM when deciding how to allocate resources. These incremental disclosures will be required beginning with the Business's financial statements for the year ending June 27, 2025. The Business expects to provide any required disclosures at that time.

In December 2023, the FASB issued ASU2023-09, "Income Taxes (Topic 740): Improvements to Income Tax Disclosures." The ASU calls for enhanced income tax disclosure requirements surrounding the tabular rate reconciliation and income taxes paid. The Business is currently compiling the information required for these disclosures. These incremental disclosures will be required beginning with the Business's financial statements for the year ending June 26, 2026, with early adoption permitted. The Business expects to provide any required disclosures at that time.

In November 2024, the FASB issued ASU2024-03, "Income Statement-Reporting Comprehensive Income-Expense Disaggregation Disclosures (Subtopic 220-40): Disaggregation of Income Statement Expenses," which is intended to improve disclosures about the expenses of public entities. The new guidance requires more detailed information about the types of expenses in commonly presented expense captions (such as cost of sales and selling, general and administrative expenses) and requires public entities to disclose, on an annual and interim basis, the amounts of expenses included in each relevant expense caption presented on the face of the income statement within continuing operations, in a tabular format. Additionally, public entities will be required to disclose a qualitative description of the amounts remaining in relevant expense captions that are not separately disaggregated quantitatively, the total amount of selling expenses, and, in annual reporting periods, the definition of selling expenses. The Business is currently compiling the information required for these disclosures. This standard is effective on either a prospective or retrospective basis for fiscal years beginning after December 15, 2026, and interim periods within fiscal years beginning after December 15, 2027, with early adoption permitted. The Business expects to provide any required disclosures at that time.

**The Flash Business of Western Digital Corporation**

**NOTES TO CONDENSED COMBINED FINANCIAL STATEMENTS – (Continued)**
**(Unaudited)**

## Note 3. Geographic Information and Concentrations of Risk

***Disaggregated Revenue***

The Business's broad portfolio of technology and products addresses multiple end markets. Cloud represents a large and growing end market comprised primarily of products for public or private cloud environments and enterprise customers. Through the Client end market, the Business provides its OEM and channel customers a broad array of high-performance flash solutions across personal computer, mobile, gaming, automotive, virtual reality headsets, at-home entertainment and industrial spaces. The Consumer end market is highlighted by the Business's broad range of retail and otherend-user products, which capitalize on the strength of the Business's product brand recognition and vast points of presence around the world.

The Business's disaggregated revenue information is as follows:

| | Three months ended | |
|---|---|---|
| | September 27, 2024 | September 29, 2023 |
| | *(in millions)* | |
| Revenue by end market | | |
| Cloud | $ 300 | $ 18 |
| Client | 1,069 | 997 |
| Consumer | 514 | 518 |
| Total revenue | $ 1,883 | $ 1,533 |

| | Three months ended | |
|---|---|---|
| | September 27, 2024 | September 29, 2023 |
| | *(in millions)* | |
| Revenue by Geography | | |
| Asia | $ 1,150 | $ 1,061 |
| Americas | 443 | 230 |
| Europe, Middle East and Africa | 290 | 242 |
| Total revenue | $ 1,883 | $ 1,533 |

The Business's top 10 customers accounted for 53% and 46% of its net revenue for the three months ended September 27, 2024 and September 29, 2023, respectively. For the three months ended September 27, 2024, no customer accounted for more than 10% of the Business's net revenue. For the three months ended September 29, 2023, one customer accounted for 11% of the Business's net revenue.

## Note 4. Revenues

Contract assets represent the Business's rights to consideration where performance obligations are completed but the customer payments are not due until another performance obligation is satisfied. The Business did not have any contract assets as of September 27, 2024 or June 28, 2024. Contract liabilities relate to customers' payments in advance of performance under the contract and primarily relate to remaining performance obligations under professional service and support and maintenance contracts. Contract liabilities as of September 27, 2024 and June 28, 2024 and changes in contract liabilities for the three months ended September 27, 2024 and September 29, 2023 were not material.

**The Flash Business of Western Digital Corporation**

**NOTES TO CONDENSED COMBINED FINANCIAL STATEMENTS – (Continued)**
**(Unaudited)**

The Business incurs sales commissions and other direct incremental costs to obtain sales contracts. The Business has applied the practical expedient to recognize the direct incremental costs of obtaining contracts as an expense when incurred if the amortization period is expected to be one year or less or the amount is not material, with these costs charged to selling, general and administrative expenses. The Business had no direct incremental costs to obtain contracts that have an expected benefit of greater than one year.

The Business applies the practical expedients and does not disclose transaction price allocated to the remaining performance obligations for (i) arrangements that have an original expected duration of one year or less, which mainly consist of the support and maintenance contracts, and (ii) variable consideration amounts for sale-based or usage-based royalties for intellectual property license arrangements, which typically range longer than one year. Remaining performance obligations are mainly attributed to right-to-access patent license arrangements, professional service arrangements and customer support and service contracts which will be recognized over the remaining contract period. The transaction price allocated to the remaining performance obligations as of September 27, 2024 was not material.

## Note 5. Supplemental Financial Statement Data

***Goodwill***

The following table provides a summary of goodwill activity for the period presented:

| | *(in millions)* |
|---|---|
| Balance at June 28, 2024 | $ 7,207 |
| Foreign currency translation adjustment | 5 |
| Goodwill reclassified to assets held for sale[1] | $ (280) |
| Balance at September 27, 2024 | $ 6,932 |

(1) As of September 27, 2024, $280 million of Goodwill was reclassified to assets held for sale due to the sale of a majority interest in a subsidiary.

The Business determined that its single operating segment was also its single reporting unit. Goodwill is not amortized. Instead, it is tested for impairment annually as of the beginning of the Business's fourth quarter, or more frequently if events or changes in circumstances indicate that goodwill may be impaired. The Business uses qualitative factors to determine whether goodwill is more-likely-than-not impaired and whether a quantitative test for impairment is considered necessary. If the Business concludes from the qualitative assessment that goodwill is more-likely-than-not-impaired, the Business is required to perform a quantitative approach to determine the amount of impairment.

For the three months ended September 27, 2024 and September 29, 2023, management concluded there were no impairment indicators as of either the beginning or end of the period.

The Business is required to use judgment when assessing goodwill for impairment, including evaluating the impact of industry and macroeconomic conditions and the determination of the fair value of the reporting unit. In addition, the estimates used to determine the fair value of the reporting unit as well as the actual carrying value may change based on future changes in the Business's results of operations, macroeconomic conditions or other factors. Changes in these estimates could materially affect the Business's assessment of the fair value and goodwill impairment. In addition, if negative macroeconomic conditions continue or worsen, goodwill could

become impaired, which could result in an impairment charge and materially adversely affect the Business's financial condition and results of operations.

***Accounts receivable, net***

From time to time, in connection with factoring agreements, our Parent sells certain of our trade accounts receivable without recourse to third-party purchasers in exchange for cash. There were no trade accounts receivable of the Business sold by the Parent during the three months ended September 27, 2024. During the three months ended September 29, 2023, the Parent sold trade accounts receivable of the Business and received cash proceeds of $122 million. The discounts on the trade accounts receivable sold during the period were not material and were recorded within other income (expense), net in the Condensed Combined Statements of Operations. There were no factored receivables outstanding as of September 27, 2024 and June 28, 2024.

***Inventories***

| | September 27, 2024 | June 28, 2024 |
|---|---|---|
| | *(in millions)* | |
| Inventories: | | |
| Raw materials and component parts | $ 1,624 | $ 1,398 |
| Work-in-process | 172 | 237 |
| Finished goods | 273 | 320 |
| Total inventories | $ 2,069 | $ 1,955 |

***Property, plant and equipment, net***

| | September 27, 2024 | June 28, 2024 |
|---|---|---|
| | *(in millions)* | |
| Property, plant and equipment: | | |
| Land | $ 10 | $ 10 |
| Buildings and improvements | 399 | 397 |
| Machinery and equipment | 2,140 | 2,340 |
| Computer equipment and software | 127 | 123 |
| Furniture and fixtures | 16 | 16 |
| Construction-in-process | 117 | 108 |
| Property, plant and equipment, gross | 2,809 | 2,994 |
| Accumulated depreciation | (2,257) | (2,203) |
| Property, plant and equipment, net | $ 552 | $ 791 |

**The Flash Business of Western Digital Corporation**

**NOTES TO CONDENSED COMBINED FINANCIAL STATEMENTS – (Continued)**
**(Unaudited)**

***Product warranty liability***

Changes in the warranty accrual were as follows:

| | Three Months Ended | |
|---|---|---|
| | September 27, 2024 | September 29, 2023 |
| | *(in millions)* | |
| Warranty accrual, beginning of period | $ 48 | $ 42 |
| Charges to operations | 1 | 7 |
| Utilization | (8) | (10) |
| Changes in estimate related to pre-existing warranties | — | 1 |
| Warranty accrual, end of period | $ 41 | $ 40 |

The current portion of the warranty accrual is classified in accrued expenses and the long-term portion is classified in other liabilities as noted below:

| | September 27, 2024 | June 28, 2024 |
|---|---|---|
| | *(in millions)* | |
| Warranty accrual: | | |
| Current portion | $ 20 | $ 27 |
| Long-term portion | 21 | 21 |
| Total warranty accrual | $ 41 | $ 48 |

***Other liabilities***

Other liabilities are as follows:

| | September 27, 2024 | June 28, 2024 |
|---|---|---|
| | *(in millions)* | |
| Other liabilities: | | |
| Non-current net tax payable | $ 48 | $ 56 |
| Long-term lease liability | 170 | 171 |
| Other non-current liabilities | 56 | 59 |
| Total other liabilities | $ 274 | $ 286 |

**The Flash Business of Western Digital Corporation**

**NOTES TO CONDENSED COMBINED FINANCIAL STATEMENTS – (Continued)**
**(Unaudited)**

***Accumulated other comprehensive loss***

Accumulated other comprehensive loss ("AOCL"), net of tax refers to expenses, gains and losses that are recorded as an element of equity but are excluded from net income (loss). The components of AOCL were as follows:

| | Foreign Currency Translation Adjustment | Unrealized Losses on Derivative Contracts | Total Accumulated Comprehensive Loss |
|---|---|---|---|
| | | *(in millions)* | |
| Balance at June 28, 2024 | $ (208) | $ (244) | $ (452) |
| Other comprehensive income | 43 | 211 | 254 |
| Income tax expense related to items of other comprehensive income | $ — | $ (45) | $ (45) |
| Net current-period other comprehensive income | 43 | 166 | 209 |
| Balance at September 27, 2024 | $ (165) | $ (78) | $ (243) |

| | Foreign Currency Translation Adjustment | Unrealized Losses on Derivative Contracts | Total Accumulated Comprehensive Loss |
|---|---|---|---|
| | | *(in millions)* | |
| Balance at June 30, 2023 | $ (165) | $ (178) | $ (343) |
| Other comprehensive loss | (16) | (49) | (65) |
| Income tax benefit related to items of other comprehensive loss | — | 10 | 10 |
| Net current-period other comprehensive loss | (16) | (39) | (55) |
| Balance at September 29, 2023 | $ (181) | $ (217) | $ (398) |

***Sale of a Majority Interest in a Subsidiary***

In March 2024, SanDisk China Limited ("SanDisk China"), an indirect wholly-owned subsidiary of WDC, entered into an equity purchase agreement to sell 80% of its equity interest in SanDisk Semiconductor (Shanghai) Co. Ltd. ("SDSS"), an indirect wholly-owned subsidiary of WDC which holds one of the Business's manufacturing facilities, to JCET Management Co., Ltd. ("JCET"), a wholly-owned subsidiary of JCET Group Co., Ltd., a Chinese publicly-listed company, thereby forming a venture between SanDisk China and JCET (the "Transaction"). Subsequent to the first quarter of fiscal 2025, on September 28, 2024, the Transaction closed. Proceeds from the sale, subject to certain working capital adjustments and payment of withholding taxes, are expected to be approximately $624 million. Following the closing of the Transaction, SanDisk China's remaining 20% ownership interest in the venture will be reported as an equity method investment.

SDSS held one of the Business's manufacturing facilities which produced certain flash-based assemblies and components. In September 2024, the Business completed substantive negotiations on a supply agreement to continue to acquire these products from SDSS after the sale. SDSS did not represent a material component of the Business. Additionally, because the divestiture of SDSS does not represent a strategic shift that would have a

major effect on the Business's operations or financial results, it is not reported as discontinued operations. Instead, as substantive negotiations were concluded and the Business concluded that completion of the divestiture would occur within one year, the assets and liabilities of SDSS subject to the Transaction as listed below have been reclassified to held for sale as of September 27, 2024. The assets and liabilities of SDSS are recorded at the lower of the carrying value or the fair value less costs to sell. As fair value less costs to sell exceeds carrying value, no impairment has been recognized. The assets and liabilities of SDSS will be derecognized in the second quarter of fiscal year 2025 in connection with the closing of the Transaction.

| | September 27, 2024 |
|---|---|
| | *(in millions)* |
| Cash and cash equivalents | $ 71 |
| Inventories | 35 |
| Other current assets | 6 |
| Property, plant and equipment, net | 236 |
| Goodwill[1] | 280 |
| Other non-current assets | 24 |
| Total assets held for sale[2] | 652 |
| Accounts payable | 73 |
| Accrued expenses | 17 |
| Accrued compensation | 15 |
| Other liabilities | 5 |
| Total liabilities held for sale | $ 110 |

(1) Goodwill was preliminarily allocated to SDSS based on the indicated fair value of the SDSS business relative to the total estimated fair value of the Business. This preliminary allocation of goodwill may be revised based on finalization of working capital adjustments and valuations of SDSS and the Business in connection with the derecognition of SDSS during the second quarter of fiscal 2025.

(2) An intercompany account receivable and intercompany account payable totaling $110 million between SDSS and another subsidiary of the Business have been excluded from the assets classified to held for sale. The intercompany account receivable will be sold as part of the Transaction. As a result, during the second quarter of fiscal 2025, the Business will reclassify this intercompany account payable to the applicable liability line item in the Condensed Combined Balance Sheets as it will represent a liability to an external third party.

## Note 6. Fair Value Measurements and Investments

***Financial Instruments Carried at Fair Value***

Financial assets and liabilities that are remeasured and reported at fair value at each reporting period are classified and disclosed in one of the following three levels:

*Level 1*. Quoted prices in active markets for identical assets or liabilities.

*Level 2*. Inputs other than Level 1 that are observable, either directly or indirectly, such as quoted prices for similar assets or liabilities; quoted prices in markets that are not active; or other inputs that are observable or can be corroborated by observable market data for substantially the full term of the assets or liabilities.

*Level 3*. Inputs that are unobservable for the asset or liability and that are significant to the fair value of the assets or liabilities.

The following tables present information about the Business's financial assets and liabilities that are measured at fair value on a recurring basis, and indicate the fair value hierarchy of the valuation techniques utilized to determine such values for the periods presented:

| | September 27, 2024 | | | |
|---|---|---|---|---|
| | Level 1 | Level 2 | Level 3 | Total |
| | *(in millions)* | | | |
| Assets: | | | | |
| Cash equivalents - Money market funds | $ 10 | $ — | $ — | $ 10 |
| Foreign exchange contracts | — | 62 | — | 62 |
| Total assets at fair value | $ 10 | $ 62 | $ — | $ 72 |
| Liabilities: | | | | |
| Foreign exchange contracts | $ — | $ 18 | $ — | $ 18 |
| Total liabilities at fair value | $ — | $ 18 | $ — | $ 18 |

| | June 28, 2024 | | | |
|---|---|---|---|---|
| | Level 1 | Level 2 | Level 3 | Total |
| | *(in millions)* | | | |
| Assets: | | | | |
| Cash equivalents - Money market funds | $ 28 | $ — | $ — | $ 28 |
| Foreign exchange contracts | — | 7 | — | 7 |
| Total assets at fair value | $ 28 | $ 7 | $ — | $ 35 |
| Liabilities: | | | | |
| Foreign exchange contracts | $ — | $ 179 | $ — | $179 |
| Total liabilities at fair value | $ — | $ 179 | $ — | $179 |

During the periods presented, the Business had no transfers of financial assets and liabilities between levels and there were no changes in valuation techniques and the inputs used in the fair value measurement.

## Note 7. Derivative Instruments and Hedging Activities

As of September 27, 2024, the Business had outstanding foreign exchange forward contracts that were designated as either cash flow hedges or non-designated hedges. Substantially all of the contract maturity dates of these foreign exchange forward contracts do not exceed twelve months.

Changes in the fair values of the non-designated foreign exchange contracts are recognized in other income, net and are largely offset by corresponding changes in the fair values of the foreign currency denominated monetary assets and liabilities. For the three months ended September 27, 2024, and September 29, 2023, total net realized and unrealized transaction and foreign exchange contract currency gains and losses were a $15 million loss, and $3 million gain, respectively.

**The Flash Business of Western Digital Corporation**

**NOTES TO CONDENSED COMBINED FINANCIAL STATEMENTS – (Continued)**
**(Unaudited)**

Unrealized gains or losses on designated cash flow hedges are recognized in AOCL. For more information regarding cash flow hedges, see Note 5, *Supplemental Financial Statement Data—Accumulated other comprehensive loss.*

## Note 8. Employee Benefit Plans

***Defined Benefit Plans***

The Business sponsors a defined benefit pension plan that is solely available for employees located in South Korea. As of September 27, 2024, and June 28, 2024, the plan had a net unfunded status of $7 million and $6 million, respectively, reported within other liabilities on the Condensed Combined Balance Sheets. Total pension expense included in cost of revenue and operating expenses in the Condensed Combined Statements of Operations was not material for the three months ended September 27, 2024 and September 29, 2023. No employees of the Business participate in defined benefit pension plans sponsored by the Parent or its subsidiaries.

## Note 9. Related Parties and Related Commitments and Contingencies

***Flash Ventures***

The Business procures substantially all of its flash-based memory wafers from its business ventures with Kioxia Corporation ("Kioxia"), which consists of three separate legal entities: Flash Partners Ltd. ("Flash Partners"), Flash Alliance Ltd. ("Flash Alliance") and Flash Forward Ltd. ("Flash Forward"), collectively referred to as "Flash Ventures."

The following table presents the notes receivable from, and equity investments in, Flash Ventures for the periods presented:

| | September 27, 2024 | June 28, 2024 |
|---|---|---|
| | *(in millions)* | |
| Notes receivable, Flash Partners | $ — | $ 1 |
| Notes receivable, Flash Alliance | 5 | 5 |
| Notes receivable, Flash Forward | 498 | 485 |
| Investment in Flash Partners | 168 | 148 |
| Investment in Flash Alliance | 243 | 219 |
| Investment in Flash Forward | 152 | 143 |
| Total notes receivable and investments in Flash Ventures | $ 1,066 | $ 1,001 |

During the three months ended September 27, 2024, and September 29, 2023, the Business made net payments to Flash Ventures of $889 million and $939 million, respectively, for purchased flash-based memory wafers and net loans.

The Business makes, or will make, loans to Flash Ventures to fund equipment investments for new process technologies and additional wafer capacity. The Business aggregates its Flash Ventures' notes receivable into one class of financing receivables due to the similar ownership interest and common structure in each Flash Venture entity. For all reporting periods presented, no loans were past due, and no loan impairments were recorded. The Business's notes receivable from each Flash Ventures entity, denominated in Japanese yen, are secured by equipment owned by that Flash Ventures entity.

**The Flash Business of Western Digital Corporation**

**NOTES TO CONDENSED COMBINED FINANCIAL STATEMENTS – (Continued)**
**(Unaudited)**

As of September 27, 2024, and June 28, 2024, the Business had accounts payable balances due to Flash Ventures of $352 million and $313 million, respectively.

The Business's maximum reasonably estimable loss exposure (excluding lost profits) as a result of its involvement with Flash Ventures, based upon the Japanese yen to U.S. dollar exchange rate at September 27, 2024, is presented below. Investments in Flash Ventures are denominated in Japanese yen, and the maximum estimable loss exposure excludes any cumulative translation adjustment due to revaluation from the Japanese yen to the U.S. dollar.

| | September 27, 2024 |
|---|---|
| | *(in millions)* |
| Notes receivable | $ 503 |
| Equity investments | 563 |
| Operating lease guarantees | 1,558 |
| Inventory and prepayments | 1,166 |
| Maximum estimable loss exposure | $ 3,790 |

The Business is obligated to pay for variable costs incurred in producing its share of Flash Ventures' flash-based memory wafer supply, based on its three-month forecast, which generally equals 50% of Flash Ventures' output. In addition, the Business is obligated to pay for half of Flash Ventures' fixed costs regardless of the output the Business chooses to purchase. The Business is not able to estimate its total wafer purchase commitment obligation beyond its rolling three-month purchase commitment because the price is determined by reference to the future cost of producing the semiconductor wafers. In addition, the Business is committed to fund 49.9% to 50.0% of each Flash Ventures entity's capital investments to the extent that Flash Ventures entity's operating cash flow is insufficient to fund these investments.

Flash Ventures has historically operated near 100% of its manufacturing capacity. During the three months ended September 29, 2023, as a result of flash market conditions, the Business temporarily reduced its utilization of its share of Flash Ventures' manufacturing capacity to an abnormally low level to more closely align the Business's flash-based wafer supply with projected demand. During the three months ended September 29, 2023, the Business incurred costs of $141 million associated with the reduction in utilization related to Flash Ventures, which was recorded as a charge to Cost of revenue. No such charges were incurred during the three months ended September 27, 2024.

The Business has facility agreements with Kioxia related to the construction and operation of Kioxia's "K1"300-millimeter wafer fabrication facility in Kitakami, Japan, a wafer fabrication facility in Yokkaichi, Japan, referred to as "Y7", and wafer fabrication facility in Kitakami, Japan, referred to as "K2". In connection with the start-up of these facilities, the Business has made prepayments toward future building depreciation. In connection with the start-up of the K1, K2 and Y7 facilities, the Business has made prepayments over time, and as of September 27, 2024, $722 million remain to be credited against future building depreciation charges. As of September 27, 2024, the Business is also committed to make additional building depreciation prepayments of $605 million, based on Japanese yen to U.S. dollars exchange rate of 142.56 as of such date, payable as follows: $337 million for the remaining of fiscal year 2025, $33 million in fiscal year 2026, $123 million in fiscal year 2027, $98 million in fiscal year 2028 and $14 million in fiscal year 2029. As of September 27, 2024, in addition to the requirements to make building depreciation prepayments, the Company will also make payments for building depreciation of approximately $315 million at varying dates through fiscal year 2035.

**The Flash Business of Western Digital Corporation**

**NOTES TO CONDENSED COMBINED FINANCIAL STATEMENTS – (Continued)**
**(Unaudited)**

***Inventory Purchase Commitments with Flash Ventures.***

Purchase orders placed under Flash Ventures for up to three months are binding and cannot be canceled.

***Research and Development Activities.***

The Business participates in common research and development ("R&D") activities with Kioxia and is contractually committed to a minimum funding level. R&D commitments are immaterial to the Condensed Combined Financial Statements.

***Off-Balance Sheet Liabilities***

Flash Ventures sells to, and leases back, from a consortium of financial institutions a portion of its tools and has entered into equipment lease agreements of which the Business guarantees half or all of the outstanding obligations under each lease agreement. The lease agreements are subject to customary covenants and cancellation events related to Flash Ventures and each of the guarantors. The occurrence of a cancellation event could result in an acceleration of Flash Ventures' obligations and a call on the Business's guarantees.

The following table presents the Business's portion of the remaining guarantee obligations under the Flash Ventures' lease facilities in both Japanese yen and U.S. dollar-equivalent, based upon the Japanese yen to U.S. dollar exchange rate:

| | September 27, 2024 Lease Amounts | |
|---|---|---|
| | *(Japanese yen, in billions)* | *(U.S. dollar, in millions)* |
| Total guarantee obligations | ¥ 222 | $ 1,558 |

The following table details the breakdown of the Business's remaining guarantee obligations between the principal amortization and the purchase option exercise price at the end of the term of the Flash Ventures lease agreements, in annual installments as of September 27, 2024 in U.S. dollars, based upon the Japanese yen to U.S. dollar exchange rate as of September 27, 2024:

| Annual Installments | Payment of Principal Amortization | Purchase Option Exercise Price at Final Lease Terms | Guarantee Amount |
|---|---|---|---|
| | | *(in millions)* | |
| Remaining nine months of 2025 | $ 331 | $ 83 | $ 414 |
| 2026 | 428 | 126 | 554 |
| 2027 | 203 | 107 | 310 |
| 2028 | 81 | 103 | 184 |
| 2029 | 22 | 56 | 78 |
| 2030 | 2 | 16 | 18 |
| Total guarantee obligations | $ 1,067 | $ 491 | $ 1,558 |

The Business and Kioxia have agreed to mutually contribute to, and indemnify each other and Flash Ventures for, environmental remediation costs or liability resulting from Flash Ventures' manufacturing operations in certain circumstances. The Business has not made any indemnification payments, nor recorded any indemnification receivables, under any such agreements. As of September 27, 2024, no amounts have been accrued in the Condensed Combined Financial Statements with respect to these indemnification agreements.

**The Flash Business of Western Digital Corporation**

**NOTES TO CONDENSED COMBINED FINANCIAL STATEMENTS – (Continued)**
**(Unaudited)**

*Unis Ventures*

WDC also has a venture with Unisplendour Corporation Limited and Unissoft (Wuxi) Group Co. Ltd. ("Unis"), referred to as the "Unis Venture", to market and sell the Business's products in China and to develop data storage systems for the Chinese market in the future. Pursuant to the separation and distribution agreement, it is expected that the Unis Venture will be minority owned by the Business and majority owned by Unis following the separation. The Unis Venture has not historically been managed as a component of the Business and as such the related equity method investment is not reflected within our Condensed Combined Financial Statements. For the three months-ended September 27, 2024, and September 29, 2023, the Business recognized approximately 1% and 1% of its combined revenue on products distributed by the Unis Venture, respectively. The outstanding accounts receivable due from the Unis Venture was 2% and 4% of Accounts receivable, net as of September 27, 2024 and June 28, 2024, respectively.

***Related Party Transactions***

*Notes Due to (from) Parent*

The Business receives financing from certain of the Parent's subsidiaries in the form of borrowings under revolving credit agreements and promissory notes to fund activities primarily related to Flash Ventures. Additionally, cash generated by the Business may be lent via promissory notes to certain of the Parent's subsidiaries for use in general corporate purposes. Outstanding balances due under these financing arrangements are due on demand.

The following presents a summary of the outstanding borrowings between the Business and subsidiaries of the Parent for the periods presented, inclusive of any associated interest payable or interest receivable:

| Notes due to (from) Parent | Interest Rate | September 27, 2024 | June 28, 2024 |
|---|---|---|---|
| | | *(in millions)* | |
| **Notes due from Parent** | | | |
| Revolving Credit Agreement due from Parent $101M - Oct. 3, 2019 | AFR Rate (USD) or TIBOR + .35% (YEN) | $ (1) | $ (102) |
| Total Notes due from Parent | | (1) | (102) |
| **Notes due to Parent** | | | |
| Notes Due to Parent $42B Yen - Apr. 29, 2014 | TIBOR + .35% | 295 | 262 |
| Revolving Credit Agreement due to Parent $100M - Aug. 20, 2021 | LIBOR Rate + 150 basis points | 1 | 77 |
| Notes due to Parent $500M - Nov. 25, 2014 | 1-year swap + 2% | — | 475 |
| Total Notes due to Parent | | 296 | 814 |
| | Total Notes due to Parent, net | $ 295 | $ 712 |

**The Flash Business of Western Digital Corporation**

**NOTES TO CONDENSED COMBINED FINANCIAL STATEMENTS – (Continued)**
**(Unaudited)**

The following presents interest expense and interest income on notes due to (from) Parent, which have been recorded within interest expense and interest income in the Condensed Combined Statements of Operations for the periods presented:

| | September 27, 2024 | September 29, 2023 |
|---|---|---|
| | *(in millions)* | |
| Interest income on notes due from Parent | $ (1) | $ (2) |
| Interest expense on notes due to Parent | $ 2 | $ 11 |

*Allocation of Corporate expenses*

The Parent has provided various corporate services to the Business in the ordinary course of business, including executive management, finance, tax, legal, information technology, employee benefits administration, treasury, risk management, procurement and other shared services. These corporate expenses have been allocated to the Business based on direct usage or benefit, where identifiable, with the remainder allocated based on headcount, revenue or other relevant measures. Management believes the basis on which the expenses have been allocated to be a reasonable reflection of the utilization of services provided to or the benefit received by us.

The table below summarizes the impact of expense allocations from WDC within the Condensed Combined Statements of Operations for the periods presented:

| | Three Months Ended | |
|---|---|---|
| | September 27, 2024 | September 29, 2023 |
| | *(in millions)* | |
| Research and development | $ 187 | $ 169 |
| Selling, general and administrative | 113 | 112 |
| Employee termination, asset impairment and other | 2 | (59) |
| Business separation costs | 20 | — |
| Total allocation of Corporate expenses | $ 322 | $ 222 |

Our historical financial statements do not purport to reflect what results of operations, financial position, equity or cash flows would have been if we had operated as a stand-alone Business during the periods presented.

*Cash Management*

WDC provides funding for our operating and investing activities including pooled cash managed by WDC treasury to fund operating expenses and capital expenditures. WDC also directly collects certain of our receivables. These activities are reflected as a component of Parent company net investment, and this arrangement is not reflective of the manner in which we would operate on a standalone business separate from WDC during the periods presented.

*Parent Company Net Investment*

Parent company net investment on the Condensed Combined Balance Sheets represents WDC's historical investment in the Business, the net effect of transactions with and allocations from WDC, the Business's retained earnings and cumulative effect adjustments from the adoption of new accounting standards.

**The Flash Business of Western Digital Corporation**

**NOTES TO CONDENSED COMBINED FINANCIAL STATEMENTS – (Continued)**
**(Unaudited)**

*Net Transfers from (to) Parent*

A reconciliation of Net transfers from (to) Parent on the Condensed Combined Statements of Changes in Parent Company Net Investment to the corresponding amounts on the Condensed Combined Statements of Cash Flows is as follows:

| | Three Months Ended | |
|---|---|---|
| | September 27, 2024 | September 29, 2023 |
| | *(in millions)* | |
| Net transfers from Parent per Condensed Combined Statement of Changes in Parent Company Net Investment | $ 583 | $ 19 |
| Property, plant and equipment, net transferred to (from) Parent | (3) | 1 |
| Strategic investments transferred from Parent | (6) | — |
| Deferred taxes, net transferred from Parent | (7) | (7) |
| Notes due to Parent transferred from Parent | (378) | — |
| Notes due from Parent transferred to Parent | — | 58 |
| Net transfers from Parent per Condensed Combined Statements of Cash Flows | $ 189 | $ 71 |

## Note 10. Leases and Other Commitments

***Leases***

The Business leases certain domestic and international facilities and data center space under long-term,non-cancelable operating leases that expire at various dates through fiscal year 2039. These leases include no material variable or contingent lease payments. Operating lease assets and liabilities are recognized based on the present value of the remaining lease payments discounted using the Business's incremental borrowing rate. Operating lease assets also include prepaid lease payments minus any lease incentives. Extension or termination options present in the Business's lease agreements are included in determining the right-of-use asset and lease liability when it is reasonably certain the Business will exercise those options. Lease expense is recognized on a straight-line basis over the lease term.

The following table presents right-of-use-lease assets and lease liabilities included in the Business's Condensed Combined Balance Sheets:

| | September 27, 2024 | June 28, 2024 |
|---|---|---|
| | Lease Amounts | |
| | *(in millions)* | |
| Operating lease right-of-use assets (included in other non-current assets) | $ 176 | $ 179 |
| Operating lease liabilities: | | |
| Current portion of long-term operating lease liabilities (included in accrued expenses) | 9 | 11 |
| Long-term operating lease liabilities (included in other liabilities) | 170 | 172 |
| Total operating lease liabilities | $ 179 | $ 183 |

**The Flash Business of Western Digital Corporation**

**NOTES TO CONDENSED COMBINED FINANCIAL STATEMENTS – (Continued)**
**(Unaudited)**

The following tables summarizes supplemental disclosures of operating cost and cash flow information related to operating leases:

| | Three Months Ended | |
|---|---|---|
| | September 27, 2024 | September 29, 2023 |
| | *(in millions)* | |
| Cost of operating leases | $ 7 | $ 6 |
| Cash paid for operating leases | $ 7 | $ 6 |
| Operating lease assets obtained in exchange for operating lease liabilities | $ — | $ 167 |

The weighted average remaining lease term and discount rate for the Business's operating leases were as follows:

| | September 27, 2024 | June 28, 2024 |
|---|---|---|
| Weighted average remaining lease term in years | 13.6 | 13.7 |
| Weighted average discount rate | 7.5% | 7.5% |

As of September 27, 2024, minimum lease payments were as follows:

| | Lease Amounts *(in millions)* |
|---|---|
| Minimum lease payments by fiscal year: | |
| Remaining nine months of 2025 | $ 15 |
| 2026 | 22 |
| 2027 | 21 |
| 2028 | 19 |
| 2029 | 19 |
| Thereafter | 199 |
| Total future minimum lease payments | 295 |
| Less: Imputed interest | 116 |
| Present value of lease liabilities | $ 179 |

***Sale-Leaseback***

In September 2023, our Parent completed a sale and leaseback of its facility in Milpitas, California and received net proceeds of $191 million in cash. As a result, $134 million of consideration from the sale-leaseback transaction has been allocated to us on a relative square footage basis and reflected as a cash inflow from investing activities within the Condensed Combined Statements of Cash Flows for the three months ended September 29, 2023. In connection with the sale and leaseback, the Business recorded a gain of $60 million upon closing of the transaction. For more information, see Note 13, *Employee Termination, Asset Impairment and Other.*

The property is being leased back at an annual rate of $16 million for the first year and increasing by 3% per year thereafter through January 1, 2039. The lease includes three 5-year renewal options and one 4-year renewal

option for the ability to extend through December 2057. The full amount of the associated operating lease liability and right of use asset for this facility has been included in the Condensed Combined Balance Sheets as of September 27, 2024 and June 28, 2024. This facility is utilized in the Business's operations and a portion of the total annual lease expense will be allocated to the Business in future periods based on the continued usage of the facility.

***Purchase Agreements and Other Commitments***

In the normal course of business, the Business enters into purchase orders with suppliers for the purchase of components used to manufacture its products. These purchase orders generally cover forecasted component supplies needed for production during the next quarter, are recorded as a liability upon receipt of the components, and generally may be changed or canceled at any time prior to shipment of the components. The Business also enters into long-term agreements with suppliers that contain fixed future commitments, which are contingent on certain conditions such as performance, quality and technology of the vendor's components. As of September 27, 2024, the Business had the following minimum long-term commitments:

| | Long-term commitments |
|---|---|
| | *(in millions)* |
| Fiscal year: | |
| Remaining nine months of 2025 | $ 35 |
| 2026 | 55 |
| 2027 | 36 |
| 2028 | 20 |
| 2029 | 20 |
| Thereafter | 110 |
| Total | $ 276 |

## Note 11. Stock-based Compensation Expense

The table below summarizes total costs charged to the Business related to the Business's employees' participation in our Parent's equity incentive plan during the three months ended September 27, 2024, and September 29, 2023:

| | Three months ended | |
|---|---|---|
| | September 27, 2024 | September 29, 2023 |
| | *(in millions)* | |
| Cost of revenue | $ 6 | $ 5 |
| Research and development | 15 | 17 |
| Selling, general and adminstrative | 20 | 18 |
| Total | $ 41 | $ 40 |

Total unrecognized stock-based compensation expense associated with our employees was $189 million as of September 27, 2024. We may receive additional allocations of share-based compensation expense associated with employees of our Parent who are engaged in corporate support functions.

**The Flash Business of Western Digital Corporation**

**NOTES TO CONDENSED COMBINED FINANCIAL STATEMENTS – (Continued)**
**(Unaudited)**

## Note 12. Income Tax Expense

The Tax Cuts and Jobs Act (the "2017 Act"), enacted on December 22, 2017, includes a broad range of tax reform proposals affecting businesses. Our Parent completed its accounting for the tax effects of the enactment of the 2017 Act during the second quarter of 2019. However, the U.S. Treasury and the IRS have issued tax guidance on certain provisions of the 2017 Act since the enactment date, and the Business anticipates the issuance of additional regulatory and interpretive guidance. The Parent applied a reasonable interpretation of the 2017 Act along with the then-available guidance in finalizing its accounting for the tax effects of the 2017 Act. Any additional regulatory or interpretive guidance would constitute new information, which may require further refinements to the Business's estimates in future periods.

On August 16, 2022, President Biden signed into law the Inflation Reduction Act of 2022, which contained significant law changes related to tax, climate, energy and health care. The tax measures include, among other things, a corporate alternative minimum tax ("CAMT") of 15% on corporations with three-year average annual adjusted financial statement income ("AFSI") exceeding $1.00 billion. The Business is not subject to the CAMT of 15% for fiscal year 2024 as its average annual AFSI did not exceed $1.00 billion for the preceding three-year period.

On December 20, 2021, the Organization for Economic Co-operation and Development G20 ("OECD/G20") Inclusive Framework on Base Erosion and Profit Shifting released Model Global Anti-Base Erosion rules under Pillar Two ("Pillar Two Model Rules"). Several non-US jurisdictions have either enacted legislation or announced their intention to enact future legislation to adopt certain or all components of the Pillar Two, some which are effective for the Business in fiscal year 2025. For fiscal year 2025, the Business currently expects to be able to meet certain transitional safe harbors and does not expect any material Pillar Two taxes. As more jurisdictions adopt this legislation in fiscal year 2026, there may be material increases in the Business's future tax obligations in certain jurisdictions.

The following table presents the Business's Income tax expense and the effective tax rate:

| | Three months ended | |
|---|---|---|
| | September 27, 2024 | September 29, 2023 |
| | *(in millions)* | |
| Income before taxes | $ 267 | $ (494) |
| Income tax expense | $ 56 | $ 24 |
| Effective tax rate | 21% | (5)% |

Beginning in fiscal year 2023, the Tax Cuts and Jobs Act (the "2017 Act") requires the Business to capitalize and amortize R&D expenses rather than expensing them in the year incurred. The tax effects related to the capitalization of R&D expenses are included in the effective tax rate for the three months ended September 27, 2024 and September 29, 2023.

The relative mix of earnings and losses by jurisdiction, the deduction for foreign-derived intangible income, credits and tax holidays in Malaysia, the Philippines and Thailand that have or will expire at various dates during years 2025 through 2031 resulted in decreases to the effective tax rate below the U.S. statutory rate for the three months ended September 27, 2024. However, the tax effects of the mandatory capitalization of R&D expenses offset these decreases, resulting in the effective tax rate being closer to the U.S. Federal statutory rate for the three months ended September 27, 2024.

**The Flash Business of Western Digital Corporation**

**NOTES TO CONDENSED COMBINED FINANCIAL STATEMENTS—(Continued)**
**(Unaudited)**

The primary drivers of the difference between the effective tax rate for the three months ended September 29, 2023 and the U.S. Federal statutory rate of 21% are the relative mix of earnings and losses by jurisdiction, the deduction for foreign derived intangible income, credits and tax holidays in Malaysia.

***Uncertain Tax Positions***

With the exception of certain unrecognized tax benefits that are directly associated with the tax position taken, unrecognized tax benefits are presented gross in the Condensed Combined Balance Sheets.

The following is a tabular reconciliation of the total amounts of unrecognized tax benefits excluding accrued interest and penalties for the three months ended September 27, 2024 (in millions):

| | *(in millions)* |
|---|---|
| Accrual balance at June 28, 2024 | $ 47 |
| Gross increases related to current year tax positions | — |
| Gross increases related to prior year tax positions | 3 |
| Gross decrease related to current year tax positions | — |
| Gross decrease related to prior year tax positions | (7) |
| Accrual balance at September 27, 2024 | $ 43 |

As of September 27, 2024 and June 28, 2024, the liability for unrecognized tax benefits (excluding accrued interest and penalties) was $43 million and $47 million, respectively. Interest and penalties related to unrecognized tax benefits are recognized in liabilities recorded for uncertain tax positions and are recorded in the provision for income taxes. Accrued interest and penalties included in the Business's liability related to unrecognized tax benefits as of September 27, 2024 and June 28, 2024 was $5 million and $9 million, respectively.

The Business believes that adequate provision has been made for any adjustments that may result from any other tax examinations. However, the outcome of such tax examinations cannot be predicted with certainty. If any issues addressed in the Business's tax examinations are resolved in a manner not consistent with management's expectations, the Business could be required to adjust its provision for income taxes in the period such resolution occurs. Any significant change in the amount of the Business's liability for unrecognized tax benefits would most likely result from additional information relating to the examination of the Business's tax returns.

## Note 13. Employee Termination and Other Charges

***Business Realignment***

The Business periodically incurs charges to realign its operations with anticipated market demand, primarily consisting of organization rationalization designed to streamline its business, reduce its cost structure and focus its resources. The Business has also taken actions to reduce the amount of capital invested in facilities, including the sale-leaseback of its facility in Milpitas, California in September 2023.

**The Flash Business of Western Digital Corporation**

**NOTES TO CONDENSED COMBINED FINANCIAL STATEMENTS – (Continued)**
**(Unaudited)**

The Business recorded the following charges related to these actions for the periods presented:

| | Three Months Ended | |
|---|---|---|
| | September 27, 2024 | September 29, 2023 |
| | *(in millions)* | |
| Employee termination benefits | $ — | $ 1 |
| Other charges (gains): | | |
| Contract termination and other | 2 | — |
| Gain on sale-leaseback of facility | — | (60) |
| Total employee termination and other charges | $ 2 | $ (59) |

The reserve accrual balance as of September 27, 2024 and the activity against the reserve during the three months ended September 27, 2024 were immaterial.

### Note 14. Legal Proceedings

In the normal course of business, the Business is subject to legal proceedings, lawsuits and other claims. Although the ultimate aggregate amount of probable monetary liability or financial impact with respect to these other matters is subject to many uncertainties, management believes that any monetary liability or financial impact to the Business from these matters, individually and in the aggregate, would not be material to the Business's financial condition, results of operations or cash flows. However, any monetary liability and financial impact to the Business from these matters could differ materially from the Business's expectations.