

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

**FORM 10-Q**

*(Mark One)*

**QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

**For the quarterly period ended December 31, 2021**

**Or**

**TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

**For the transition period from \_\_\_\_\_ to \_\_\_\_\_**

**Commission file number: 1-8703**

**Western Digital®  
WESTERN DIGITAL CORPORATION**

*(Exact Name of Registrant as Specified in Its Charter)*

**Delaware**

*(State or other jurisdiction of  
incorporation or organization)*

**5601 Great Oaks Parkway San Jose, California**  
*(Address of principal executive offices)*

**33-0956711**

*(I.R.S. Employer Identification No.)*

**95119**  
*(Zip Code)*

**Registrant's telephone number, including area code: (408) 717-6000**

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

<u>Title of each class</u>	<u>Trading symbol(s)</u>	<u>Name of each exchange on which registered</u>
Common Stock, \$0.01 Par Value Per Share	WDC	The Nasdaq Stock Market LLC (Nasdaq Global Select Market)

Indicate by check mark whether the registrant: (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes  No

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes  No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See the 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
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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.

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes  No

As of the close of business on January 27, 2022, 312,917,687 shares of common stock, par value \$0.01 per share, were outstanding.

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# WESTERN DIGITAL CORPORATION

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Unless otherwise indicated, references herein to specific years and quarters are to our fiscal years and fiscal quarters, and references to financial information are on a consolidated basis. As used herein, the terms "we," "us," "our," the "Company," "WDC" and "Western Digital" refer to Western Digital Corporation and its subsidiaries, unless we state, or the context indicates, otherwise.

WDC, a Delaware corporation, is the parent company of our data storage business. Our principal executive offices are located at 5601 Great Oaks Parkway, San Jose, California 95119. Our telephone number is (408) 717-6000.

Western Digital, the Western Digital logo, G-Technology, SanDisk and WD are registered trademarks or trademarks of Western Digital or its affiliates in the U.S. and/or other countries. All other trademarks, registered trademarks and/or service marks, indicated or otherwise, are the property of their respective owners.

## FORWARD-LOOKING STATEMENTS

This document contains forward-looking statements within the meaning of the federal securities laws. Any statements that do not relate to historical or current facts or matters are forward-looking statements. You can identify some of the forward-looking statements by the use of forward-looking words, such as “may,” “will,” “could,” “would,” “project,” “believe,” “anticipate,” “expect,” “estimate,” “continue,” “potential,” “plan,” “forecast,” and the like, or the use of future tense. Statements concerning current conditions may also be forward-looking if they imply a continuation of current conditions. Examples of forward-looking statements include, but are not limited to, statements concerning: expectations regarding the effects of the COVID-19 pandemic and measures intended to reduce its spread; expectations regarding supply chain conditions and constraints; expectations regarding demand trends and market conditions for our products and expected future financial performance; expectations regarding our product momentum and product development and technology plans; expectations regarding capital expenditure plans and investments, including relating to our Flash Ventures joint venture with Kioxia Corporation (“Kioxia”), and sources of funding for those expenditures; and our beliefs regarding the sufficiency of our available liquidity to meet our working capital, debt and capital expenditure needs.

These forward-looking statements are based on management’s current expectations, represent the most current information available to the Company as of the date of this Quarterly Report on Form 10-Q and are subject to a number of risks, uncertainties and other factors that could cause actual results or performance to differ materially from those expressed in the forward-looking statements. These risks and uncertainties include, but are not limited to:

- future responses to and effects of the COVID-19 pandemic;
- volatility in global economic conditions;
- impact of business and market conditions;
- impact of competitive products and pricing;
- our development and introduction of products based on new technologies and expansion into new data storage markets;
- risks associated with cost saving initiatives, restructurings, acquisitions, divestitures, mergers, joint ventures and our strategic relationships;
- difficulties or delays in manufacturing or other supply chain disruptions;
- hiring and retention of key employees;
- our substantial level of debt and other financial obligations;
- changes to our relationships with key customers;
- disruptions in operations from cyberattacks or other system security risks;
- actions by competitors;
- risks associated with compliance with changing legal and regulatory requirements and the outcome of legal proceedings; and
- the other risks and uncertainties disclosed in Part I, Item 1A of our Annual Report on Form 10-K for the fiscal year ended July 2, 2021 (the “2021 Annual Report on Form 10-K”).

You are urged to carefully review the disclosures we make concerning these risks and review the additional disclosures we make concerning material risks and other factors that may affect the outcome of our forward-looking statements and our business and operating results, including those made in Part I, Item 1A of our 2021 Annual Report on Form 10-K and any of those made in our other reports filed with the Securities and Exchange Commission, including under “Risk Factors” in Item 1A of subsequent Annual Reports on Form 10-K and Quarterly Reports on Form 10-Q that may from time to time amend, supplement or supersede the risks and uncertainties disclosed in the 2021 Annual Report on Form 10-K. You are cautioned not to place undue reliance on the forward-looking statements included in this Quarterly Report on Form 10-Q, which speak only as of the date of this document. We do not intend, and undertake no obligation, to update or revise these forward-looking statements to reflect new information or events after the date of this document or to reflect the occurrence of unanticipated events, except as required by law.

**PART I. FINANCIAL INFORMATION**

**Item 1. Financial Statements (unaudited)**

**WESTERN DIGITAL CORPORATION**  
**CONDENSED CONSOLIDATED BALANCE SHEETS**  
(in millions, except par value)  
(Unaudited)

	December 31, 2021	July 2, 2021
<b>ASSETS</b>		
Current assets:		
Cash and cash equivalents	\$ 2,531	\$ 3,370
Accounts receivable, net	2,743	2,257
Inventories	3,647	3,616
Other current assets	614	514
Total current assets	9,535	9,757
Property, plant and equipment, net	3,367	3,188
Notes receivable and investments in Flash Ventures	1,553	1,586
Goodwill	10,065	10,066
Other intangible assets, net	300	442
Other non-current assets	1,205	1,093
Total assets	\$ 26,025	\$ 26,132
<b>LIABILITIES AND SHAREHOLDERS' EQUITY</b>		
Current liabilities:		
Accounts payable	\$ 2,022	\$ 1,934
Accounts payable to related parties	389	398
Accrued expenses	1,700	1,653
Accrued compensation	567	634
Current portion of long-term debt	251	251
Total current liabilities	4,929	4,870
Long-term debt	7,057	8,474
Other liabilities	2,021	2,067
Total liabilities	14,007	15,411
Commitments and contingencies (Notes 10, 11, 13 and 16)		
Shareholders' equity:		
Preferred stock, \$0.01 par value; authorized — 5 shares; issued and outstanding — none	—	—
Common stock, \$0.01 par value; authorized — 450 shares; issued — 313 shares and 312 shares, respectively; outstanding — 313 shares and 308 shares, respectively	3	3
Additional paid-in capital	3,519	3,608
Accumulated other comprehensive loss	(217)	(197)
Retained earnings	8,713	7,539
Treasury stock — common shares at cost; 0 shares and 4 shares, respectively	—	(232)
Total shareholders' equity	12,018	10,721
Total liabilities and shareholders' equity	\$ 26,025	\$ 26,132

The accompanying notes are an integral part of these Condensed Consolidated Financial Statements.

**WESTERN DIGITAL CORPORATION**  
**CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS**  
(in millions, except per share amounts)  
(Unaudited)

	Three Months Ended		Six Months Ended	
	December 31, 2021	January 1, 2021	December 31, 2021	January 1, 2021
Revenue, net	\$ 4,833	\$ 3,943	\$ 9,884	\$ 7,865
Cost of revenue	3,250	2,983	6,636	6,001
Gross profit	1,583	960	3,248	1,864
Operating expenses:				
Research and development	575	535	1,153	1,090
Selling, general and administrative	279	265	570	521
Employee termination, asset impairment, and other charges	2	2	20	25
Total operating expenses	856	802	1,743	1,636
Operating income	727	158	1,505	228
Interest and other income (expense):				
Interest income	1	2	3	4
Interest expense	(76)	(81)	(154)	(165)
Other income (loss), net	(6)	6	(4)	15
Total interest and other expense, net	(81)	(73)	(155)	(146)
Income before taxes	646	85	1,350	82
Income tax expense	82	23	176	80
Net income	\$ 564	\$ 62	\$ 1,174	\$ 2
Income per common share:				
Basic	\$ 1.81	\$ 0.20	\$ 3.77	\$ 0.01
Diluted	\$ 1.79	\$ 0.20	\$ 3.73	\$ 0.01
Weighted average shares outstanding:				
Basic	312	305	311	304
Diluted	315	307	315	305

The accompanying notes are an integral part of these Condensed Consolidated Financial Statements.

**WESTERN DIGITAL CORPORATION**  
**CONDENSED CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME**  
**(in millions)**  
**(Unaudited)**

	Three Months Ended		Six Months Ended	
	December 31, 2021	January 1, 2021	December 31, 2021	January 1, 2021
Net income	\$ 564	\$ 62	\$ 1,174	\$ 2
Other comprehensive income (loss), before tax:				
Actuarial pension gain	—	1	1	2
Foreign currency translation adjustment	(45)	34	(41)	66
Net unrealized gain (loss) on derivative contracts and available-for-sale securities	(10)	20	23	50
Total other comprehensive income (loss), before tax	(55)	55	(17)	118
Income tax benefit (expense) related to items of other comprehensive income (loss), before tax	5	(4)	(3)	(11)
Other comprehensive income (loss), net of tax	(50)	51	(20)	107
Total comprehensive income	<u>\$ 514</u>	<u>\$ 113</u>	<u>\$ 1,154</u>	<u>\$ 109</u>

The accompanying notes are an integral part of these Condensed Consolidated Financial Statements.

**WESTERN DIGITAL CORPORATION**  
**CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS**  
(in millions)  
(Unaudited)

	Six Months Ended	
	December 31, 2021	January 1, 2021
<b>Cash flows from operating activities</b>		
Net income	\$ 1,174	\$ 2
Adjustments to reconcile net income to net cash provided by operations:		
Depreciation and amortization	492	710
Stock-based compensation	163	156
Deferred income taxes	38	(5)
Loss on disposal of assets	1	1
Amortization of debt discounts	21	20
Other non-cash operating activities, net	13	(18)
Changes in:		
Accounts receivable, net	(486)	546
Inventories	(30)	(505)
Accounts payable	96	70
Accounts payable to related parties	(9)	(13)
Accrued expenses	47	78
Accrued compensation	(66)	51
Other assets and liabilities, net	(267)	(305)
Net cash provided by operating activities	1,187	788
<b>Cash flows from investing activities</b>		
Purchases of property, plant and equipment	(551)	(576)
Proceeds from the sale of property, plant and equipment	12	39
Notes receivable issuances to Flash Ventures	(337)	(252)
Notes receivable proceeds from Flash Ventures	320	346
Strategic investments and other, net	(13)	7
Net cash used in investing activities	(569)	(436)
<b>Cash flows from financing activities</b>		
Issuance of stock under employee stock plans	60	63
Taxes paid on vested stock awards under employee stock plans	(80)	(43)
Repayment of debt	(2,425)	(461)
Proceeds from debt	998	—
Debt issuance costs	(9)	—
Other	—	(9)
Net cash used in financing activities	(1,456)	(450)
Effect of exchange rate changes on cash	(1)	6
Net decrease in cash and cash equivalents	(839)	(92)
Cash and cash equivalents, beginning of year	3,370	3,048
Cash and cash equivalents, end of period	\$ 2,531	\$ 2,956
<b>Supplemental disclosure of cash flow information:</b>		
Cash paid for income taxes	\$ 312	\$ 251
Cash paid for interest	\$ 129	\$ 144

The accompanying notes are an integral part of these Condensed Consolidated Financial Statements.



**WESTERN DIGITAL CORPORATION**  
**CONDENSED CONSOLIDATED STATEMENTS OF SHAREHOLDERS' EQUITY**  
(in millions)

	Common Stock		Treasury Stock		Additional Paid-In Capital	Accumulated Other Comprehensive Income (Loss)	Retained Earnings	Total Shareholders' Equity
	Shares	Amount	Shares	Amount				
<b>Balance at July 2, 2021</b>	312	\$ 3	(4)	\$ (232)	\$ 3,608	\$ (197)	\$ 7,539	\$ 10,721
Net income	—	—	—	—	—	—	610	610
Employee stock plans	—	—	3	207	(283)	—	—	(76)
Stock-based compensation	—	—	—	—	76	—	—	76
Actuarial pension gain	—	—	—	—	—	1	—	1
Foreign currency translation adjustment	—	—	—	—	—	4	—	4
Net unrealized gain on derivative contracts	—	—	—	—	—	25	—	25
<b>Balance at October 1, 2021</b>	312	\$ 3	(1)	\$ (25)	\$ 3,401	\$ (167)	\$ 8,149	\$ 11,361
Net income	—	—	—	—	—	—	564	564
Employee stock plans	1	—	1	25	31	—	—	56
Stock-based compensation	—	—	—	—	87	—	—	87
Foreign currency translation adjustment	—	—	—	—	—	(45)	—	(45)
Net unrealized loss on derivative contracts	—	—	—	—	—	(5)	—	(5)
<b>Balance at December 31, 2021</b>	313	\$ 3	—	\$ —	\$ 3,519	\$ (217)	\$ 8,713	\$ 12,018

**WESTERN DIGITAL CORPORATION**  
**CONDENSED CONSOLIDATED STATEMENTS OF SHAREHOLDERS' EQUITY**  
(in millions)

	Common Stock		Treasury Stock		Additional Paid-In Capital	Accumulated Other Comprehensive Income (Loss)	Retained Earnings	Total Shareholders' Equity
	Shares	Amount	Shares	Amount				
<b>Balance at July 3, 2020</b>	312	\$ 3	(10)	\$ (737)	\$ 3,717	\$ (157)	\$ 6,725	\$ 9,551
Net loss	—	—	—	—	—	—	(60)	(60)
Adoption of new accounting standards	—	—	—	—	—	—	(7)	(7)
Employee stock plans	—	—	2	216	(256)	—	—	(40)
Stock-based compensation	—	—	—	—	76	—	—	76
Actuarial pension gain	—	—	—	—	—	1	—	1
Foreign currency translation adjustment	—	—	—	—	—	32	—	32
Net unrealized gain on derivative contracts	—	—	—	—	—	23	—	23
<b>Balance at October 2, 2020</b>	312	\$ 3	(8)	\$ (521)	\$ 3,537	\$ (101)	\$ 6,658	\$ 9,576
Net income	—	—	—	—	—	—	62	62
Employee stock plans	—	—	2	131	(71)	—	—	60
Stock-based compensation	—	—	—	—	80	—	—	80
Actuarial pension gain	—	—	—	—	—	1	—	1
Foreign currency translation adjustment	—	—	—	—	—	34	—	34
Net unrealized gain on derivative contracts	—	—	—	—	—	16	—	16
<b>Balance at January 1, 2021</b>	312	\$ 3	(6)	\$ (390)	\$ 3,546	\$ (50)	\$ 6,720	\$ 9,829

The accompanying notes are an integral part of these Condensed Consolidated Financial Statements.

**WESTERN DIGITAL CORPORATION**  
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS**  
**(Unaudited)**

**Note 1. Organization and Basis of Presentation**

Western Digital Corporation (“Western Digital” or the “Company”) is a leading developer, manufacturer, and provider of data storage devices and solutions that address the evolving needs of the information technology (“IT”) industry and the infrastructure that enables the proliferation of data in virtually every other industry. The Company creates environments for data to thrive. The Company is driving the innovation needed to help customers capture, preserve, access and transform an ever-increasing diversity of data. Everywhere data lives, from advanced data centers to mobile sensors to personal devices, the Company’s industry-leading solutions deliver the possibilities of data.

The accounting policies followed by the Company are set forth in Part II, Item 8, Note 1, *Organization and Basis of Presentation*, of the Notes to Consolidated Financial Statements included in the Company’s Annual Report on Form 10-K for the fiscal year ended July 2, 2021. In the opinion of management, all adjustments necessary to fairly state the Condensed Consolidated Financial Statements have been made. All such adjustments are of a normal, recurring nature. Certain information and footnote disclosures normally included in the Consolidated 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 Consolidated Financial Statements should be read in conjunction with the Consolidated Financial Statements and the notes thereto included in the Company’s Annual Report on Form 10-K for the fiscal year ended July 2, 2021. The results of operations for interim periods are not necessarily indicative of results to be expected for the full year.

*Fiscal Year*

The Company’s fiscal year ends on the Friday nearest to June 30 and typically consists of 52 weeks. Approximately every five to six years, the Company reports a 53-week fiscal year to align the fiscal year with the foregoing policy. Fiscal years 2022, which ends on July 1, 2022, and 2021, which ended on July 2, 2021, are each comprised of 52 weeks, with all quarters presented consisting of 13 weeks.

*Use of Estimates*

Company 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 the ongoing COVID-19 pandemic. However, actual results could differ materially from these estimates and be significantly affected by the severity and duration of the COVID-19 pandemic, the extent of actions to contain or treat COVID-19, the timing, distribution, efficacy and public acceptance of vaccines around the world, additional surges of COVID-19, including the emergence of more contagious or vaccine-resistant variants, and how quickly and to what extent normal economic and operating activity can resume.

**Note 2. Recent Accounting Pronouncements***Accounting Pronouncements Recently Adopted*

In December 2019, the Financial Accounting Standards Board (“FASB”) issued Accounting Standards Update (“ASU”) No. 2019-12, “Income Taxes (Topic 740): Simplifying the Accounting for Income Taxes” (“ASU 2019-12”). ASU 2019-12 removes certain exceptions for recognizing deferred taxes for investments, performing intraperiod allocation and calculating income taxes in interim periods. The ASU also adds guidance to reduce complexity in certain areas, including recognizing deferred taxes for tax goodwill and allocating taxes to members of a consolidated group. The Company adopted this ASU on July 3, 2021, which is the beginning of fiscal 2022, and its adoption did not have a material impact on the Company’s Condensed Consolidated Financial Statements.

*Recently Issued Accounting Pronouncements Not Yet Adopted*

In August 2020, the FASB issued ASU 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” (“ASU 2020-06”). ASU 2020-06 reduces the number of accounting models for convertible debt instruments and convertible preferred stock and results in fewer instruments with embedded conversion features being separately recognized from the host contract as compared with current standards. Those instruments that do not have a separately recognized embedded conversion feature will no longer recognize a debt issuance discount related to such a conversion feature and would recognize less interest expense on a periodic basis. Additionally, the ASU amends the calculation of the share dilution impact related to a conversion feature and eliminates the treasury method as an option. For instruments that do not have a component mandatorily settled in cash, the change will likely result in a higher amount of share dilution in the calculation of earnings per share. The Company expects to adopt this ASU in the first quarter of fiscal 2023, and is currently assessing the impact of adoption.

In November 2021, the FASB issued ASU No. 2021-10, “Government Assistance (Topic 832): Disclosures by Business Entities about Government Assistance” (“ASU 2021-10”). ASU 2021-10 increases the transparency of government assistance received by requiring most business entities to disclose information about government assistance received, including (1) the types of assistance, (2) the entity’s accounting for the assistance, and (3) the effect of the assistance on an entity’s financial statements. This ASU is effective for fiscal years (and interim periods within those fiscal years) beginning after December 15, 2021, which for the Company is the first quarter of fiscal 2023. Early adoption is permitted. The Company is currently assessing the impact and timing of adoption of this ASU.

**WESTERN DIGITAL CORPORATION**  
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

**Note 3. Segment Information**

The Company manufactures, markets, and sells data storage devices and solutions in the U.S. and in foreign countries through its sales personnel, dealers, distributors, retailers, and subsidiaries. Historically, the Company had been managed and reported under a single operating segment. Late in the first quarter of fiscal 2021, the Chief Executive Officer, who is the Company's Chief Operating Decision Maker ("CODM"), announced a decision to reorganize the Company's business by forming two separate product business units: hard disk drives ("HDD") and flash-based products ("Flash"). To align with the new operating model and business structure, the Company made management organizational changes and implemented new reporting modules and processes to provide discrete information to manage the business. Effective July 3, 2021, the Company's management finalized its assessment of the Company's operating segments and concluded that the Company now has two reportable segments: HDD and Flash.

The CODM evaluates performance of the Company and makes decisions regarding allocation of resources based on each operating segment's net revenue and gross margin, which are summarized below. Because of the integrated nature of the Company's production and distribution activities, separate segment asset measures are not available or reviewed by the CODM to evaluate the performance of or to allocate resources to the segments.

The following table summarizes the operating performance of the Company's reportable segments:

	Three Months Ended		Six Months Ended	
	December 31, 2021	January 1, 2021	December 31, 2021	January 1, 2021
<b>Net revenue:</b>				
HDD	\$ 2,213	\$ 1,909	\$ 4,774	\$ 3,753
Flash	2,620	2,034	5,110	4,112
Total net revenue	<u>\$ 4,833</u>	<u>\$ 3,943</u>	<u>\$ 9,884</u>	<u>\$ 7,865</u>
<b>Gross profit:</b>				
HDD	\$ 677	\$ 488	\$ 1,469	\$ 971
Flash	946	551	1,867	1,099
Total gross profit for segments	<u>1,623</u>	<u>1,039</u>	<u>3,336</u>	<u>2,070</u>
<b>Unallocated corporate items:</b>				
Amortization of acquired intangible assets	(26)	(109)	(65)	(254)
Stock-based compensation expense	(14)	(15)	(23)	(27)
Charges related to a power outage incident and related recovery	—	45	—	75
Total unallocated corporate items	<u>(40)</u>	<u>(79)</u>	<u>(88)</u>	<u>(206)</u>
Consolidated gross profit	<u>\$ 1,583</u>	<u>\$ 960</u>	<u>\$ 3,248</u>	<u>\$ 1,864</u>
<b>Gross margin:</b>				
HDD	30.6 %	25.6 %	30.8 %	25.9 %
Flash	36.1 %	27.1 %	36.5 %	26.7 %
Consolidated gross margin	32.8 %	24.3 %	32.9 %	23.7 %

**WESTERN DIGITAL CORPORATION**  
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

*Disaggregated Revenue*

The Company's broad portfolio of technology and products address multiple end markets. In the fiscal first quarter of 2022, the Company refined the end markets it reports to be Cloud, Client and Consumer. Cloud represents a large and growing end market comprised primarily of products for public or private cloud environments and end customers, which the Company believes it is uniquely positioned to address as the only provider of both hard drive and flash products. Through the Client end market, the Company provides its original equipment manufacturer ("OEM") and channel customers a broad array of high-performance flash and hard drive solutions across personal computer, mobile, gaming, automotive, virtual reality headsets, at-home entertainment, and industrial spaces. The Consumer end market is highlighted by the Company's broad range of retail and other end-user products, which capitalize on the strength of the Company's product brand recognition and vast points of presence around the world.

The Company's disaggregated revenue information is as follows:

	Three Months Ended		Six Months Ended	
	December 31, 2021	January 1, 2021	December 31, 2021	January 1, 2021
	<i>(in millions)</i>			
<b>Revenue by End Market</b>				
Cloud	\$ 1,920	\$ 1,014	\$ 4,145	\$ 2,305
Client	1,854	1,869	3,707	3,619
Consumer	1,059	1,060	2,032	1,941
<b>Total Revenue</b>	<b>\$ 4,833</b>	<b>\$ 3,943</b>	<b>\$ 9,884</b>	<b>\$ 7,865</b>
<b>Revenue by Geography</b>				
Americas	\$ 1,407	\$ 945	\$ 3,021	\$ 2,024
Europe, Middle East and Africa	816	725	1,578	1,354
Asia	2,610	2,273	5,285	4,487
<b>Total Revenue</b>	<b>\$ 4,833</b>	<b>\$ 3,943</b>	<b>\$ 9,884</b>	<b>\$ 7,865</b>

The Company's top 10 customers accounted for 46% and 44% of its net revenue for the three and six months ended December 31, 2021, respectively, and 43% and 41% of its net revenue for the three and six months ended January 1, 2021, respectively. For the three and six months ended December 31, 2021 and January 1, 2021, no single customer accounted for 10% or more of the Company's net revenue.

*Goodwill*

In connection with the Company's determination of its reportable segments, effective July 3, 2021, the Company allocated its goodwill between its segments based on the estimated relative fair values of the business units. In addition, management performed a goodwill impairment assessment for each segment and concluded there were no impairment indicators as of both the beginning and end of the six months ended December 31, 2021. The following table provides a summary of goodwill activity for the period:

	HDD	Flash	Total
	<i>(in millions)</i>		
Balance at July 3, 2021	\$ 4,328	\$ 5,738	\$ 10,066
Foreign currency translation adjustment	—	(1)	(1)
<b>Balance at December 31, 2021</b>	<b>\$ 4,328</b>	<b>\$ 5,737</b>	<b>\$ 10,065</b>

**WESTERN DIGITAL CORPORATION**  
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

**Note 4. Revenues**

Contract assets represent the Company's rights to consideration where performance obligations are completed but the customer payments are not due until another performance obligation is satisfied. The Company did not have any contract assets as of either December 31, 2021 or July 2, 2021.

The Company incurs sales commissions and other direct incremental costs to obtain sales contracts. The Company 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. Other direct incremental costs to obtain contracts that have an expected benefit of greater than one year are amortized over the period of expected cash flows from the related contracts, and the amortization expense is recorded as a reduction to revenue. Total capitalized contract costs as of December 31, 2021 and July 2, 2021 as well as the related amortization for the three and six months ended December 31, 2021 and January 1, 2021 were not material.

Contract liabilities relate to customers' payments in advance of performance under the contract and primarily relate to remaining performance obligations under support and maintenance contracts. As of December 31, 2021 and July 2, 2021, contract liabilities were not material.

The Company 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 ("IP") license arrangements, which typically range longer than one year. Remaining performance obligations are mainly attributed to right-to-access patent license 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 December 31, 2021 was \$51 million, which is mainly attributable to the functional IP license and service arrangements. The Company expects to recognize this amount as revenue as follows: \$20 million during the remainder of fiscal 2022, \$30 million in fiscal 2023, and \$1 million in fiscal 2024 and thereafter.

**WESTERN DIGITAL CORPORATION**  
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

**Note 5. Supplemental Financial Statement Data***Accounts receivable, net*

From time to time, in connection with factoring agreements, the Company sells trade accounts receivable without recourse to third party purchasers in exchange for cash. The Company did not sell any trade accounts receivable during the six months ended December 31, 2021. During the six months ended January 1, 2021, the Company sold trade accounts receivable for cash proceeds of \$173 million. The discounts on the trade accounts receivable sold were not material and were recorded within Other income, net in the Condensed Consolidated Statements of Operations. There were no factored receivables outstanding as of December 31, 2021 and July 2, 2021.

*Inventories*

	<u>December 31, 2021</u>	<u>July 2, 2021</u>
	<i>(in millions)</i>	
<b>Inventories:</b>		
Raw materials and component parts	\$ 1,685	\$ 1,623
Work-in-process	1,013	1,088
Finished goods	949	905
<b>Total inventories</b>	<u>\$ 3,647</u>	<u>\$ 3,616</u>

*Property, plant and equipment, net*

	<u>December 31, 2021</u>	<u>July 2, 2021</u>
	<i>(in millions)</i>	
<b>Property, plant and equipment:</b>		
Land	\$ 273	\$ 278
Buildings and improvements	1,870	1,854
Machinery and equipment	8,287	7,860
Computer equipment and software	466	440
Furniture and fixtures	53	51
Construction-in-process	486	476
Property, plant and equipment, gross	11,435	10,959
Accumulated depreciation	(8,068)	(7,771)
<b>Property, plant and equipment, net</b>	<u>\$ 3,367</u>	<u>\$ 3,188</u>

*Intangible assets*

	<u>December 31, 2021</u>	<u>July 2, 2021</u>
	<i>(in millions)</i>	
Finite-lived intangible assets	\$ 5,508	\$ 5,508
In-process research and development	80	80
Accumulated amortization	(5,288)	(5,146)
<b>Intangible assets, net</b>	<u>\$ 300</u>	<u>\$ 442</u>

As part of prior acquisitions, the Company recorded at the time of the acquisition acquired in-process research and development (“IPR&D”) for projects in progress that had not yet reached technological feasibility. IPR&D is initially accounted for as an indefinite-lived intangible asset. Once a project reaches technological feasibility, the Company reclassifies the balance to existing technology and begins to amortize the intangible asset over its estimated useful life.



**WESTERN DIGITAL CORPORATION**  
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

*Product warranty liability*

Changes in the warranty accrual were as follows:

	Three Months Ended		Six Months Ended	
	December 31, 2021	January 1, 2021	December 31, 2021	January 1, 2021
	<i>(in millions)</i>			
Warranty accrual, beginning of period	\$ 370	\$ 391	\$ 363	\$ 408
Charges to operations	36	24	76	59
Utilization	(28)	(24)	(51)	(55)
Changes in estimate related to pre-existing warranties	(27)	(25)	(37)	(46)
Warranty accrual, end of period	\$ 351	\$ 366	\$ 351	\$ 366

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:

	December 31, 2021	July 2, 2021
		<i>(in millions)</i>
Warranty accrual:		
Current portion (included in Accrued expenses)	\$ 166	\$ 1
Long-term portion (included in Other liabilities)	185	1
Total warranty accrual	\$ 351	\$ 3

*Other liabilities*

	December 31, 2021	July 2, 2021
		<i>(in millions)</i>
Other liabilities:		
Non-current net tax payable	\$ 572	\$ 684
Payables related to unrecognized tax benefits	772	750
Other non-current liabilities	677	633
Total other liabilities	\$ 2,021	\$ 2,067

**WESTERN DIGITAL CORPORATION**  
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

*Accumulated other comprehensive income (loss)*

Accumulated other comprehensive income (loss) (“AOCI”), net of tax refers to expenses, gains and losses that are recorded as an element of shareholders’ equity but are excluded from net income. The following table illustrates the changes in the balances of each component of AOCI:

	Actuarial Pension Gains (Losses)	Foreign Currency Translation Adjustment	Unrealized Gains (Losses) on Derivative Contracts	Total Accumulated Comprehensive Income (Loss)
	<i>(in millions)</i>			
<b>Balance at July 2, 2021</b>	\$ (35)	\$ (38)	\$ (124)	\$ (197)
Other comprehensive income (loss) before reclassifications	1	(41)	(71)	(111)
Amounts reclassified from accumulated other comprehensive income (loss)	—	—	94	94
Income tax expense related to items of other comprehensive income (loss)	—	—	(3)	(3)
Net current-period other comprehensive income (loss)	1	(41)	20	(20)
<b>Balance at December 31, 2021</b>	<b>\$ (34)</b>	<b>\$ (79)</b>	<b>\$ (104)</b>	<b>\$ (217)</b>

During the three and six months ended December 31, 2021, the amounts reclassified out of AOCI were losses related to foreign exchange contracts and interest rate swap contracts. Losses reclassified out of AOCI related to foreign exchange contracts were \$32 million and \$69 million, respectively, and were substantially charged to Cost of revenue in the Condensed Consolidated Statements of Operations. Losses reclassified out of AOCI related to interest rate swap contracts were \$12 million and \$25 million, respectively, and were charged to Interest expense in the Condensed Consolidated Statements of Operations.

As of December 31, 2021, the amount of existing net losses related to cash flow hedges recorded in AOCI included \$5 million related to the Company’s interest rate swaps that is expected to be reclassified to earnings after twelve months. In addition, as of December 31, 2021, the Company did not have any foreign exchange forward contracts with credit-risk-related contingent features.

**WESTERN DIGITAL CORPORATION**  
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

**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 Company's financial assets and liabilities that are measured at fair value on a recurring basis as of December 31, 2021 and July 2, 2021, and indicate the fair value hierarchy of the valuation techniques utilized to determine such values:

	December 31, 2021			
	Level 1	Level 2	Level 3	Total
	<i>(in millions)</i>			
<b>Assets:</b>				
Cash equivalents - Money market funds	\$ 71	\$ —	\$ —	\$ 71
Foreign exchange contracts	—	22	—	22
Total assets at fair value	<u>\$ 71</u>	<u>\$ 22</u>	<u>\$ —</u>	<u>\$ 93</u>
<b>Liabilities:</b>				
Foreign exchange contracts	\$ —	\$ 86	\$ —	\$ 86
Interest rate swap contracts	—	48	—	48
Total liabilities at fair value	<u>\$ —</u>	<u>\$ 134</u>	<u>\$ —</u>	<u>\$ 134</u>
	July 2, 2021			
	Level 1	Level 2	Level 3	Total
	<i>(in millions)</i>			
<b>Assets:</b>				
Cash equivalents - Money market funds	\$ 1,283	\$ —	\$ —	\$ 1,283
Foreign exchange contracts	—	14	—	14
Total assets at fair value	<u>\$ 1,283</u>	<u>\$ 14</u>	<u>\$ —</u>	<u>\$ 1,297</u>
<b>Liabilities:</b>				
Foreign exchange contracts	\$ —	\$ 65	\$ —	\$ 65
Interest rate swap contracts	—	80	—	80
Total liabilities at fair value	<u>\$ —</u>	<u>\$ 145</u>	<u>\$ —</u>	<u>\$ 145</u>

During the three and six months ended December 31, 2021 and January 1, 2021, the Company had no transfers of financial assets and liabilities between levels and there were no changes in valuation techniques or the inputs used in the fair value measurement.

**WESTERN DIGITAL CORPORATION**  
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

*Financial Instruments Not Carried at Fair Value*

For financial instruments where the carrying value (which includes principal adjusted for any unamortized issuance costs, and discounts or premiums) differs from fair value (which is based on quoted market prices), the following table represents the related carrying value and fair value for each of the Company's outstanding financial instruments. Each of the financial instruments presented below was categorized as Level 2 for all periods presented, based on the frequency of trading immediately prior to the end of the second quarter of fiscal 2022 and the fourth quarter of fiscal 2021, respectively.

	December 31, 2021		July 2, 2021	
	Carrying Value	Fair Value	Carrying Value	Fair Value
	<i>(in millions)</i>			
Variable interest rate Term Loan A-1 maturing 2023	\$ 2,998	\$ 3,006	\$ 4,327	\$ 4,346
Variable interest rate Term Loan B-4 maturing 2023	—	—	1,093	1,094
1.50% convertible notes due 2024	1,032	1,116	1,017	1,173
4.75% senior unsecured notes due 2026	2,289	2,516	2,288	2,556
2.85% senior unsecured notes due 2029	495	505	—	—
3.10% senior unsecured notes due 2032	494	504	—	—
<b>Total</b>	<b>\$ 7,308</b>	<b>\$ 7,647</b>	<b>\$ 8,725</b>	<b>\$ 9,169</b>

**WESTERN DIGITAL CORPORATION**  
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

**Note 7. Derivative Instruments and Hedging Activities**

As of December 31, 2021, the Company 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 12 months. In addition, the Company had outstanding pay-fixed interest rate swaps that were designated as cash flow hedges of variable rate interest payments on a portion of its term loans through February 2023.

Changes in 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 each of the three and six months ended December 31, 2021 and January 1, 2021, total net realized and unrealized transaction and foreign exchange contract currency gains and losses were not material to the Company's Condensed Consolidated Financial Statements.

Unrealized gains or losses on designated cash flow hedges are recognized in AOCI. For more information regarding cash flow hedges, see Part I, Item 1, Note 5. *Supplemental Information - Accumulated other comprehensive income (losses)*, of the Notes to the Condensed Consolidated Financial Statements included in this Quarterly Report on Form 10-Q.

*Netting Arrangements*

Under certain provisions and conditions within agreements with counterparties to the Company's foreign exchange forward contracts, subject to applicable requirements, the Company has the right of offset associated with the Company's foreign exchange forward contracts and is allowed to net settle transactions of the same currency with a single net amount payable by one party to the other. As of December 31, 2021 and July 2, 2021, the effect of rights of offset was not material and the Company did not offset or net the fair value amounts of derivative instruments in its Condensed Consolidated Balance Sheets.

**WESTERN DIGITAL CORPORATION**  
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

**Note 8. Debt**

Debt consisted of the following as of December 31, 2021 and July 2, 2021:

	December 31, 2021	July 2, 2021
	(in millions)	
Variable interest rate Term Loan A-1 maturing 2023	\$ 3,000	\$ 4,332
Variable interest rate Term Loan B-4 maturing 2023	—	1,093
1.50% convertible notes due 2024	1,100	1,100
4.75% senior unsecured notes due 2026	2,300	2,300
2.85% senior unsecured notes due 2029	500	—
3.10% senior unsecured notes due 2032	500	—
<b>Total debt</b>	<b>7,400</b>	<b>8,825</b>
Issuance costs and debt discounts	(92)	(100)
<b>Subtotal</b>	<b>7,308</b>	<b>8,725</b>
Less current portion of long-term debt	(251)	(251)
<b>Long-term debt</b>	<b>\$ 7,057</b>	<b>\$ 8,474</b>

In December 2021, the Company issued \$500 million aggregate principal amount of 2.850% senior unsecured notes due February 1, 2029 (the “2029 Notes”) and issued \$500 million aggregate principal amount of 3.100% senior unsecured notes due February 1, 2032 (the “2032 Notes”) pursuant to the terms of an indenture, dated as of December 10, 2021 (the “Base Indenture”) between the Company and U.S. Bank National Association, as trustee (the “Trustee”), as supplemented by the first supplemental indenture dated as of December 10, 2021 (the “First Supplemental Indenture”) between the Company and the Trustee. As used herein, “Indenture” means the Base Indenture, as supplemented by the First Supplemental Indenture. The Indenture contains certain restrictive covenants which are subject to a number of limitations and exceptions. Interest for both the 2029 Notes and 2032 Notes is payable on February 1 and August 1 of each year. The Company is not required to make principal payments on either the 2029 Notes or 2032 Notes prior to their maturity dates. Issuance costs and discounts are amortized to interest expense over their respective terms and as of December 31, 2021, unamortized issuance costs and discounts were \$5 million for the 2029 Notes and \$6 million for the 2032 Notes.

During the six months ended December 31, 2021, the Company voluntarily paid \$1.09 billion to prepay the remaining principal balance of its Term Loan B-4 in accordance with its terms. In addition, during the three months ended December 31, 2021, the Company repaid \$1.27 billion of the outstanding principal balance on its Term Loan A-1 in accordance with its terms to reduce the remaining outstanding principal balance to \$3.0 billion using proceeds from the issuance of the 2029 Notes and the 2032 Notes and using cash on hand.

Subsequent to the end of the second quarter of fiscal 2022, on January 7, 2022, the Company entered into a restatement agreement (“Restatement Agreement”) to amend and restate the Loan Agreement, originally dated as of April 29, 2016 (including subsequent amendments and the Restatement Agreement, collectively, the “Loan Agreement”), to provide for, among other things, (i) the issuance of a new \$3.0 billion Term Loan A-2 maturing in January 2027 (the “Term Loan A-2”) to replace our previously existing Term Loan A-1; and (ii) the availability of a new \$2.25 billion revolving credit facility maturing in January 2027 (the “2027 Revolving Facility”) to replace our previously existing \$2.25 billion revolving credit facility and (iii) additional covenant flexibility and other modifications. The obligations under the Loan Agreement will be the senior unsecured obligations of the Company and will not benefit from any collateral or subsidiary guarantees.

The Term Loan A-2 Loan bears interest, at the Company’s option, at a per annum rate equal to either (x) the Adjusted Term Secured Overnight Financing Rate (“SOFR”) (as defined in the Loan Agreement) plus an applicable margin varying from 1.125% to 2.000% or (y) a base rate plus an applicable margin varying from 0.125% to 1.000%, in each case depending on the corporate family ratings of the Company from at least two of Standard & Poor’s Ratings Services (“S&P”), Moody’s Investors Service, Inc. (“Moody’s”) and Fitch Ratings, Inc. (“Fitch”), with an initial interest rate of Adjusted Term SOFR plus 1.375%. The Term Loan A-2 will amortize in equal quarterly installments of (i) 0.625% per quarter during the first through the fourth

**WESTERN DIGITAL CORPORATION**  
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

full fiscal quarters following the date of the Restatement Agreement (the “Restatement Effective Date”) and (ii) 1.25% per quarter for the fifth through the nineteenth full fiscal quarters following the Restatement Effective Date, with the remaining balance payable on the date that is five years after the Restatement Effective Date.

Loans under the 2027 Revolving Facility bear interest at a per annum rate, at the Company’s option, equal to either (x) the Adjusted Term SOFR Rate (as defined in the Loan Agreement) plus an applicable margin varying from 1.125% to 2.000% or (y) a base rate plus an applicable margin varying from 0.125% to 1.000%, in each case depending on the corporate family ratings of the Company from at least two of S&P, Moody’s and Fitch, with an initial rate of Adjusted Term SOFR plus 1.375%. The Company will also pay an unused commitment fee on the 2027 Revolving Facility ranging from 0.120% to 0.350% based on the corporate family ratings of the Company from at least two of S&P, Moody’s and Fitch, with an initial unused commitment fee of 0.200%.

Prior to its restatement on January 7, 2022, the Loan Agreement required the Company to comply with certain financial covenants, consisting of a leverage ratio and an interest coverage ratio. As of December 31, 2021, the Company was in compliance with these financial covenants. Following its restatement on January 7, 2022, the covenants under the Loan Agreement were simplified and the interest coverage ratio requirement was removed.

**WESTERN DIGITAL CORPORATION**  
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

**Note 9. Pension and Other Post-Retirement Benefit Plans**

The Company has pension and other post-retirement benefit plans in various countries. The Company's principal pension plans are in Japan, Thailand and the Philippines. All pension and other post-retirement benefit plans outside of the Company's Japan, Thailand and Philippines defined benefit pension plans (the "Pension Plans") are immaterial to the Condensed Consolidated Financial Statements. The expected long-term rate of return on the Pension Plans assets is 2.5%.

*Obligations and Funded Status*

The following table presents the unfunded status of the benefit obligations for the Pension Plans:

	December 31, 2021	July 2, 2021
	<i>(in millions)</i>	
Benefit obligation at end of period	\$ 353	\$ 359
Fair value of plan assets at end of period	223	227
Unfunded status	<u>\$ 130</u>	<u>\$ 132</u>

The following table presents the unfunded amounts related to the Pension Plans as recognized on the Company's Condensed Consolidated Balance Sheets:

	December 31, 2021	July 2, 2021
	<i>(in millions)</i>	
Current liabilities	\$ 1	\$ 1
Non-current liabilities	129	131
Net amount recognized	<u>\$ 130</u>	<u>\$ 132</u>

Net periodic benefit costs were not material for the three and six months ended December 31, 2021.



**WESTERN DIGITAL CORPORATION**  
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

**Note 10. Related Parties and Related Commitments and Contingencies***Flash Ventures*

The Company's business ventures with Kioxia Corporation ("Kioxia") consist 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 as of December 31, 2021 and July 2, 2021:

	December 31, 2021	July 2, 2021
	<i>(in millions)</i>	
Notes receivable, Flash Partners	\$ 92	\$ 191
Notes receivable, Flash Alliance	161	213
Notes receivable, Flash Forward	694	561
Investment in Flash Partners	194	199
Investment in Flash Alliance	284	293
Investment in Flash Forward	128	129
Total notes receivable and investments in Flash Ventures	<u>\$ 1,553</u>	<u>\$ 1,586</u>

During the three and six months ended December 31, 2021 and during the three and six months ended January 1, 2021, the Company made net payments to Flash Ventures of \$1.11 billion and \$2.30 billion, and \$1.21 billion and \$2.19 billion, respectively, for purchased flash-based memory wafers and net loans.

The Company makes, or will make, loans to Flash Ventures to fund equipment investments for new process technologies and additional wafer capacity. The Company 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 Company's notes receivable from each Flash Ventures entity, denominated in Japanese yen, are secured by equipment owned by that Flash Ventures entity.

As of December 31, 2021 and July 2, 2021, the Company had Accounts payable balances due to Flash Ventures of \$389 million and \$398 million, respectively.

The Company'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 December 31, 2021, 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.

	December 31, 2021
	<i>(in millions)</i>
Notes receivable	\$ 947
Equity investments	606
Operating lease guarantees	1,964
Inventory and prepayments	865
Maximum estimable loss exposure	<u>\$ 4,382</u>

**WESTERN DIGITAL CORPORATION**  
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

The Company 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 Company is obligated to pay for half of Flash Ventures' fixed costs regardless of the output the Company chooses to purchase. The Company 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 Company is committed to fund 49.9% to 50.0% of each Flash Ventures entity's capital investments to the extent that each Flash Ventures entity's operating cash flow is insufficient to fund these investments.

In June 2019, an unexpected power outage incident occurred at the flash-based memory manufacturing facilities operated in Yokkaichi, Japan. The power outage incident impacted the facilities and process tools and resulted in damage to flash wafers in production and a reduction in the Company's flash wafer availability. During the three and six months ended January 1, 2021, the Company recovered \$45 million and \$75 million, respectively, related to this incident from its insurance carriers, which was recorded in Cost of revenue.

*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 Company 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 Consolidated 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 Company 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 Company's guarantees.

The following table presents the Company'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 as of December 31, 2021.

	<b>Lease Amounts</b>	
	<i>(Japanese yen, in billions)</i>	<i>(U.S. dollar, in millions)</i>
Total guarantee obligations	¥ 226	\$ 1,964

**WESTERN DIGITAL CORPORATION**  
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

The following table details the breakdown of the Company'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 December 31, 2021 in U.S. dollars, based upon the Japanese yen to U.S. dollar exchange rate as of December 31, 2021:

Annual Installments	Payment of Principal Amortization	Purchase Option Exercise Price at Final Lease Terms <i>(in millions)</i>	Guarantee Amount
Remaining six months of 2022	\$ 304	\$ —	\$ 304
2023	507	63	570
2024	353	113	466
2025	161	103	264
2026	124	156	280
Thereafter	15	65	80
Total guarantee obligations	<u>\$ 1,464</u>	<u>\$ 500</u>	<u>\$ 1,964</u>

The Company 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 Company has not made any indemnification payments, nor recorded any indemnification receivables, under any such agreements. As of December 31, 2021, no amounts have been accrued in the Condensed Consolidated Financial Statements with respect to these indemnification agreements.

#### *Unis Venture*

The Company 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 Company's products in China and to develop data storage systems for the Chinese market in the future. The Unis Venture is 49% owned by the Company and 51% owned by Unis. The Company accounts for its investment in the Unis Venture under the equity method of accounting. Revenue on products distributed by the Unis Venture is recognized upon sell through to third-party customers. For both the three and six months ended December 31, 2021, the Company recognized approximately 4% of its consolidated revenue on products distributed by the Unis Venture. For both the three and six months ended January 1, 2021, the Company recognized approximately 3% of its consolidated revenue on products distributed by the Unis Venture. The outstanding accounts receivable due from the Unis Venture were 7% and 6% of Accounts receivable, net as of December 31, 2021 and July 2, 2021, respectively.

**WESTERN DIGITAL CORPORATION**  
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

**Note 11. Leases and Other Commitments**
*Leases*

The Company leases certain domestic and international facilities and data center space under long-term, non-cancelable operating leases that expire at various dates through 2034. 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 Company's incremental borrowing rate. Operating lease assets also include prepaid lease payments minus any lease incentives. Extension or termination options present in the Company's lease agreements are included in determining the right-of-use asset and lease liability when it is reasonably certain the Company will exercise those options. Lease expense is recognized on a straight-line basis over the lease term. The following table summarizes supplemental balance sheet information related to operating leases as of December 31, 2021:

	<b>Lease Amounts</b>
	<i>(\$ in millions)</i>
Minimum lease payments by fiscal year:	
Remaining six months of 2022	\$ 27
2023	47
2024	46
2025	43
2026	42
Thereafter	188
Total future minimum lease payments	393
Less: Imputed Interest	58
Present value of lease liabilities	335
Less: Current portion (included in Accrued expenses)	42
Long-term operating lease liabilities (included in Other liabilities)	\$ 293
Operating lease right-of-use assets (included in Other non-current assets)	\$ 318
Weighted average remaining lease term in years	8.7
Weighted average discount rate	3.4 %

The following table summarizes supplemental disclosures of operating cost and cash flow information related to operating leases:

	<b>Three Months Ended</b>		<b>Six Months Ended</b>	
	<b>December 31, 2021</b>	<b>January 1, 2021</b>	<b>December 31, 2021</b>	<b>January 1, 2021</b>
	<i>(in millions)</i>			
Cost of operating leases	\$ 14	\$ 12	\$ 27	\$ 25
Cash paid for operating leases	12	14	24	26
Operating lease assets obtained in exchange for operating lease liabilities	11	20	123	27

**WESTERN DIGITAL CORPORATION**  
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

*Purchase Agreements and Other Commitments*

In the normal course of business, the Company 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 Company 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 December 31, 2021, the Company had the following minimum long-term commitments:

	<u>Long-term commitments</u> <i>(in millions)</i>
Fiscal year:	
Remaining six months of 2022	\$ 343
2023	550
2024	296
2025	148
2026	20
Thereafter	170
Total	<u>\$ 1,527</u>

**WESTERN DIGITAL CORPORATION**  
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

**Note 12. Shareholders' Equity**
*Stock-based Compensation Expense*

The following tables present the Company's stock-based compensation for equity-settled awards by type (i.e., stock options, restricted stock units ("RSUs"), restricted stock unit awards with performance conditions or market conditions ("PSUs"), and rights to purchase shares of common stock under the Company's Employee Stock Purchase Plan ("ESPP")) and financial statement line as well as the related tax benefit included in the Company's Condensed Consolidated Statements of Operations:

	Three Months Ended		Six Months Ended	
	December 31, 2021	January 1, 2021	December 31, 2021	January 1, 2021
	<i>(in millions)</i>			
RSUs and PSUs	\$ 78	\$ 72	\$ 145	\$ 139
ESPP	9	8	18	17
<b>Total</b>	<b>\$ 87</b>	<b>\$ 80</b>	<b>\$ 163</b>	<b>\$ 156</b>

	Three Months Ended		Six Months Ended	
	December 31, 2021	January 1, 2021	December 31, 2021	January 1, 2021
	<i>(in millions)</i>			
Cost of revenue	\$ 14	\$ 15	\$ 23	\$ 27
Research and development	43	40	83	79
Selling, general and administrative	30	25	57	50
Subtotal	87	80	163	156
Tax benefit	(13)	(9)	(28)	(20)
<b>Total</b>	<b>\$ 74</b>	<b>\$ 71</b>	<b>\$ 135</b>	<b>\$ 136</b>

Windfall tax benefits and tax deficiencies for shortfalls related to the vesting and exercise of stock-based awards, which are recognized as a component of the Company's Income tax expense, were not material for the periods presented.

Compensation cost related to unvested stock options, RSUs, PSUs, and rights to purchase shares of common stock under the ESPP will generally be amortized on a straight-line basis over the remaining average service period. The following table presents the unamortized compensation cost and weighted average service period of all unvested outstanding awards as of December 31, 2021:

	Unamortized Compensation Costs	Weighted Average Service Period
	<i>(in millions)</i>	<i>(years)</i>
RSUs and PSUs <sup>(1)</sup>	\$ 664	2.5
ESPP	81	1.7
<b>Total unamortized compensation cost</b>	<b>\$ 745</b>	

<sup>(1)</sup> Weighted average service period assumes the performance metrics are met for the PSUs.

**WESTERN DIGITAL CORPORATION**  
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

**Plan Activities***Stock Options*

The following table summarizes stock option activity under the Company's incentive plans. All outstanding options were exercisable at December 31, 2021:

	Number of Shares <i>(in millions)</i>	Weighted Average Exercise Price Per Share	Weighted Average Remaining Contractual Life <i>(in years)</i>	Aggregate Intrinsic Value <i>(in millions)</i>
Options outstanding at July 2, 2021	1.5	\$ 72.84	1.2	\$ 15
Exercised	(0.1)	43.57		2
Canceled or expired	(0.4)	98.85		
Options outstanding at December 31, 2021	<u>1.0</u>	66.15	1.0	9

*RSUs and PSUs*

The following table summarizes RSU and PSU activity under the Company's incentive plans:

	Number of Shares <i>(in millions)</i>	Weighted Average Grant Date Fair Value	Aggregate Intrinsic Value at Vest Date <i>(in millions)</i>
RSUs and PSUs outstanding at July 2, 2021	16.1	\$ 50.12	
Granted	5.1	63.39	
Vested	(4.6)	53.93	\$ 285
Forfeited	(1.2)	51.71	
RSUs and PSUs outstanding at December 31, 2021	<u>15.4</u>	53.32	

RSUs and PSUs are generally settled in an equal number of shares of the Company's common stock at the time of vesting of the units.

**Stock Repurchase Program**

The Company's Board of Directors has authorized a stock repurchase program for the repurchase of up to \$5.00 billion of the Company's common stock, which authorization is effective through July 25, 2023. The Company did not make any stock repurchases during the six months ended December 31, 2021 and has not repurchased any shares of its common stock pursuant to its stock repurchase program since the first quarter of fiscal 2019. The remaining amount available to be repurchased under the Company's current stock repurchase program as of December 31, 2021 was \$4.50 billion. Repurchases under the stock repurchase program may be made in the open market or in privately negotiated transactions and may be made under a Rule 10b5-1 plan. The Company expects stock repurchases to be funded principally by operating cash flows.

**WESTERN DIGITAL CORPORATION**  
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

**Note 13. 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. The Company completed its accounting for the tax effects of the enactment of the 2017 Act during the second quarter of fiscal 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 the Company anticipates the issuance of additional regulatory and interpretive guidance. The Company 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 Company’s estimates in future periods.

The following table presents the Company’s Income tax expense and the effective tax rate:

	Three Months Ended		Six Months Ended	
	December 31, 2021	January 1, 2021	December 31, 2021	January 1, 2021
	(\$ in millions)			
Income before taxes	\$ 646	\$ 85	\$ 1,350	\$ 82
Income tax expense	82	23	176	80
Effective tax rate	13 %	27 %	13 %	98 %

The primary drivers of the difference between the effective tax rate for the three and six months ended December 31, 2021 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, the Philippines and Thailand that will expire at various dates during fiscal years 2024 through 2031. In addition, the effective tax rate for the three and six months ended December 31, 2021 includes the discrete effect of an increase to unrecognized tax benefits as a result of ongoing discussions with various taxing authorities of \$8 million and \$25 million, respectively.

The primary drivers of the difference between the effective tax rate for the three and six months ended January 1, 2021 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, Philippines and Thailand. In addition, the effective tax rate for the six months ended January 1, 2021 includes the discrete effects of net tax deficiencies from shortfalls of \$12 million related to the vesting of stock-based awards and additional tax expense of \$10 million from the re-measurement of certain deferred tax liabilities due to restructuring activities. The discrete items had no impact on the amount of income taxes paid by the Company.

As previously disclosed, the IRS issued statutory notices of deficiency with respect to adjustments relating to transfer pricing with the Company’s foreign subsidiaries and intercompany payable balances for fiscal years 2008 through 2012. The Company filed petitions with the U.S. Tax Court with respect to these notices. Through January 2022, the IRS has filed various Amendments to Answer with the U.S. Tax Court which (i) assert adjustments relating to transfer pricing with the Company’s foreign subsidiaries for fiscal years 2008 through 2012 that would result in additional federal income tax liabilities totaling approximately \$1.26 billion for fiscal years 2008 through 2012, and (ii) assert penalties totaling \$340 million on the proposed adjustments relating to transfer pricing with respect to fiscal years 2008 through 2012. In addition, the IRS proposed adjustments relating to transfer pricing with the Company’s foreign subsidiaries and intercompany payable balances for fiscal years 2013 through 2015 that, if sustained, would result in additional federal income tax liabilities totaling approximately \$343 million for those fiscal years. In March 2021, the IRS asserted penalties totaling \$109 million on the proposed adjustments relating to transfer pricing with respect to fiscal years 2013 through 2015. The Company disagrees with the proposed adjustments relating to transfer pricing and related penalties, and continues to believe that its tax positions are properly supported and will vigorously contest the position taken by the IRS. Also in March 2021, the Company and the IRS tentatively reached a basis for resolving the intercompany payable balances matter for all fiscal years at issue and the impact was not material to the Consolidated Financial Statements.



**WESTERN DIGITAL CORPORATION**  
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

The Company believes that adequate provision has been made for any adjustments that may result from tax examinations. However, the outcome of tax examinations cannot be predicted with certainty. If any issues addressed in the Company's tax examinations are resolved in a manner not consistent with management's expectations, the Company could be required to adjust its provision for income taxes in the period such resolution occurs. As of December 31, 2021, 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 Company's liability for unrecognized tax benefits would most likely result from additional information or settlements relating to the examination of the Company's tax returns.

As of December 31, 2021, the liability for unrecognized tax benefits (excluding accrued interest and penalties) was approximately \$772 million. Accrued interest and penalties related to unrecognized tax benefits as of December 31, 2021 was approximately \$135 million. Of these amounts, approximately \$772 million could result in potential cash payments. The Company is not able to provide a reasonable estimate of the timing of future tax payments related to these obligations.

**WESTERN DIGITAL CORPORATION**  
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

**Note 14. Net Income Per Common Share**

The following table presents the computation of basic and diluted income per common share:

	Three Months Ended		Six Months Ended	
	December 31, 2021	January 1, 2021	December 31, 2021	January 1, 2021
	<i>(in millions, except per share data)</i>			
Net income	\$ 564	\$ 62	\$ 1,174	\$ 2
Weighted average shares outstanding:				
Basic	312	305	311	304
Employee stock options, RSUs, PSUs and ESPP	3	2	4	1
Basic and diluted	315	307	315	305
Income per common share:				
Basic	\$ 1.81	\$ 0.20	\$ 3.77	\$ 0.01
Diluted	\$ 1.79	\$ 0.20	\$ 3.73	\$ 0.01
Anti-dilutive potential common shares excluded	5	8	3	10

The Company computes basic income per common share using Net income and the weighted average number of common shares outstanding during the period. Diluted income per common share is computed using Net income and the weighted average number of common shares and potentially dilutive common shares outstanding during the period. Potentially dilutive common shares include dilutive outstanding employee stock options, RSUs and PSUs, and rights to purchase shares of common stock under the Company's ESPP.

**WESTERN DIGITAL CORPORATION**  
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

**Note 15. Employee Termination, Asset Impairment, and Other Charges**

*Business Realignment*

The Company periodically incurs charges as part of the integration process of recent acquisitions and 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 Company recorded the following charges related to these actions:

	Three Months Ended		Six Months Ended	
	December 31, 2021	January 1, 2021	December 31, 2021	January 1, 2021
	<i>(in millions)</i>			
Employee termination benefits	\$ 3	\$ 2	\$ 18	\$ 25
Asset impairments and losses (gains) on disposal of assets	(1)	—	2	—
Total employee termination, asset impairment, and other charges	<u>\$ 2</u>	<u>\$ 2</u>	<u>\$ 20</u>	<u>\$ 25</u>

The following table presents an analysis of the components of these activities against the reserve during the six months ended December 31, 2021:

	<b>Employee Termination Benefits</b>
	<i>(in millions)</i>
Accrual balance at July 2, 2021	\$ 2
Charges	18
Cash payments	(12)
Accrual balance at December 31, 2021	<u>\$ 8</u>

**Note 16. Legal Proceedings***Tax*

For disclosures regarding statutory notices of deficiency issued by the IRS on June 28, 2018 and December 10, 2018, petitions filed by the Company with the U.S. Tax Court in September 2018 and March 2019, additional penalties asserted by the IRS in March 2021 and a tentative resolution with respect to certain matters, see Note 13, *Income Tax Expense*.

*Other Matters*

In the normal course of business, the Company 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 Company from these matters, individually and in the aggregate, would not be material to the Company's financial condition, results of operations or cash flows. However, any monetary liability and financial impact to the Company from these matters could differ materially from the Company's expectations.

## **Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations**

The following discussion and analysis contains forward-looking statements within the meaning of the federal securities laws, and should be read in conjunction with the disclosures we make concerning risks and other factors that may affect our business and operating results. You should read this information in conjunction with the unaudited Condensed Consolidated Financial Statements and the notes thereto included in this Quarterly Report on Form 10-Q, and the audited Consolidated Financial Statements and notes thereto included in Part II, Item 8 of our Annual Report on Form 10-K for the fiscal year ended July 2, 2021. See also "Forward-Looking Statements" immediately prior to Part I, Item 1 in this Quarterly Report on Form 10-Q.

Unless otherwise indicated, references herein to specific years and quarters are to our fiscal years and fiscal quarters. As used herein, the terms "we," "us," "our," and the "Company" refer to Western Digital Corporation and its subsidiaries.

### **Our Company**

We are a leading developer, manufacturer and provider of data storage devices and solutions that address the evolving needs of information technology ("IT") and the infrastructure that enables the proliferation of data in virtually every industry. We create environments for data to thrive. We are driving the innovation needed to help customers capture, preserve, access and transform an ever-increasing diversity of data. Everywhere data lives, from advanced data centers to mobile sensors to personal devices, our industry-leading solutions deliver the possibilities of data.

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 years 2022, which ends on July 1, 2022, and 2021, which ended on July 2, 2021, are each comprised of 52 weeks, with all quarters presented consisting of 13 weeks.

### **Key Developments**

#### *Financing Activities*

In the second quarter of fiscal 2022, we continued to execute on our commitment to reduce our overall debt levels and fully repaid our Term Loan B-4. In December 2021, Fitch Ratings, Inc. raised our Company credit rating to investment grade. We then initiated a series of transactions to further reduce our debt levels and better stagger the maturities of our debt. In December 2021, we issued \$500 million aggregate principal amount of 2.850% senior unsecured notes due February 1, 2029 (the "2029 Notes") and issued \$500 million aggregate principal amount of 3.100% senior unsecured notes due February 1, 2032 (the "2032 Notes"). We used the proceeds from these notes offerings and available cash to voluntarily repay \$1.21 billion of our Term Loan A-1 and reduce its principal amount to \$3.0 billion as of December 31, 2021. In January 2022, we amended and restated our existing loan agreement to provide for, among other things: (i) the issuance of a new \$3.0 billion Term Loan A-2 maturing in January 2027 to replace our previously existing Term Loan A-1; (ii) the availability of a new \$2.25 billion revolving credit facility maturing in January 2027 to replace our previously existing \$2.25 billion revolving credit facility; and (iii) additional covenant flexibility and other modifications. Upon completion of these transactions, over 85% of the principal amount of our debt is now due in 2026 or later. We believe this new debt structure gives us greater financial stability and flexibility to manage our business over the longer term.

Additional information regarding our indebtedness, including the principal repayment terms, interest rates, covenants and other key terms of our outstanding indebtedness, is included in Part I, Item 1, Note 8, *Debt*, of the Notes to Condensed Consolidated Financial Statements in this Quarterly Report on Form 10-Q and in Part II, Item 8, Note 6, *Debt*, of the Notes to Consolidated Financial Statements included in our Annual Report on Form 10-K for the fiscal year ended July 2, 2021.

## *Business Structure*

Historically, our company had been managed and reported under a single operating segment. Late in the first quarter of fiscal 2021, the Chief Executive Officer, who is our Chief Operating Decision Maker, announced a decision to reorganize our business by forming two separate product business units: hard disk drives (“HDD”) and flash-based products (“Flash”). The new structure is intended to provide each business unit with focus and responsibility for identifying current and future customer requirements while driving the strategy, roadmap, pricing and overall profitability for their respective product areas. To align with the new operating model and business structure, we made management organizational changes and implemented new reporting modules and processes to provide discrete information to manage the business. Effective July 3, 2021, management finalized its assessment of our operating segments and concluded that we now have two reportable segments: HDD and Flash.

Our broad portfolio of technology and products address multiple end markets. In the fiscal first quarter of 2022, we refined the end markets we report to be “Cloud”, “Client” and “Consumer”. Cloud represents a large and growing end market comprised primarily of products for public or private cloud environments and end customers, which we believe we are uniquely positioned to address as the only provider of both hard drive and flash products. Through the Client end market, we provide our original equipment manufacturer (“OEM”) and channel customers a broad array of high-performance flash and hard drive 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 capitalize on the strength of our product brand recognition and vast points of presence around the world.

The discussion and analysis included under *Results of Operations* below reflects our new business unit structure and end markets discussed above.

## *COVID-19 Pandemic and Operational Update*

As the ongoing COVID-19 pandemic has evolved, we have implemented and maintained more thorough sanitation practices as outlined by health organizations and supported vaccination efforts. As we begin to phase in a return to site for more employees, we are monitoring and adopting practices recommended by health organizations to ensure the continued safety of our employees and business partners. In addition, the responses to COVID-19 taken by others in the supply chain have increased the costs of their services which have in turn impacted our operations. We incurred incremental charges primarily related to logistics, absorption and other factory-related costs of approximately \$70 million and \$126 million, and \$33 million and \$61 million during the three and six months ended December 31, 2021 and January 1, 2021, respectively, which were recorded in Cost of revenue.

The technology hardware and semiconductor industries continued to face supply chain disruptions during the quarter that negatively impacted both our customers’ ability to ship products, and our ability to build products. In order to meet our end customers’ demand, we are incurring increased component costs in addition to COVID-related expenses, which we expect to weigh primarily on our hard drive gross margins through the first half of calendar year 2022. While these supply disruptions may continue for the near term, we ultimately expect that they will be transitory as demand for our products has remained solid during the COVID-19 pandemic, with work-from-home, distance learning, and at home entertainment driving demand for cloud environments, new devices, and retail products.

The COVID-19 environment remains dynamic and we will continue to actively monitor the situation and may take further actions altering our business operations that we determine are in the best interests of our employees, customers, partners, suppliers, and stakeholders, or as required by federal, state, or local authorities. See “The COVID-19 pandemic could negatively affect our business” and “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” in Part I, Item 1A, *Risk Factors*, of our Annual Report on Form 10-K for the fiscal year ended July 2, 2021 for more information regarding the risks we face as a result of the COVID-19 pandemic and supply chain disruptions.

## *Flash Ventures*

In October 2020, Kioxia announced the start of construction of the shell for a new fabrication facility in Yokkaichi, Japan, referred to as “Y7”. We expect to continue Flash Ventures investments into Y7 in due course.

## Results of Operations

### Second Quarter and First Half Overview

The following table sets forth, for the periods presented, selected summary information from our Condensed Consolidated Statements of Operations by dollars and percentage of net revenue<sup>(1)</sup>:

	Three Months Ended						\$ Change	% Change
	December 31, 2021			January 1, 2021				
				(\$ in millions)				
Revenue, net	\$ 4,833	100.0	%	\$ 3,943	100.0	%	\$ 890 23 %	
Cost of revenue	3,250	67.2		2,983	75.7		267 9	
Gross profit	1,583	32.8		960	24.3		623 65	
Operating Expenses:								
Research and development	575	11.9		535	13.6		40 7	
Selling, general and administrative	279	5.8		265	6.7		14 5	
Employee termination, asset impairment, and other charges	2	—		2	0.1		— —	
Total operating expenses	856	17.7		802	20.3		54 7	
Operating income	727	15.0		158	4.0		569 360	
Interest and other income (expense):								
Interest income	1	—		2	0.1		(1) (50)	
Interest expense	(76)	(1.6)		(81)	(2.1)		5 (6)	
Other income (loss), net	(6)	(0.1)		6	0.2		(12) (200)	
Total interest and other expense, net	(81)	(1.7)		(73)	(1.9)		(8) 11	
Income before taxes	646	13.4		85	2.2		561 660	
Income tax expense	82	1.7		23	0.6		59 257	
Net income	\$ 564	11.7		\$ 62	1.6		502 810	

<sup>(1)</sup> Percentages may not total due to rounding.

	Six Months Ended					
	December 31, 2021		January 1, 2021		\$ Change	% Change
	<i>(\$ in millions)</i>					
Revenue, net	\$ 9,884	100.0 %	\$ 7,865	100.0 %	\$ 2,019	26 %
Cost of revenue	6,636	67.1	6,001	76.3	635	11
Gross profit	<u>3,248</u>	32.9	<u>1,864</u>	23.7	1,384	74
Operating Expenses:						
Research and development	1,153	11.7	1,090	13.9	63	6
Selling, general and administrative	570	5.8	521	6.6	49	9
Employee termination, asset impairment, and other charges	20	0.2	25	0.3	(5)	(20)
Total operating expenses	<u>1,743</u>	17.6	<u>1,636</u>	20.8	107	7
Operating income	1,505	15.2	228	2.9	1,277	560
Interest and other income (expense):						
Interest income	3	—	4	0.1	(1)	(25)
Interest expense	(154)	(1.6)	(165)	(2.1)	11	(7)
Other income (expense), net	(4)	—	15	0.2	(19)	(127)
Total interest and other expense, net	<u>(155)</u>	(1.6)	<u>(146)</u>	(1.9)	(9)	6
Income before taxes	1,350	13.7	82	1.0	1,268	1,546
Income tax expense	176	1.8	80	1.0	96	120
Net income	<u>\$ 1,174</u>	11.9	<u>\$ 2</u>	—	1,172	58,600

<sup>(1)</sup> Percentages may not total due to rounding.



The following table sets forth, for the periods presented, a summary of our segment information:

	Three Months Ended		Six Months Ended	
	December 31, 2021	January 1, 2021	December 31, 2021	January 1, 2021
	(\$ in millions)			
<b>Net revenue:</b>				
Cloud	\$ 2,283	1,969	4,784	3,753
Other	2,620	2,034	5,110	4,112
Total net revenue	\$ 4,833	3,943	9,884	7,865
<b>Gross profit:</b>				
Cloud	\$ 687	488	1,469	971
Other	946	551	1,867	1,099
Total gross profit for segments	1,623	1,039	3,336	2,070
<b>Unallocated corporate items:</b>				
Amortization of acquired intangible assets	(26)	(109)	(65)	(254)
Stock-based compensation expense	(14)	(15)	(23)	(27)
Charges related to cost savings initiatives	—	—	—	—
Recovery related to a power outage incident	—	45	—	75
Other	—	—	—	—
Total unallocated corporate items	(40)	(79)	(88)	(206)
Consolidated gross profit	\$ 1,583	960	3,248	1,864
<b>Gross margin:</b>				
Cloud	30.8%	25.0%	30.8%	25.9%
Other	36.1%	27.4%	36.6%	26.7%
Consolidated gross margin	32.8%	24.3%	32.9%	23.7%

The Company's disaggregated revenue information is as follows:

	Three Months Ended		Six Months Ended	
	December 31, 2021	January 1, 2021	December 31, 2021	January 1, 2021
	(in millions)			
<b>Revenue by End Market</b>				
Cloud	\$ 1,920	\$ 1,014	\$ 4,145	\$ 2,305
Client	1,854	1,869	3,707	3,619
Consumer	1,059	1,060	2,032	1,941
Total Revenue	\$ 4,833	\$ 3,943	\$ 9,884	\$ 7,865
<b>Revenue by Geography</b>				
Americas	\$ 1,407	\$ 945	\$ 3,021	\$ 2,024
Europe, Middle East and Africa	816	725	1,578	1,354
Asia	2,610	2,273	5,285	4,487
Total Revenue	\$ 4,833	\$ 3,943	\$ 9,884	\$ 7,865

## Net Revenue

The increases in consolidated net revenue for the three and six months ended December 31, 2021 from the comparable periods in the prior year reflect increases in exabytes of HDD and Flash sold as further discussed below. The revenue increases driven by exabyte growth were partially offset by declines in the average price per gigabyte of storage for both HDD and Flash as product mix shifted.

HDD revenue increased 16% for the three months ended December 31, 2021 from the comparable period in the prior year, primarily driven by a 27% increase in exabytes sold, partially offset by a decline in the average price per gigabyte as noted above. The increase in exabytes sold was due to continued demand for our latest generation energy assisted drives among our public and private cloud customers. The strong demand in Cloud was partly offset by a decline in HDD exabytes sold in our Client and Consumer end markets due to pressure in the commercial channel related to component issues impacting our customers' ability to ship product and greater component sourcing constraints within our own operations, and customers transitioning to client SSD. HDD revenue increased 27% for the six months ended December 31, 2021 from the comparable period in the prior year, primarily driven by a 40% increase in exabytes sold, partially offset by a decline in the average price per gigabyte as noted above. The increase in exabytes for the six-month period was largely attributable to the same factors noted above for the three-month period.

Flash revenue increased 29% for the three months ended December 31, 2021 from the comparable period in the prior year, primarily driven by a 37% increase in exabytes sold, partially offset by a decline in the average price per gigabyte as noted above. The higher exabytes sold was due to strong demand in Cloud for our latest generation of enterprise SSD products and the ramp of new 5G-based mobile phones incorporating our latest BiCS5 flash solutions in the Client market. Higher volume was also driven by strong demand in gaming along with a growing brand recognition of WD\_Black based products in our Consumer market. Flash revenue increased 24% for the six months ended December 31, 2021 from the comparable period in the prior year, primarily driven by a 33% increase in exabytes sold, partially offset by a decline in the average price per gigabyte as noted above. The increase in exabytes for the six-month period was largely attributable to the same factors noted above for the three-month period.

The increase in Cloud revenue for the three months ended December 31, 2021 from the comparable period in the prior year was led by demand for HDD capacity enterprise drives, including growth in our 18-terabyte capacity drives and enterprise SSDs, as we continued to ramp sales of our latest generation products. However, the supply chain disruptions previously noted contributed to a decline in exabyte shipments and a decline in revenues compared to the first quarter of fiscal 2022. In Client, the slight decrease in revenues for the three months ended December 31, 2021 from the comparable period in the prior year reflected declines in both client SSD and client HDD revenue, as a result of the supply chain disruptions noted previously, partially offset by the ramp of 5G phones. In Consumer, revenue for the three months ended December 31, 2021 was relatively flat with the comparable period in the prior year with a shift in mix from HDD to flash reflecting stronger demand in gaming along with a growing brand recognition of WD\_Black.

The increase in Cloud revenue for the six months ended December 31, 2021 from the comparable period in the prior year primarily reflects the same drivers noted above for the three-month period. In Client, the slight increase in revenues for the six months ended December 31, 2021 from the comparable period in the prior year reflected growth in mobile (led by 5G growth), and growth in gaming, automotive, IOT, and industrial applications in the first quarter of fiscal 2022, partially offset by declines in both client SSD and client HDD revenue, as a result of the supply chain disruptions noted previously. In Consumer, the increase in revenue for the six months ended December 31, 2021 from the comparable period in the prior year primarily reflected stronger demand in gaming along with a growing brand recognition of WD\_Black.

The changes in net revenue by geography for both the three and six months ended December 31, 2021 from the comparable periods in the prior year reflect routine variations in the mix of business.

Our top 10 customers accounted for 46% and 44% of our net revenue for the three and six months ended December 31, 2021, respectively, compared to 43% and 41% of our net revenue for the three and six months ended January 1, 2021, respectively. For each of the three and six months ended December 31, 2021 and January 1, 2021, no single customer accounted for 10% or more of our 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. These programs represented 18% of gross revenues for both the three and six months ended December 31, 2021, and 20% and 19% of gross revenues for the three and six months ended January 1, 2021, respectively. Adjustments due to changes in accruals for these programs have generally averaged less than 1% of gross revenue year over year. 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.

We believe we have made significant progress in strengthening our product portfolio. We have qualified our enterprise SSD products at three cloud titans and two OEMs, and commenced commercial shipments of 20 terabyte hard drives based on OptiNAND technology. Additionally, we are seeing an increase in customer interest in adopting SMR technology and expect multiple cloud titans to deploy SMR drives in higher volume later in this calendar year. In client SSD, we plan to launch new products in the fiscal third quarter and enterprise SSD products later in the year, both based on BiCS5 technology. For our next generation 3D-flash, we began initial commercial shipment of consumer flash devices based on our 162-layer BiCS6. Furthermore, we qualified and commenced revenue shipment of client SSDs based on QLC and BiCS5 technology in the fiscal second quarter. While still early in its evolution, we believe our next generation BiCS6 node will play an important role in the adoption of QLC in the future. We expect these developments to contribute to further revenue growth as supply chain disruptions begin to abate.

#### *Gross Profit and Gross Margin*

Consolidated gross profit increased by \$623 million for the three months ended December 31, 2021 from the comparable period in the prior year, which reflects the increase in revenue in both HDD and Flash and reduced costs as we ramped production on newer products, as well as an \$83 million decrease in charges in the current period related to amortization expense on acquired intangible assets, some of which became fully amortized. Consolidated gross margin increased 8.5 percentage points for the three months ended December 31, 2021 from the comparable period in the prior year, which reflects cost reductions as we ramped production on newer products, the lower charges for amortization of acquired intangible assets noted above, and a shift in product mix to higher-margin flash drives. HDD and Flash gross margin increased by 5.0 and 9.0 percentage points year over year, respectively, reflecting cost reductions as we ramped production on newer products.

Consolidated gross profit increased by \$1.38 billion for the six months ended December 31, 2021 from the comparable period in the prior year, which reflects the increase in revenue in both HDD and Flash, as well as a \$189 million decrease in charges in the current period related to amortization expense on acquired intangible assets, some of which became fully amortized. Consolidated gross margin increased 9.2 percentage points for the six months ended December 31, 2021 from the comparable period in the prior year, which reflects higher gross margin in both HDD and Flash, the lower charges for amortization of acquired intangible assets noted above, and a shift in product mix to higher-margin flash drives. HDD and Flash gross margin increased by 4.9 and 9.8 percentage points year over year, respectively, reflecting cost reductions as we ramped production on newer products.

#### *Operating Expenses*

Research and development (“R&D”) expense increased \$40 million for the three months ended December 31, 2021 from the comparable period in the prior year. The primary increases include approximately \$20 million in employee compensation costs due to merit increases and increased headcount and approximately \$10 million of higher engineering-related costs due to timing of projects. R&D expense increased \$63 million for the six months ended December 31, 2021 from the comparable period in the prior year and primarily reflected higher employee compensation costs due to merit increases, increased headcount and higher variable compensation.

Selling, general and administrative (“SG&A”) expense increased \$14 million for the three months ended December 31, 2021 from the comparable period in the prior year. The increase primarily reflected small increases in employee compensation costs due to merit increases as well as a small increase in professional services. SG&A expense increased \$49 million for the six months ended December 31, 2021 from the comparable period in the prior year. The increase primarily reflected approximately \$25 million related to higher professional services and approximately \$20 million of higher employee compensation cost due to merit increases and higher variable compensation.

Employee termination, asset impairment and other charges were relatively flat for both the three and six month periods compared to the prior year and reflect minor actions taken in each period. For information regarding Employee termination, asset impairment and other charges, see Part I, Item 1, Note 15, *Employee Termination, Asset Impairment, and Other Charges* of the Notes to Condensed Consolidated Financial Statements included in this Quarterly Report on Form 10-Q.

#### *Interest and Other Income (Expense)*

Total interest and other expense, net for the three and six months ended December 31, 2021 increased slightly compared to the prior year, reflecting higher foreign exchange losses partially offset by lower interest expense resulting from the pay-down of principal on our debt.

#### Income Tax Expense

The Tax Cuts and Jobs Act (the “2017 Act”) includes a broad range of tax reform proposals affecting businesses. We completed our accounting for the tax effects of the enactment of the 2017 Act during the second quarter of fiscal 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. We applied a reasonable interpretation of the 2017 Act along with the then-available guidance in finalizing our 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 our estimates in future periods.

The following table sets forth income tax information from our Condensed Consolidated Statements of Operations by dollar and effective tax rate:

	Three Months Ended		Six Months Ended	
	December 31, 2021	January 1, 2021	December 31, 2021	January 1, 2021
	(\$ in millions)			
Income before taxes	\$ 646	\$ 85	\$ 1,350	\$ 82
Income tax expense	82	23	176	80
Effective tax rate	13 %	27 %	13 %	98 %

The primary drivers of the difference between the effective tax rate for the three and six months ended December 31, 2021 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, the Philippines and Thailand that will expire at various dates during fiscal years 2024 through 2031. In addition, the effective tax rate for both the three and six months ended December 31, 2021 includes the discrete effect of an increase to unrecognized tax benefits as a result of ongoing discussions with various taxing authorities of \$8 million and \$25 million, respectively.

The primary drivers of the difference between the effective tax rate for the three and six months ended January 1, 2021 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, Philippines and Thailand. In addition, the effective tax rate for the three and six months ended January 1, 2021 includes the discrete effects of net tax deficiencies from shortfalls of \$12 million related to the vesting of stock-based awards and additional tax expense of \$10 million from the re-measurement of certain deferred tax liabilities due to restructuring activities. The discrete items had no impact on the amount of income taxes paid.

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 fiscal years may also vary as a result of discrete items such as excess tax benefits or deficiencies.

For additional information regarding Income tax expense, see Part I, Item 1, Note 13, *Income Tax Expense*, of the Notes to Condensed Consolidated Financial Statements included in this Quarterly Report on Form 10-Q.

**Liquidity and Capital Resources**

The following table summarizes our statements of cash flows:

	Six Months Ended	
	December 31, 2021	January 1, 2021
	<i>(in millions)</i>	
Net cash provided by (used in):		
Operating activities	\$ 1,187	\$ 788
Investing activities	(569)	(436)
Financing activities	(1,456)	(450)
Effect of exchange rate changes on cash	(1)	6
Net decrease in cash and cash equivalents	<u>\$ (839)</u>	<u>\$ (92)</u>

We believe our cash, cash equivalents and cash generated from operations as well as our available credit facilities will be sufficient to meet our working capital, debt and capital expenditure needs for at least the next twelve months. Our ability to sustain our working capital position is subject to a number of risks that we discuss in Part I, Item 1A, *Risk Factors*, in our Annual Report on Form 10-K for the fiscal year ended July 2, 2021.

As further explained under *Key Developments- Financing Activities* above, we have taken recent actions to reduce our overall debt levels and extend the average maturity. Following these actions, we have reduced the outstanding principal amount of our debt by approximately \$1.43 billion since October 1, 2021 and over 85% of the principal amount is now due in 2026 or later. We also have an existing a shelf registration statement (the “Shelf Registration Statement”) filed with the Securities and Exchange Commission that expires in August 2024, which allows us to offer and sell shares of common stock, preferred stock, warrants, and debt securities. We used the Shelf Registration Statement to complete our offering of \$1.00 billion aggregate principal amount of senior unsecured notes in December 2021, and we may use the Shelf Registration Statement or other capital sources, including other offerings of equity or debt securities or the credit markets, to satisfy future financing needs, including planned or unanticipated capital expenditures, investments, debt repayments or other expenses. Any such additional financing will be subject to market conditions and may not be available on terms acceptable to us or at all.

During fiscal 2022, we expect expenditures for property, plant and equipment for our company plus our portion of the capital expenditures by our Flash Ventures joint venture with Kioxia for its operations to aggregate approximately \$3.0 billion. After consideration of the Flash Ventures’ lease financing of its capital expenditures and net operating cash flow, we now expect net cash used for our purchases of property, plant and equipment and net activity in notes receivable relating to Flash Ventures to be a cash outflow of approximately \$1.5 billion during fiscal 2022. The total expected cash to be used could vary depending on the timing and completion of various capital projects and the availability, timing and terms of related financing.

A total of \$1.84 billion and \$1.97 billion of our Cash and cash equivalents was held outside of the U.S. as of December 31, 2021 and January 1, 2021, respectively. There are no material tax consequences that were not previously accrued for on the repatriation of this cash.

### Operating Activities

Cash flow from operating activities primarily consists of net income, adjusted for non-cash charges, plus or minus changes in operating assets and liabilities. This represents our principal source of cash. Net cash used for changes in operating assets and liabilities was \$715 million for the six months ended December 31, 2021, as compared to \$78 million for the six months ended January 1, 2021. 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. The cash conversion cycles were as follows (in days):

	Three Months Ended	
	December 31, 2021	January 1, 2021
Days sales outstanding	52	42
Days in inventory	102	109
Days payables outstanding	(68)	(71)
Cash conversion cycle	86	80

Changes in days sales outstanding (“DSO”) are generally due to the timing of shipments. Changes in days in inventory (“DIO”) are generally related to the timing of inventory builds and staging of inventory to meet expected future demand. Changes in days payables outstanding (“DPO”) are generally related to production volume and the timing of purchases during the period. From time to time, we negotiate to modify the timing of payments to our vendors to manage our vendor relationships and to manage our cash flows, including our cash balances.

For the three months ended December 31, 2021, DSO increased by 10 days from the comparable period in the prior year, primarily reflecting the timing of shipments and customer collections. We have seen no significant deterioration in our receivables as a result of COVID-19. DIO and DPO decreased by 7 days and 3 days, respectively, from the comparable period in the prior year primarily reflecting improved supply chain management in the HDD business, as well as routine variations in the timing of purchases and payments during the period.

### Investing Activities

Net cash used in investing activities for the six months ended December 31, 2021 primarily consisted of \$551 million in capital expenditures and a \$17 million net increase in notes receivable issuances to Flash Ventures to fund its capital expansion. Net cash used in investing activities for the six months ended January 1, 2021 primarily consisted of \$576 million in capital expenditures, partially offset by a \$94 million net decrease in notes receivable issuances to Flash Ventures to fund its capital expansion.

Our cash equivalents are primarily invested in money market funds that invest in U.S. Treasury securities and U.S. Government agency securities. In addition, from time to time, we also invest directly in certificates of deposit, asset backed securities and corporate and municipal notes and bonds.

### Financing Activities

During the six months ended December 31, 2021, net cash used in financing activities primarily consisted of \$2.43 billion for repayment of debt, which included \$1.09 billion to voluntarily repay our Term Loan B-4 in full, scheduled principal payments of \$126 million and a voluntary prepayment of \$1.21 billion on our Term Loan A-1, as well as \$80 million for taxes paid on vested stock awards under employee stock plans offset by net proceeds of \$989 million from the issuance of new debt, which was used to fund a portion of the voluntary prepayment on Term Loan A-1, and \$60 million from the issuance of stock under employee stock plans. Net cash used in financing activities for the six months ended months ended January 1, 2021 primarily consisted of \$461 million for the repayment of our debt, which included a \$300 million voluntary prepayment on our Term Loan B-4.

## **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-Contractual Obligations and 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 Consolidated Financial Statements. Additionally, with the exception of Flash Ventures and our joint venture with Unisplendour Corporation Limited and Unisoft (Wuxi) Group Co. Ltd., we do not have an interest in, or relationships with, any variable interest entities. For additional information regarding our off-balance sheet arrangements, see Part I, Item 1, Note 10, *Related Parties and Related Commitments and Contingencies*, of the Notes to Condensed Consolidated Financial Statements included in this Quarterly Report on Form 10-Q.

**Short- and Long-term Liquidity***Contractual Obligations and Commitments*

The following is a summary of our known contractual cash obligations and commercial commitments as of December 31, 2021:

	Total	Remaining six months of 2022	2023-2024	2025-2026	Beyond 2026
	<i>(in millions)</i>				
Long-term debt, including current portion <sup>(1)</sup>	\$ 7,400	\$ 126	\$ 3,974	\$ 2,300	\$ 1,000
Interest on debt	831	103	376	278	74
Flash Ventures related commitments <sup>(2)</sup>	6,049	2,105	2,587	1,136	221
Operating leases	393	27	93	85	188
Purchase obligations and other commitments	3,770	2,215	1,217	168	170
Mandatory Deemed Repatriation Tax	819	—	284	535	—
<b>Total</b>	<b>\$ 19,262</b>	<b>\$ 4,576</b>	<b>\$ 8,531</b>	<b>\$ 4,502</b>	<b>\$ 1,653</b>

<sup>(1)</sup> Principal portion of debt, excluding discounts and issuance costs.

<sup>(2)</sup> 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 R&D and building depreciation. Funding commitments assume no additional operating lease guarantees. Additional operating lease guarantees can reduce funding commitments.

*Debt*

Following the transactions described under *Key Developments- Financing Activities*, we have outstanding \$3.3 billion aggregate principal amount of senior unsecured notes with maturities between 2026 and 2032, \$3.0 billion principal amount of a new Term Loan A-2 that will mature in January 2027 and \$1.1 billion of 1.5% convertible notes due 2024. In addition to our existing debt, we have \$2.25 billion available for borrowing under our revolving credit facility until January 2027, subject to customary conditions under the loan agreement. See *Key Developments- Financing Activities* above for further information. Additional information regarding our indebtedness, including information about availability under our revolving credit facility and the principal repayment terms, interest rates, covenants and other key terms of our outstanding indebtedness, is included in Part I, Item 1, Note 8, *Debt*, of the Notes to Condensed Consolidated Financial Statements in this Quarterly Report on Form 10-Q and in Part II, Item 8, Note 6, *Debt*, of the Notes to Consolidated Financial Statements included in our Annual Report on Form 10-K for the fiscal year ended July 2, 2021.



We may issue additional debt securities in the future that may be guaranteed by our 100% owned domestic subsidiary, Western Digital Technologies, Inc. (“Guarantor” and, together with Western Digital Corporation, the “Obligor Group”). Such guarantees may be full and unconditional, joint and several, on a secured or unsecured, subordinated or unsubordinated basis, and may be subject to certain customary guarantor release conditions. We conduct operations almost entirely through our subsidiaries. Accordingly, the Obligor Group’s cash flow and ability to service any guaranteed registered debt securities will depend on the earnings of our subsidiaries and the distribution of those earnings to the Obligor Group, including the earnings of the non-guarantor subsidiaries, whether by dividends, loans or otherwise. Holders of such guaranteed registered debt securities would have a direct claim only against the Obligor Group.

The following tables include summarized financial information for the Obligor Group. The information for the Obligor Group is presented on combined basis, excluding intercompany balances and transactions between the Company and the Guarantor and excluding investments in and equity in the earnings of non-guarantor subsidiaries. The Obligor Group’s amounts due from, amounts due to, and transactions with non-guarantor subsidiaries have been presented in separate line items in the tables below.

The assets and liabilities of the Obligor Group include the following:

	<b>December 31, 2021</b>	<b>July 2, 2021</b>
	<i>(in millions)</i>	
Current assets (excluding net intercompany receivable from non-guarantor subsidiaries)	\$ 2,429	\$ 2,898
Non-current assets	1,848	1,903
Net intercompany payable to non-guarantor subsidiaries	1,110	463
Current liabilities	2,379	2,325
Non-current liabilities	8,289	9,726

The operating results and transactions with non-guarantor subsidiaries of the Obligor Group include the following:

	<b>Six Months Ended December 31, 2021</b>	<b>Year Ended July 2, 2021</b>
	<i>(in millions)</i>	
Net sales	\$ 4,253	\$ 12,378
Gross profit	1,124	1,861
Operating income	77	142
Net income (loss)	(15)	377
Intercompany revenue	1,234	5,190
Net intercompany interest expense (income)	(22)	23
Intercompany dividends	105	528

#### *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 December 31, 2021, we were in compliance with all covenants under these Japanese lease facilities. See Part I, Item 1, Note 10, *Related Parties and Related Commitments and Contingencies*, of the Notes to Condensed Consolidated Financial Statements included in this Quarterly Report on Form 10-Q for information regarding Flash Ventures.

### *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.

### *Mandatory Deemed Repatriation Tax*

The following is a summary of our estimated mandatory deemed repatriation tax obligations that are payable in the following fiscal years (in millions):

	<b>December 31, 2021</b>
2023	\$ 106
2024	178
2025	238
2026	297
Total	<u>\$ 819</u>

For additional information regarding our estimate of the total tax liability for the mandatory deemed repatriation tax, see Part II, Item 8, Note 14, *Income Tax Expense*, of the Notes to Consolidated Financial Statements included in our Annual Report on Form 10-K for the fiscal year ended July 2, 2021.

### *Unrecognized Tax Benefits*

As of December 31, 2021, the liability for unrecognized tax benefits (excluding accrued interest and penalties) was approximately \$772 million. Accrued interest and penalties related to unrecognized tax benefits as of December 31, 2021 was approximately \$135 million. Of these amounts, approximately \$772 million could result in potential cash payments. We are not able to provide a reasonable estimate of the timing of future tax payments related to these obligations.

### *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, see Part I, Item 1, Note 7, *Derivative Instruments and Hedging Activities*, of the Notes to Condensed Consolidated Financial Statements included in this Quarterly Report on Form 10-Q.

### *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 from 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.

### *Stock Repurchase Program*

Our Board of Directors has authorized a stock repurchase program for the repurchase of up to \$5.0 billion of our common stock, which authorization is effective through July 25, 2023. We did not make any stock repurchases during the six months ended December 31, 2021 and have not repurchased any shares of our common stock pursuant to our stock repurchase program since the first quarter of fiscal 2019. Although we will reevaluate the repurchasing of our common stock when appropriate, there can be no assurance if, when or at what level we may resume such activity. The remaining amount available to be repurchased under our current stock repurchase program as of December 31, 2021 was \$4.50 billion. Repurchases under the stock repurchase program may be made in the open market or in privately negotiated transactions and may be made under a Rule 10b5-1 plan.

### **Recent Accounting Pronouncements**

For a description of recently issued and adopted accounting pronouncements, including the respective dates of adoption and expected effects on our results of operations and financial condition, see Part I, Item 1, Note 2, *Recent Accounting Pronouncements*, of the Notes to Condensed Consolidated Financial Statements included in this Quarterly Report on Form 10-Q.

### **Critical Accounting Policies and Estimates**

We have prepared the accompanying unaudited Condensed Consolidated Financial Statements in accordance with accounting principles generally accepted in the United States (U.S. 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 shareholders' equity. 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 Condensed Consolidated Financial Statements may be material.

There have been no material changes in our critical accounting policies and estimates from those disclosed in our Annual Report on Form 10-K for the fiscal year ended July 2, 2021. Please refer to Part II, Item 7 of our Annual Report on Form 10-K for the fiscal year ended July 2, 2021 for a discussion of our critical accounting policies and estimates.

### **Item 3. Quantitative and Qualitative Disclosures About Market Risk**

Except as disclosed below, there have been no material changes to our market risk during the three months ended December 31, 2021. See Part II, Item 7A, *Quantitative and Qualitative Disclosures About Market Risks* in our Annual Report on Form 10-K for the fiscal year ended July 2, 2021 for further information about our exposure to market risk.

#### *Foreign Currency Risk*

We performed sensitivity analyses as of December 31, 2021 and July 2, 2021 using a modeling technique that measures the change in the fair values arising from a hypothetical 10% adverse movement in the levels of foreign currency exchange rates relative to the U.S. dollar, with all other variables held constant. The analyses cover all of our foreign currency derivative contracts used to offset the underlying exposures. The foreign currency exchange rates used in performing the sensitivity analyses were based on market rates in effect at December 31, 2021 and July 2, 2021. The sensitivity analyses indicated that a hypothetical 10% adverse movement in foreign currency exchange rates relative to the U.S. dollar would result in a foreign exchange fair value loss of \$294 million and \$183 million at December 31, 2021 and July 2, 2021, respectively.

#### *Interest Rate Risk*

We have generally held a balance of fixed and variable rate debt. As of December 31, 2021, we had reduced the amount of variable rate debt to \$3.0 billion from \$5.43 billion as of July 2, 2021. As of December 31, 2021, a one percent increase in the variable rate of interest would increase annual interest expense by \$30 million. We currently have pay-fixed interest rate swaps on \$2.00 billion notional amount, which would help mitigate the impact of fluctuations in variable interest rates through February 2023.

### **Item 4. Controls and Procedures**

#### *Evaluation of Disclosure Controls and Procedures*

As required by Rule 13a-15(b) promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), we carried out an evaluation, under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer, of the effectiveness of the design and operation of our disclosure controls and procedures (as such term is defined in Rule 13a-15(e) under the Exchange Act) as of the end of the period covered by this Quarterly Report on Form 10-Q. Based on that evaluation, our Chief Executive Officer and Chief Financial Officer concluded that, as of the end of the period covered by this Quarterly Report on Form 10-Q, our disclosure controls and procedures were effective.

#### *Changes in Internal Controls over Financial Reporting*

There has been no change in our internal control over financial reporting during the second quarter of fiscal 2022 that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

## PART II. OTHER INFORMATION

### Item 1. *Legal Proceedings*

See Note 13, *Income Tax Expense*, of the Notes to Condensed Consolidated Financial Statements included in this Quarterly Report on Form 10-Q for disclosures regarding statutory notices of deficiency issued by the IRS on June 28, 2018 and December 10, 2018, petitions filed by the Company with the U.S. Tax Court in September 2018 and March 2019, additional penalties asserted by the IRS in March 2021 and a tentative resolution with respect to certain matters.

### Item 1A. *Risk Factors*

We have described under the heading “Risk Factors” in Part I, Item 1A of our Annual Report on Form 10-K for the fiscal year ended July 2, 2021 risks and uncertainties that could cause our actual results of operations and financial condition to vary materially from past, or from anticipated future, results of operations and financial condition. There have been no material changes from these risk factors previously described in our Annual Report on Form 10-K for the fiscal year ended July 2, 2021. These risks and uncertainties are not the only risks facing us. Additional risks and uncertainties not presently known to us or that we currently deem immaterial may also adversely affect our business, financial condition, results of operations or the market price of our common stock.

### Item 5. *Other Information*

#### *Disclosure Pursuant to Section 13(r) of the Securities Exchange Act of 1934*

On March 2, 2021, the U.S. government designated the Russian Federal Security Service (the “FSB”) as a blocked party under Executive Order 13382; however, on the same day, the U.S. Department of the Treasury’s Office of Foreign Assets Control issued General License No. 1B (the “OFAC General License”), which generally authorizes U.S. companies to engage in certain transactions and dealings with the FSB necessary and ordinarily incident to requesting or obtaining licenses, permits, certifications or notifications issued or registered by the FSB for the importation, distribution or use of information technology products in the Russian Federation.

In the normal course of business, as permitted and authorized by the OFAC General License, the Company or its subsidiaries file notifications with, or apply for import licenses and permits from, the FSB as required pursuant to Russian encryption product import controls for the purpose of enabling the Company or its subsidiaries or their channel partners to import and distribute certain products in the Russian Federation. There are no gross revenues or net profits directly associated with these activities, and the Company and its subsidiaries do not distribute or sell products or provide services to the FSB. The Company expects that we or our subsidiaries will continue to file notifications with and apply for import licenses and permits from the FSB to qualify our products for importation and distribution in the Russian Federation if and as permitted by applicable U.S. law, including the OFAC General License.

#### *Entry into Separation Agreement*

On February 1, 2022, we entered into a Separation and General Release Agreement with Robert K. Eulau, Executive Vice President and Chief Financial Officer (the “Separation Agreement”). Mr. Eulau has agreed to continue in an advisory capacity through May 1, 2022 to assist with the transition of his duties and responsibilities. Pursuant to the Separation Agreement, Mr. Eulau will receive the Tier I severance benefits to which he is entitled pursuant to the terms and conditions of our Amended and Restated Executive Severance Plan, the material terms of which have been previously disclosed and a copy previously filed with the SEC (the “Separation Benefits”). Mr. Eulau’s receipt of the Separation Benefits is subject to his non-revocation of a general release of claims included in the Separation Agreement and compliance with the terms of the Separation Agreement, including certain non-solicitation and cooperation provisions.

**Item 6. Exhibits**

The exhibits listed in the Exhibit Index below are filed with, or incorporated by reference in, this Quarterly Report on Form 10-Q, as specified in the Exhibit List, from exhibits previously filed with the Securities and Exchange Commission. Certain agreements listed in the Exhibit Index that we have filed or incorporated by reference may contain representations and warranties by us or our subsidiaries. These representations and warranties have been made solely for the benefit of the other party or parties to such agreements and (i) may have been qualified by disclosures made to such other party or parties, (ii) were made only as of the date of such agreements or such other date(s) as may be specified in such agreements and are subject to more recent developments, which may not be fully reflected in our public disclosures, (iii) may reflect the allocation of risk among the parties to such agreements and (iv) may apply materiality standards different from what may be viewed as material to investors. Accordingly, these representations and warranties may not describe the actual state of affairs at the date hereof and should not be relied upon.

**EXHIBIT INDEX**

Exhibit Number	Description
<a href="#">3.1</a>	Amended and Restated Certificate of Incorporation of Western Digital Corporation, as amended to date (Filed as Exhibit 3.1 to the Company's Quarterly Report on Form 10-Q (File No. 1-08703) with the Securities and Exchange Commission on February 8, 2006)
<a href="#">3.2</a>	Amended and Restated By-Laws of Western Digital Corporation, as amended effective as of February 10, 2021 (Filed as Exhibit 3.1 to the Company's Current Report on Form 8-K (File No. 1-08703) with the Securities and Exchange Commission on February 12, 2021)
<a href="#">4.1</a>	Indenture, dated as of December 10, 2021, between Western Digital Corporation and U.S. Bank National Association, as trustee (Filed as Exhibit 4.1 to the Company's Current Report on Form 8-K (File No. 1-08703) with the Securities and Exchange Commission on December 10, 2021)
<a href="#">4.2</a>	First Supplemental Indenture (including Form of 2.850% Senior Notes due 2029 and Form of 3.100% Senior Notes due 2032), dated as of December 10, 2021, between Western Digital Corporation and U.S. Bank National Association, as trustee (Filed as Exhibit 4.2 to the Company's Current Report on Form 8-K (File No. 1-08703) with the Securities and Exchange Commission on December 10, 2021)
<a href="#">10.1</a>	Western Digital Corporation 2021 Long-Term Incentive Plan, adopted as of August 18, 2021 (Filed as Exhibit 10.1 to the Company's Current Report on Form 8-K (File No. 1-08703) with the Securities and Exchange Commission on November 18, 2021)*
<a href="#">10.2</a>	Form of Grant Notice for Performance Stock Unit Award (TSR Measure) under the Western Digital Corporation 2021 Long-Term Incentive Plan†*
<a href="#">10.3</a>	Form of Grant Notice for Performance Stock Unit Award (Financial Measures) under the Western Digital Corporation 2021 Long-Term Incentive Plan†*
<a href="#">10.4</a>	Form of Grant Notice for Restricted Stock Unit Award – Vice President and Above, under the Western Digital Corporation 2021 Long-Term Incentive Plan†*
<a href="#">10.5</a>	Western Digital Corporation 2021 Long-Term Incentive Plan Non-Employee Director Restricted Stock Unit Grant Program, as amended November 22, 2021†**
<a href="#">10.6</a>	Flash Alliance Master Agreement, dated as of July 7, 2006, by and among SanDisk Corporation, Toshiba Corporation and SanDisk (Ireland) Limited†#
<a href="#">10.7</a>	Operating Agreement of Flash Alliance, Ltd., dated as of July 7, 2006, by and between Toshiba Corporation and SanDisk (Ireland) Limited†#
<a href="#">31.1</a>	Certification of Principal Executive Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002†
<a href="#">31.2</a>	Certification of Principal Financial Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002†
<a href="#">32.1</a>	Certification of Chief Executive Officer Pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002**
<a href="#">32.2</a>	Certification of Chief Financial Officer Pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002**
101.INS	XBRL Instance Document - the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document
101.SCH	XBRL Taxonomy Extension Schema Document†
101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document†
101.LAB	XBRL Taxonomy Extension Label Linkbase Document†
101.PRE	XBRL Taxonomy Extension Presentation Linkbase Document†
101.DEF	XBRL Taxonomy Extension Definition Linkbase Document†
104	Cover Page Interactive Data File - formatted in Inline XBRL and contained in Exhibit 101

† Filed with this report.

\* Management contract or compensatory plan or arrangement required to be filed as an exhibit pursuant to applicable rules of the Securities and Exchange Commission.

\*\* Furnished with this report.

# 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.





**WESTERN DIGITAL CORPORATION  
2021 LONG-TERM INCENTIVE PLAN  
GRANT NOTICE FOR  
PERFORMANCE STOCK UNIT AWARD  
(TSR MEASURE)**

FOR GOOD AND VALUABLE CONSIDERATION, Western Digital Corporation (the “*Company*”), hereby grants to the Participant named below the number of Performance Stock Units (the “*PSUs*”) listed below (this “*Award*”) under the Western Digital Corporation 2021 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 “ <i>Vesting Date</i> ”). 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.
Measurement Period:	The Measurement Period begins [_____] and ends [_____]. The actual number of PSUs that may become eligible to vest on the Vesting Date based on performance during a Measurement Period may range from [0%] to [200%] of the Target Number of PSUs corresponding to that Measurement Period, subject to forfeiture as provided in 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 THE AWARD DOCUMENT.**

Grant Notice for  
Performance Stock Unit Award

## EXHIBIT A

### WESTERN DIGITAL CORPORATION 2021 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 Western Digital Corporation 2021 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

Western Digital 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 Western Digital Corporation Deferred Compensation Plan (or any applicable successor plan) or any other deferred compensation arrangement of the Company.

(b) Following the end of the Measurement Period, the Administrator shall determine the extent to which the applicable performance goals have been achieved and the number of PSUs eligible to vest. Any PSUs (including any related credited dividend equivalents) corresponding to the Measurement Period that do not become eligible to vest shall terminate as of the end of the Measurement Period. The PSUs that become eligible to vest based on performance during the Measurement 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(c) or Section 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.

(c) *Termination due to Death; Termination due to a Qualifying Retirement; Termination without Cause under the Executive Severance Plan.* (1) Upon Participant’s termination of Continuous Service due to death, (2) upon Participant’s termination of employment due to a Qualifying Retirement (as defined below), or (3) for a Participant who is subject to the terms of the Western Digital Corporation Amended and Restated 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 Measurement 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 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 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 Measurement Period.

Exhibit A  
Standard Terms and Conditions

(ii) If the Measurement 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).

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 each applicable vesting date.

**"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.

(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 Western Digital Corporation Amended and Restated 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 Measurement 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 corresponding to the Measurement Period or (y) the number of shares of Common Stock subject to the PSUs corresponding to the Measurement Period that would vest based on the treatment set forth in the definitive agreement providing for the Change in Control.

(ii) If the Measurement Period has ended as of the date of termination of Continuous Service, the PSUs corresponding to such Measurement Period will remain outstanding and will vest, if at all, based on the actual achievement of the applicable performance goal(s).

(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(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). 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(c) 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 REALES 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. NONTRANSFERABILITY 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 Western Digital Technologies, Inc. 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. Such arbitration shall be held in Orange County, California, U.S.A., before a sole arbitrator selected from Judicial Arbitration and Mediation Services, Inc., Orange, California, 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 for non-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 – TSR MEASURE  
Performance Measures and Goals**

[To be Inserted]

Exhibit B  
PERFORMANCE MEASURES AND GOALS



## 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 to Tax-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, prior to 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 for Tax-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 the Tax-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 of Tax-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 decide, in its sole discretion, to deliver by email or other electronic means any documents relating to the Plan or the PSUs. Further, the Participant 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. 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.

**WESTERN DIGITAL CORPORATION  
2021 LONG-TERM INCENTIVE PLAN  
GRANT NOTICE FOR  
PERFORMANCE STOCK UNIT AWARD  
(FINANCIAL MEASURES)**

FOR GOOD AND VALUABLE CONSIDERATION, Western Digital Corporation (the “*Company*”), hereby grants to the Participant named below the number of Performance Stock Units (the “*PSUs*”) listed below (this “*Award*”) under the Western Digital Corporation 2021 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 “ <i>Vesting Date</i> ”). 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.
Measurement Period:	The Measurement Period begins [_____] and ends [_____]. The actual number of PSUs that may become eligible to vest on the Vesting Date based on performance during a Measurement Period may range from [0%] to [200%] of the Target Number of PSUs corresponding to that Measurement Period, subject to forfeiture as provided in 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 THE AWARD DOCUMENT.**

Grant Notice for  
Performance Stock Unit Award

## EXHIBIT A

### WESTERN DIGITAL CORPORATION 2021 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 Western Digital Corporation 2021 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

Western Digital 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 Western Digital Corporation Deferred Compensation Plan (or any applicable successor plan) or any other deferred compensation arrangement of the Company.

(b) Following the end of the Measurement Period, the Administrator shall determine the extent to which the applicable performance goals have been achieved and the number of PSUs eligible to vest. Any PSUs (including any related credited dividend equivalents) corresponding to the Measurement Period that do not become eligible to vest shall terminate as of the end of the Measurement Period. The PSUs that become eligible to vest based on performance during the Measurement 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(c) or Section 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.

(c) *Termination due to Death; Termination due to a Qualifying Retirement; Termination without Cause under the Executive Severance Plan.* (1) Upon Participant’s termination of Continuous Service due to death, (2) upon Participant’s termination of employment due to a Qualifying Retirement (as defined below), or (3) for a Participant who is subject to the terms of the Western Digital Corporation Amended and Restated 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 Measurement 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 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 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 Measurement Period.

Exhibit A  
Standard Terms and Conditions

(ii) If the Measurement 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).

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 each applicable vesting date.

**"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.

(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 Western Digital Corporation Amended and Restated 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 Measurement 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 corresponding to the Measurement Period or (y) the number of shares of Common Stock subject to the PSUs corresponding to the Measurement Period that would vest based on the treatment set forth in the definitive agreement providing for the Change in Control.

(ii) If the Measurement Period has ended as of the date of termination of Continuous Service, the PSUs corresponding to such Measurement Period will remain outstanding and will vest, if at all, based on the actual achievement of the applicable performance goal(s).

(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(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). 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(c) 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 REALES 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. NONTRANSFERABILITY 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 Western Digital Technologies, Inc. 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. Such arbitration shall be held in Orange County, California, U.S.A., before a sole arbitrator selected from Judicial Arbitration and Mediation Services, Inc., Orange, California, 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 for non-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 – FINANCIAL MEASURES Performance Measures and Goals**

[To be Inserted]

## **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 to Tax-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, prior to 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 for Tax-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 the Tax-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 of Tax-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.

Exhibit b  
performance measures and goals

### 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 decide, in its sole discretion, to deliver by email or other electronic means any documents relating to the Plan or the PSUs. Further, the Participant 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. 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.

**WESTERN DIGITAL CORPORATION  
2021 LONG-TERM INCENTIVE PLAN  
GRANT NOTICE FOR  
RESTRICTED STOCK UNIT AWARD – VICE PRESIDENT AND ABOVE**

FOR GOOD AND VALUABLE CONSIDERATION, Western Digital Corporation (the “*Company*”) hereby grants 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 (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:	<p>The RSUs shall vest in accordance with the following schedule:</p> <p><input type="checkbox"/></p> <p>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.</p>

**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.**

Grant Notice for  
Restricted Stock Unit Award



## EXHIBIT A

### WESTERN DIGITAL CORPORATION 2021 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 Western Digital Corporation 2021 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

Western Digital 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 Western Digital 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 Western Digital Corporation Amended and Restated 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) 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 Western Digital Corporation Amended and Restated 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 REALES 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. NONTRANSFERABILITY 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 Western Digital Technologies, Inc. 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. Such arbitration shall be held in Orange County, California, U.S.A., before a sole arbitrator selected from Judicial Arbitration and Mediation Services, Inc., Orange, California, 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 for non-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 to Tax-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, prior to 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 for Tax-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 the Tax-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 of Tax-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);
- (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 decide, in its sole discretion, to deliver by email or other electronic means any documents relating to the Plan or the RSUs. Further, the Participant 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. 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.



**WESTERN DIGITAL CORPORATION**  
**2021 LONG-TERM INCENTIVE PLAN**  
**NON-EMPLOYEE DIRECTOR RESTRICTED STOCK UNIT GRANT PROGRAM**

- 1. Establishment.** The Company maintains the Western Digital Corporation Non-Employee Directors Restricted Stock Unit Program (the “**Program**”), which is hereby amended and restated in its entirety effective as of November 22, 2021 (the “**Effective Date**”). This amendment and restatement of the Program is effective as to grants on and after the Effective Date; awards granted under the Program prior to the Effective Date are governed by the applicable terms of the Program as in effect on the date of grant of the award. The Program has been restated as an Appendix to, and any shares of Common Stock issued with respect to awards granted under the Program on and after the Effective Date shall be charged against the applicable share limits of, the Western Digital Corporation 2021 Long-Term Incentive Plan (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 members of the Board who are not officers or employees of the Company or one of its Subsidiaries (“**Non-Employee Directors**”) an opportunity 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 6 or Section 8. 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**”).
- 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 2021, each Non-Employee 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 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 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.

**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. Dividend and Voting Rights.**

**5.1 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 5.2 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.

**5.2 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 5.2 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 5.2. 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).

**6. Vesting.** Subject to Section 8 hereof and Section 9 of the Plan, a Restricted Stock Unit Award granted to a Non-Employee Director pursuant to the Program (whether pursuant to

Section 4 or Section 5.2) shall vest and become payable as to 100% of the total number of Restricted Stock Units subject thereto on the first to occur of (i) the first anniversary of the date of grant of the Restricted Stock Unit Award or (ii) immediately prior to the Company's first regular meeting of stockholders following the date of grant of the Restricted Stock Unit Award.

7. **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 a Restricted Stock Unit 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 8 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.

8. **Termination of Directorship.** Subject to earlier termination pursuant to Section 9 of the Plan, if a Non-Employee Director incurs a Separation from Service (as defined below) for any reason, the following rules shall apply with respect to any Restricted Stock Units granted to the Non-Employee Director pursuant to Section 4 above:

- other than as expressly provided below in this Section 8, all Restricted Stock Units granted to the Non-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 Restricted Stock Units granted to the Non-Employee Director pursuant to the Program shall immediately vest and become payable as provided in Section 9;
- 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 Restricted Stock Units granted to the Non-Employee Director pursuant to the Program shall immediately terminate without payment therefor.

For purposes of this Section 8, 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 8, 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 8, 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.

**9. Timing and Manner of Payment of Restricted Stock Units.** Except as provided in Section 10 below, on or within fifteen (15) business days following the first to occur of (i) the first anniversary of the date of grant of the Restricted Stock Unit Award, or (ii) 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) that vested with respect to the corresponding Restricted Stock Unit 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 Amended and Restated 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 with respect to Restricted Stock Units that vest 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 with respect to vested Restricted Stock Units is subject to the condition precedent that the Non-Employee Director (or other person entitled under the Plan to receive any shares with respect to the vested Restricted Stock Units) 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 8 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.

**10. Change in Control Events.** A Restricted Stock Unit 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 Restricted Stock Unit Award shall not be made until such Restricted Stock Unit Award would have become vested and payable without regard to this Section 10 or Section 9 of the Plan.

**11. Plan Provisions; Maximum Number of Shares; Amendment; Administration; Construction.** Restricted Stock Units 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 a Restricted Stock Unit Award granted under the Program before the adoption of such amendment. The Board may amend, modify, suspend or terminate outstanding Restricted Stock Unit Awards; provided, however, that outstanding Restricted Stock Unit 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 Restricted Stock Unit 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 any or all of the Restricted Stock Units subject to the award pursuant to the Deferred Compensation Plan shall be disregarded. The Program does not limit the Board's authority to make other, discretionary award grants to Non-Employee Directors pursuant to the Plan. The Plan 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 Restricted Stock Unit 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 Restricted Stock Unit Awards granted hereunder shall be construed and interpreted consistent with that intent.

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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

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FLASH ALLIANCE MASTER AGREEMENT

Dated as of July 7, 2006

by and among

TOSHIBA CORPORATION,

SANDISK CORPORATION

and

SANDISK (IRELAND) LIMITED

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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:



<b>Term</b>	<b>Defined In</b>
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

<b>Term</b>	<b>Defined In</b>
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)

<b>Term</b>	<b>Defined In</b>
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 of Exhibit 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 of Exhibit 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 of Exhibit 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 of Exhibit 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. 2 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 the Ramp-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) [\*\*\*]

(A) [\*\*\*]

(B) [\*\*\*]

(C) [\*\*\*]

(D) [\*\*\*]

(E) [\*\*\*]

(ii) [\*\*\*]

(A) [\*\*\*]

(B) [\*\*\*]

(C) [\*\*\*]

(D) [\*\*\*]

(E) [\*\*\*]

(iii) [\*\*\*]

(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 the Non-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 the Non-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 facilitating 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 rolling six-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 a non-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, 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.
- (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.

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IN WITNESS WHEREOF, this Agreement has been executed and delivered by the Parties as of the date first above written.

TOSHIBA CORPORATION

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

Name: Masashi Muromachi

Title: President and CEO

Semiconductor Company  
Corporate Executive Vice President

SANDISK CORPORATION

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

Name: Eli Harari

Title: Chief Executive Officer

SANDISK (IRELAND) LIMITED

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

Name: Sanjay Mehrotra

Title: Director

## APPENDICES

Appendix A — Definitions, Rules of Construction and General Terms and Conditions

## EXHIBIT

### (Flash Alliance Documents)

Exhibit A1 — Share Purchase Agreement  
Exhibit A2 — FA Operating Agreement  
Exhibit A3 — FA Foundry Agreement  
Exhibit A4-1 — SanDisk Purchase and Supply Agreement  
Exhibit A4-2 — Toshiba Purchase and Supply Agreement  
Exhibit A5 — FA Patent Indemnification Agreement  
Exhibit A6 — Mutual Environmental Indemnification Agreement  
Exhibit A7 — Lease Agreement  
Exhibit A8 — Toshiba-SanDisk Ireland Services Agreement  
Exhibit A9 — Toshiba-Flash Alliance Services Agreement  
Exhibit A10 — SanDisk Ireland-Flash Alliance Services Agreement

### (Joint Operative Documents)

Exhibit B1 — Common R&D and Participation Agreement  
Exhibit B2 — Product Development Agreement  
Exhibit B3 — Amendment No. 4 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 6.3 — 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

**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

2.1 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 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) 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 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 Yamanoishshikicho,  
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: 01 1-81-3-3457-3452  
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 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.

(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 than 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 this Appendix A shall apply to this Article II.

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

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**OPERATING AGREEMENT OF FLASH ALLIANCE, LTD.**

Dated as of July 7, 2006 between

TOSHIBA CORPORATION

and

SANDISK (IRELAND) LIMITED

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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:**



<b><u>Term</u></b>	<b><u>Defined in</u></b>
"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 4.1(b)
"Indemnified Party"	Section 12.4(a)
"Indemnifying Party"	Section 12.4(a)
"Initiating Shareholder"	Section 10.3(e)
"Losses"	Section 12.1(a)
"Master Agreement"	Section 1.1(a)
"Nondefaulting Shareholder"	Section 10.4
"Notified Patty"	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 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 5.1(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 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 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 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 11.11 (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 my 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 has 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 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 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 5.1(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 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 or 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 than fifty-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 the non-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 9.1(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 4.1(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 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 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 Party'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 11.6(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 Party 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 12.1(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 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 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

**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 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.

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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

[\*\*\*]



**CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER  
PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, David V. Goeckeler, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Western Digital Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15(d)-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

/s/ David V. Goeckeler

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David V. Goeckeler  
*Chief Executive Officer*

Dated: February 3, 2022

**CERTIFICATION OF PRINCIPAL FINANCIAL OFFICER  
PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Robert K. Eulau, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Western Digital Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15(d)-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

/s/ Robert K. Eulau

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Robert K. Eulau  
*Executive Vice President and Chief Financial Officer  
(Principal Financial Officer)*

Dated: February 3, 2022

The following certification is being furnished solely to accompany the Report pursuant to 18 U.S.C. § 1350 and in accordance with SEC Release No. 33-8238. This certification shall not be deemed “filed” for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, or otherwise subject to the liability of that section, nor shall it be incorporated by reference into any filing of the Company under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended, except to the extent that Western Digital Corporation specifically incorporates it by reference.

**Certification of Chief Executive Officer**

Pursuant to 18 U.S.C. § 1350, as created by Section 906 of the Sarbanes-Oxley Act of 2002, the undersigned officer of Western Digital Corporation, a Delaware corporation (the “Company”), hereby certifies, to his knowledge, that:

(i) the accompanying Quarterly Report on Form 10-Q of the Company for the period ended December 31, 2021 (the “Report”) fully complies with the requirements of Section 13(a) or Section 15(d), as applicable, of the Securities Exchange Act of 1934, as amended; and

(ii) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ David V. Goeckeler

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David V. Goeckeler  
*Chief Executive Officer*

Dated: February 3, 2022

The following certification is being furnished solely to accompany the Report pursuant to 18 U.S.C. § 1350 and in accordance with SEC Release No. 33-8238. This certification shall not be deemed “filed” for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, or otherwise subject to the liability of that section, nor shall it be incorporated by reference into any filing of the Company under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended, except to the extent that Western Digital Corporation specifically incorporates it by reference.

**Certification of Chief Financial Officer**

Pursuant to 18 U.S.C. § 1350, as created by Section 906 of the Sarbanes-Oxley Act of 2002, the undersigned officer of Western Digital Corporation, a Delaware corporation (the “Company”), hereby certifies, to his knowledge, that:

(i) the accompanying Quarterly Report on Form 10-Q of the Company for the period ended December 31, 2021 (the “Report”) fully complies with the requirements of Section 13(a) or Section 15(d), as applicable, of the Securities Exchange Act of 1934, as amended; and

(ii) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ Robert K. Eulau

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Robert K. Eulau

*Executive Vice President and Chief Financial Officer  
(Principal Financial Officer)*

Dated: February 3, 2022