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 March 31, 2023

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	**33-0956711**
(State or other jurisdiction of incorporation or organization)	*(I.R.S. Employer Identification No.)*
5601 Great Oaks Parkway San Jose, California	**95119**
(Address of principal executive offices)	*(Zip Code)*

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

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

Title of each class	Trading symbol(s)	Name of each exchange on which registered
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
☒	☐	☐	☐	☐

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 April 26, 2023, 319,937,433 shares of common stock, par value $0.01 per share, were outstanding.

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.

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 impact of the network security incident; the global macroeconomic environment; 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; expectations regarding our effective tax rate and our unrecognized tax benefits; 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:

- *volatility in global economic conditions;*
- *future responses to and effects of the COVID-19 pandemic or other similar global health crises;*
- *impact of business and market conditions;*
- *the outcome and impact of our ongoing strategic review, including with respect to customer and supplier relationships, regulatory and contractual restrictions, stock price volatility and the diversion of management's attention from ongoing business operations and opportunities;*
- *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 level of debt and other financial obligations;*
- *changes to our relationships with key customers;*
- *compromise, damage or interruption from cybersecurity incidents or other data or 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 year ended July 1, 2022 (the "2022 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 2022 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 2022 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)

	March 31, 2023	July 1, 2022
ASSETS		
Current assets:		
Cash and cash equivalents	$ 2,220	$ 2,327
Accounts receivable, net	1,591	2,804
Inventories	3,979	3,638
Other current assets	693	684
Total current assets	8,483	9,453
Property, plant and equipment, net	3,668	3,670
Notes receivable and investments in Flash Ventures	1,379	1,396
Goodwill	10,041	10,041
Other intangible assets, net	97	213
Other non-current assets	1,483	1,486
Total assets	$ 25,151	$ 26,259
LIABILITIES, CONVERTIBLE PREFERRED STOCK AND SHAREHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	$ 1,307	$ 1,902
Accounts payable to related parties	265	320
Accrued expenses	1,158	1,636
Income taxes payable	1,013	869
Accrued compensation	343	510
Current portion of long-term debt	1,175	—
Total current liabilities	5,261	5,237
Long-term debt	5,898	7,022
Other liabilities	1,505	1,779
Total liabilities	12,664	14,038
Commitments and contingencies (Notes 10, 11, 13 and 16)		
Convertible preferred stock, $0.01 par value; authorized — 5 shares; issued and outstanding — 0.9 shares and 0 shares, respectively	876	—
Shareholders' equity:		
Common stock, $0.01 par value; authorized — 450 shares; issued and outstanding — 320 shares and 315 shares, respectively	3	3
Additional paid-in capital	3,831	3,733
Accumulated other comprehensive loss	(362)	(554)
Retained earnings	8,139	9,039
Total shareholders' equity	11,611	12,221
Total liabilities, convertible preferred stock and shareholders' equity	$ 25,151	$ 26,259

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		Nine Months Ended	
	March 31, 2023	April 1, 2022	March 31, 2023	April 1, 2022
Revenue, net	$ 2,803	$ 4,381	$ 9,646	$ 14,265
Cost of revenue	2,517	3,200	7,851	9,836
Gross profit	286	1,181	1,795	4,429
Operating expenses:				
Research and development	476	572	1,551	1,725
Selling, general and administrative	242	281	739	851
Employee termination, asset impairment, and other charges	40	4	140	24
Total operating expenses	758	857	2,430	2,600
Operating income (loss)	(472)	324	(635)	1,829
Interest and other income (expense):				
Interest income	10	1	15	4
Interest expense	(80)	(75)	(223)	(229)
Other income, net	13	12	13	8
Total interest and other expense, net	(57)	(62)	(195)	(217)
Income (loss) before taxes	(529)	262	(830)	1,612
Income tax expense	43	237	161	413
Net income (loss)	(572)	25	(991)	1,199
Less: cumulative dividends allocated to preferred shareholders	9	—	9	—
Net income (loss) attributable to common shareholders	$ (581)	$ 25	$ (1,000)	$ 1,199
Income (loss) per common share:				
Basic	$ (1.82)	$ 0.08	$ (3.14)	$ 3.84
Diluted	$ (1.82)	$ 0.08	$ (3.14)	$ 3.79
Weighted average shares outstanding:				
Basic	319	313	318	312
Diluted	319	316	318	316

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

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

	Three Months Ended		Nine Months Ended	
	March 31, 2023	April 1, 2022	March 31, 2023	April 1, 2022
Net income (loss)	$ (572)	$ 25	$ (991)	$ 1,199
Other comprehensive income (loss), before tax:				
Actuarial pension gain (loss)	(1)	1	(1)	2
Foreign currency translation adjustment	(7)	(82)	8	(123)
Net unrealized gain (loss) on derivative contracts and available-for-sale securities	21	(74)	233	(51)
Total other comprehensive income (loss), before tax	13	(155)	240	(172)
Income tax benefit (expense) related to items of other comprehensive income (loss), before tax	(6)	15	(48)	12
Other comprehensive income (loss), net of tax	7	(140)	192	(160)
Total comprehensive income (loss)	$ (565)	$ (115)	$ (799)	$ 1,039

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)

	Nine Months Ended	
	March 31, 2023	**April 1, 2022**
Cash flows from operating activities		
Net income (loss)	$ (991)	$ 1,199
Adjustments to reconcile net income (loss) to net cash provided by operations:		
Depreciation and amortization	643	708
Stock-based compensation	246	249
Deferred income taxes	34	41
Gain on disposal of assets	(7)	(14)
Non-cash portion of asset impairment	18	—
Amortization of debt issuance costs and discounts	9	34
Other non-cash operating activities, net	6	42
Changes in:		
Accounts receivable, net	1,213	(96)
Inventories	(341)	(45)
Accounts payable	(442)	(100)
Accounts payable to related parties	(54)	(2)
Accrued expenses	(484)	2
Income taxes payable	144	(50)
Accrued compensation	(169)	(149)
Other assets and liabilities, net	(165)	(234)
Net cash (used in) provided by operating activities	(340)	1,585
Cash flows from investing activities		
Purchases of property, plant and equipment	(702)	(842)
Proceeds from the sale of property, plant and equipment	14	13
Notes receivable issuances to Flash Ventures	(496)	(496)
Notes receivable proceeds from Flash Ventures	542	519
Strategic investments and other, net	22	(16)
Net cash used in investing activities	(620)	(822)
Cash flows from financing activities		
Issuance of stock under employee stock plans	49	62
Taxes paid on vested stock awards under employee stock plans	(69)	(85)
Net proceeds from convertible preferred stock	882	—
Repayments of debt	(1,180)	(3,471)
Proceeds from debt	1,180	1,894
Debt issuance costs	(6)	(23)
Net cash provided by (used in) financing activities	856	(1,623)
Effect of exchange rate changes on cash	(3)	(5)
Net decrease in cash and cash equivalents	(107)	(865)
Cash and cash equivalents, beginning of year	2,327	3,370
Cash and cash equivalents, end of period	$ 2,220	$ 2,505
Supplemental disclosure of cash flow information:		
Cash paid for income taxes	$ 181	$ 376
Cash paid for interest	$ 252	$ 221
Noncash exchange of TLA-1 notes for TLA-2 notes	$ —	$ 2,104

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

WESTERN DIGITAL CORPORATION
CONDENSED CONSOLIDATED STATEMENTS OF CONVERTIBLE PREFERRED STOCK AND SHAREHOLDERS' EQUITY
(in millions)
(Unaudited)

	Convertible Preferred Stock		Common Stock		Additional Paid-In Capital	Accumulated Other Comprehensive Loss	Retained Earnings	Total Shareholders' Equity
	Shares	Amount	Shares	Amount				
Balance at July 1, 2022	—	$ —	315	$ 3	$ 3,733	$ (554)	$ 9,039	$ 12,221
Net income	—	—	—	—	—	—	27	27
Adoption of new accounting standards	—	—	—	—	(128)	—	91	(37)
Employee stock plans	—	—	3	—	(50)	—	—	(50)
Stock-based compensation	—	—	—	—	86	—	—	86
Foreign currency translation adjustment	—	—	—	—	—	(80)	—	(80)
Net unrealized loss on derivative contracts	—	—	—	—	—	(60)	—	(60)
Balance at September 30, 2022	—	—	318	3	3,641	(694)	9,157	12,107
Net loss	—	—	—	—	—	—	(446)	(446)
Employee stock plans	—	—	1	—	43	—	—	43
Stock-based compensation	—	—	—	—	86	—	—	86
Foreign currency translation adjustment	—	—	—	—	—	97	—	97
Net unrealized gain on derivative contracts	—	—	—	—	—	228	—	228
Balance at December 30, 2022	—	—	319	3	3,770	(369)	8,711	12,115
Net loss	—	—	—	—	—	—	(572)	(572)
Issuance of convertible preferred stock, net of issuance costs	1	876	—	—	—	—	—	—
Employee stock plans	—	—	1	—	(13)	—	—	(13)
Stock-based compensation	—	—	—	—	74	—	—	74
Actuarial pension gain	—	—	—	—	—	(1)	—	(1)
Foreign currency translation adjustment	—	—	—	—	—	(8)	—	(8)
Net unrealized gain on derivative contracts	—	—	—	—	—	16	—	16
Balance at March 31, 2023	1	$ 876	320	$ 3	$ 3,831	$ (362)	$ 8,139	$ 11,611

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

WESTERN DIGITAL CORPORATION
CONDENSED CONSOLIDATED STATEMENTS OF CONVERTIBLE PREFERRED STOCK AND SHAREHOLDERS' EQUITY
(in millions)
(Unaudited)

	Common Stock		Treasury Stock		Additional Paid-In Capital	Accumulated Other Comprehensive Loss	Retained Earnings	Total Shareholders' Equity
	Shares	Amount	Shares	Amount				
Balance at July 2, 2021	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
Balance at October 1, 2021	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)
Balance at December 31, 2021	313	3	—	—	3,519	(217)	8,713	12,018
Net income	—	—	—	—	—	—	25	25
Employee stock plans	—	—	—	—	(5)	—	—	(5)
Stock-based compensation	—	—	—	—	86	—	—	86
Actuarial pension gain	—	—	—	—	—	1	—	1
Foreign currency translation adjustment	—	—	—	—	—	(82)	—	(82)
Net unrealized gain on derivative contracts	—	—	—	—	—	(59)	—	(59)
Balance at April 1, 2022	313	$ 3	—	$ —	$ 3,600	$ (357)	$ 8,738	$ 11,984

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 based on both flash-based products ("Flash") and hard disk drives ("HDD") technologies. With dedicated Flash and HDD business units driving advancements in storage technologies, the Company creates and drives innovations needed to help customers capture, preserve, access, and transform an ever-increasing diversity 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 year ended July 1, 2022. 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 year ended July 1, 2022. 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 2023, which ends on June 30, 2023, and 2022, which ended on July 1, 2022, are each comprised of 52 weeks, with all quarters presented consisting of 13 weeks.

Segment Reporting

The Company manufactures, markets, and sells data storage devices and solutions in the United States ("U.S.") and in foreign countries through its sales personnel, dealers, distributors, retailers, and subsidiaries. The Company manages and reports under two reportable segments: Flash and HDD.

The Company's Chief Operating Decision Maker ("CODM") evaluates performance of the Company and makes decisions regarding allocation of resources based on each operating segment's net revenue and gross margin. 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.

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 current macroeconomic conditions. However, actual results could differ materially from these estimates.

Income (Loss) per Common Share

The Company computes net income (loss) per common share using a two-class method when shares are issued that meet the definition of participating securities. The two-class method determines net income (loss) per common share for each class of common stock and participating securities according to dividends declared or accumulated and participation rights in undistributed earnings. The two-class method requires undistributed earnings for the period to be allocated between common stock and participating securities based upon their respective rights to receive dividends as if all income for the period had been distributed. The Company's convertible preferred stock contractually entitles the holders of such shares to participate in dividends but does not contractually require the holders of such shares to participate in the Company's losses.

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

Note 2. Recent Accounting Pronouncements

Accounting Pronouncements Recently Adopted

In August 2020, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("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 prior 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. The Company adopted the new standard effective July 2, 2022, the first day of the year ending June 30, 2023, using the modified retrospective method. On the date of adoption, the Company recorded a reduction in Additional Paid-In Capital of $128 million, a reduction of unamortized debt discount of $48 million, a reduction of deferred income tax liabilities of $11 million, and an increase to retained earnings of $91 million for the after-tax impact of previously recognized amortization of the debt discount associated with the Company's convertible senior notes.

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 2023. The Company adopted this ASU on July 2, 2022, the first day of the year ending June 30, 2023, and the adoption did not have a material impact on its Condensed Consolidated Financial Statements.

Recently Issued Accounting Pronouncements Not Yet Adopted

In September 2022, the FASB issued ASU No. 2022-04, "Liabilities-Supplier Finance Programs (Subtopic 405-50): Disclosure of Supplier Finance Program Obligations". This guidance requires annual and interim disclosures for entities that use supplier finance programs in connection with the purchase of goods and services. The ASU is effective for fiscal years beginning after December 15, 2022, which for the Company is the first quarter of 2024, with early adoption permitted, except for the amendment on rollforward information, which is effective for fiscal years beginning after December 15, 2023. The Company is currently evaluating the extent of the impact of this ASU on its Condensed Consolidated Financial Statements.

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

Note 3. Business Segments, Geographic Information, and Concentrations of Risk

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

	Three Months Ended		Nine Months Ended	
	March 31, 2023	April 1, 2022	March 31, 2023	April 1, 2022
	$ in millions			
Net revenue:				
Flash	$ 1,307	$ 2,243	$ 4,686	$ 7,353
HDD	1,496	2,138	4,960	6,912
Total net revenue	$ 2,803	$ 4,381	$ 9,646	$ 14,265
Gross profit:				
Flash	$ (65)	$ 798	$ 597	$ 2,665
HDD	363	592	1,237	2,061
Total gross profit for segments	298	1,390	1,834	4,726
Unallocated corporate items:				
Stock-based compensation expense	(12)	(13)	(38)	(36)
Amortization of acquired intangible assets	—	—	(1)	(65)
Contamination related charges	—	(203)	—	(203)
Recoveries from a power outage incident	—	7	—	7
Total unallocated corporate items	(12)	(209)	(39)	(297)
Consolidated gross profit	$ 286	$ 1,181	$ 1,795	$ 4,429
Gross margin:				
Flash	(5.0)%	35.6 %	12.7 %	36.2 %
HDD	24.3 %	27.7 %	24.9 %	29.8 %
Consolidated gross margin	10.2 %	27.0 %	18.6 %	31.0 %

Disaggregated Revenue

The Company's broad portfolio of technology and products address multiple end markets. Cloud is 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 Flash and HDD. 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.

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

The Company's disaggregated revenue information is as follows:

	Three Months Ended		Nine Months Ended	
	March 31, 2023	April 1, 2022	March 31, 2023	April 1, 2022
	(in millions)			
Revenue by End Market				
Cloud	$ 1,205	$ 1,774	$ 4,258	$ 5,919
Client	975	1,732	3,293	5,439
Consumer	623	875	2,095	2,907
Total Revenue	$ 2,803	$ 4,381	$ 9,646	$ 14,265
Revenue by Geography				
Asia	$ 1,353	$ 2,400	$ 4,533	$ 7,685
Americas	935	1,377	3,448	4,398
Europe, Middle East and Africa	515	604	1,665	2,182
Total Revenue	$ 2,803	$ 4,381	$ 9,646	$ 14,265

The Company's top 10 customers accounted for 49% and 45% of its net revenue for the three and nine months ended March 31, 2023, respectively, and 44% and 43% of its net revenue for the three and nine months ended April 1, 2022, respectively. For the three and nine months ended March 31, 2023 and April 1, 2022, no single customer accounted for 10% or more of the Company's net revenue.

Goodwill

The following table provides a summary of goodwill activity for the period:

	Flash	HDD	Total
		(in millions)	
Balance at July 1, 2022	$ 5,718	$ 4,323	$ 10,041
Foreign currency translation adjustment	—	—	—
Balance at March 31, 2023	$ 5,718	$ 4,323	$ 10,041

Goodwill is not amortized. Instead, it is tested for impairment annually as of the beginning of the Company's fourth quarter, or more frequently if events or changes in circumstances indicate that goodwill may be impaired. The Company uses qualitative factors to determine whether goodwill is more-likely-than-not impaired and whether a quantitative test for impairment is considered necessary. If the Company concludes from the qualitative assessment that goodwill is more-likely-than-not-impaired, the Company is required to perform a quantitative approach to determine the amount of impairment.

As of December 30, 2022, management identified several continuing factors, including changes in macroeconomic conditions and recent declines of the Company's market stock price, that warranted quantitative analyses of impairments for both the Flash and HDD reporting units as of such date. The fair value of each operating segment was based on a weighting of two valuation methodologies: an income approach and a market approach.

The income approach was based on the present value of the projected discounted cash flows ("DCF") expected to be generated by the operating segment. Those projections required the use of significant estimates and assumptions specific to the reporting unit as well as those based on general economic conditions, which included, among other factors, revenue growth rates, gross margins, operating costs, capital expenditures, assumed tax rates and other assumptions deemed reasonable by management. The present value was based on applying a weighted average cost of capital ("WACC") which considered long-term interest rates and cost of equity based on the Company's risk profile.

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The market approach was based on a guideline company method, which analyzed market multiples of revenue and earnings before interest, taxes, depreciation and amortization ("EBITDA") for a group of comparable public companies.

The Company reconciled the aggregated estimated fair value of both operating segments to the Company's market capitalization, including consideration of a control premium representing the estimated amount a market participant would pay to obtain a controlling interest in the Company.

As of December 30, 2022, the fair value derived from those valuation methodologies exceeded the carrying value by 9% and 28% for Flash and HDD, respectively.

Management performed a goodwill impairment assessment for both reporting units as of the third quarter ended March 31, 2023. The assessment considered the continuing macroeconomic environment, industry conditions, reporting unit performance and revised forecasts, and determined there were no events or circumstances from prior quarter's quantitative assessment that rise to a level that would more-likely-than-not reduce the fair value of the reporting units below their carrying value; therefore, no quantitative goodwill impairment analysis was performed. There were no impairment charges recorded for the three and nine months ended March 31, 2023.

The Company is required to use judgment when assessing goodwill for impairment, including evaluating the impact of industry and macroeconomic conditions, the determination of the fair value of each reporting unit and the assignment of assets and liabilities to reporting units. In addition, the estimates used to determine the fair value of reporting units as well as their actual carrying value may change based on future changes in the Company's results of operations, macroeconomic conditions or other factors. Changes in these estimates could materially affect the Company's assessment of the fair value and goodwill impairment. In addition, if negative macroeconomic conditions continue or worsen or the Company's stock price decreases for a sustained period of time, goodwill could become impaired, which could result in an impairment charge and materially adversely affect the Company's financial condition and results of operations.

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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 March 31, 2023 or July 1, 2022. Contract liabilities relate to customers' payments in advance of performance under the contract and primarily relate to remaining performance obligations under professional service and support and maintenance contracts. Contract liabilities as of March 31, 2023 and July 1, 2022 and changes in contract liabilities for the nine months ended March 31, 2023 and April 1, 2022 were not material.

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. The Company had no direct incremental costs to obtain contracts that have an expected benefit of greater than one year.

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 license arrangements, which typically range longer than one year. Remaining performance obligations are mainly attributed to right-to-access patent license arrangements, professional service arrangements and customer support and service contracts which will be recognized over the remaining contract period. The transaction price allocated to the remaining performance obligations as of March 31, 2023 was not material.

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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. During the nine months ended March 31, 2023 and April 1, 2022, the Company sold trade accounts receivable aggregating $626 million and $100 million, respectively. 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. As of March 31, 2023 and July 1, 2022, the amount of factored receivables that remained outstanding was $235 million and $300 million, respectively.

Inventories

	March 31, 2023	July 1, 2022
	(in millions)	
Inventories:		
Raw materials and component parts	$ 2,204	$ 1,603
Work-in-process	1,025	1,162
Finished goods	750	873
Total inventories	$ 3,979	$ 3,638

Property, plant and equipment, net

	March 31, 2023	July 1, 2022
	(in millions)	
Property, plant and equipment:		
Land	$ 269	$ 269
Buildings and improvements	1,957	1,920
Machinery and equipment	8,716	8,642
Computer equipment and software	510	494
Furniture and fixtures	55	54
Construction-in-process	756	591
Property, plant and equipment, gross	12,263	11,970
Accumulated depreciation	(8,595)	(8,300)
Property, plant and equipment, net	$ 3,668	$ 3,670

Other Intangible assets, net

	March 31, 2023	July 1, 2022
	(in millions)	
Other Intangible assets:		
Finite-lived intangible assets	$ 5,493	$ 5,493
In-process research and development	80	80
Accumulated amortization	(5,476)	(5,360)
Other Intangible assets, net	$ 97	$ 213

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.

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Product warranty liability

Changes in the warranty accrual were as follows:

	Three Months Ended		Nine Months Ended	
	March 31, 2023	April 1, 2022	March 31, 2023	April 1, 2022
	(in millions)			
Warranty accrual, beginning of period	$ 289	$ 351	$ 345	$ 363
Charges to operations	26	35	83	111
Utilization	(43)	(20)	(137)	(71)
Changes in estimate related to pre-existing warranties	—	(11)	(19)	(48)
Warranty accrual, end of period	$ 272	$ 355	$ 272	$ 355

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:

	March 31, 2023	July 1, 2022
	(in millions)	
Warranty accrual:		
Current portion (included in Accrued expenses)	$ 117	$ 162
Long-term portion (included in Other liabilities)	155	183
Total warranty accrual	$ 272	$ 345

Other liabilities

	March 31, 2023	July 1, 2022
	(in millions)	
Other liabilities:		
Non-current net tax payable	$ 462	$ 659
Non-current portion of unrecognized tax benefits	439	477
Other non-current liabilities	604	643
Total other liabilities	$ 1,505	$ 1,779

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Accumulated other comprehensive loss

Accumulated other comprehensive 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 Losses	Foreign Currency Translation Adjustment	Unrealized Losses on Derivative Contracts	Total Accumulated Comprehensive Loss
		(in millions)		
Balance at July 1, 2022	$ (11)	$ (277)	$ (266)	$ (554)
Other comprehensive income before reclassifications	(1)	8	(17)	(10)
Amounts reclassified from accumulated other comprehensive loss	—	—	250	250
Income tax benefit related to items of other comprehensive loss	—	1	(49)	(48)
Net current-period other comprehensive income	(1)	9	184	192
Balance at March 31, 2023	$ (12)	$ (268)	$ (82)	$ (362)

During the three and nine months ended March 31, 2023, the amounts reclassified out of AOCI were losses related to foreign exchange contracts and gains related to interest rate swap contracts. Losses reclassified out of AOCI related to foreign exchange contracts were $79 million and $260 million for the three and nine months ended March 31, 2023, respectively, that were substantially charged to Cost of revenue in the Condensed Consolidated Statements of Operations. Gains reclassified out of AOCI related to interest rate swap contracts were $6 million and $10 million for the three and nine months ended March 31, 2023, respectively, that were charged to Interest expense in the Condensed Consolidated Statements of Operations.

As of March 31, 2023, substantially all existing net losses related to cash flow hedges recorded in AOCI are expected to be reclassified to earnings within the next twelve months. In addition, as of March 31, 2023, the Company did not have any foreign exchange forward contracts with credit-risk-related contingent features.

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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 March 31, 2023 and July 1, 2022, and indicate the fair value hierarchy of the valuation techniques utilized to determine such values:

	March 31, 2023			
	Level 1	Level 2	Level 3	Total
	(in millions)			
Assets:				
Cash equivalents - Money market funds	$ 146	$ —	$ —	$ 146
Foreign exchange contracts	—	72	—	72
Total assets at fair value	$ 146	$ 72	$ —	$ 218
Liabilities:				
Foreign exchange contracts	$ —	$ 46	$ —	$ 46
Total liabilities at fair value	$ —	$ 46	$ —	$ 46

	July 1, 2022			
	Level 1	Level 2	Level 3	Total
	(in millions)			
Assets:				
Cash equivalents - Money market funds	$ 266	$ —	$ —	$ 266
Foreign exchange contracts	—	61	—	61
Interest rate swap contracts	—	3	—	3
Total assets at fair value	$ 266	$ 64	$ —	$ 330
Liabilities:				
Foreign exchange contracts	$ —	$ 316	$ —	$ 316
Total liabilities at fair value	$ —	$ 316	$ —	$ 316

During the periods presented, 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.

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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 third quarter of 2023 and the fourth quarter of 2022, respectively.

	March 31, 2023		July 1, 2022	
	Carrying Value	Fair Value	Carrying Value	Fair Value
	(in millions)			
1.50% convertible notes due 2024	$ 1,098	$ 1,063	$ 1,048	$ 1,040
4.75% senior unsecured notes due 2026	2,292	2,219	2,291	2,205
Variable interest rate Term Loan A-2 maturing 2027	2,692	2,651	2,693	2,621
2.85% senior unsecured notes due 2029	496	408	495	412
3.10% senior unsecured notes due 2032	495	378	495	389
Total	$ 7,073	$ 6,719	$ 7,022	$ 6,667

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Note 7. Derivative Instruments and Hedging Activities

As of March 31, 2023, 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.

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 nine months ended March 31, 2023 and April 1, 2022, 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 Note 5, *Supplemental Financial Statement Data - Accumulated other comprehensive loss.*

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 March 31, 2023 and July 1, 2022, 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.

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Note 8. Debt

Debt consisted of the following:

	March 31, 2023	July 1, 2022
	(in millions)	
1.50% convertible notes due 2024	$ 1,100	$ 1,100
4.75% senior unsecured notes due 2026	2,300	2,300
Variable interest rate Term Loan A-2 maturing 2027	2,700	2,700
2.85% senior unsecured notes due 2029	500	500
3.10% senior unsecured notes due 2032	500	500
Total debt	7,100	7,100
Issuance costs and debt discounts	(27)	(78)
Subtotal	7,073	7,022
Less current portion of long-term debt	(1,175)	—
Long-term debt	$ 5,898	$ 7,022

During the nine months ended March 31, 2023, the Company drew and repaid $1.18 billion principal amount under its $2.25 billion revolving credit facility maturing in January 2027 (the "2027 Revolving Credit Facility").

In December 2022, the Company amended the credit agreement governing the 2027 Revolving Credit Facility and Term Loan A-2 for the purposes of providing flexibility by adjusting the leverage ratio requirements of the financial covenant thereunder through the Company's quarter ending September 27, 2024 (such period, the "Covenant Relief Period"). As amended, the Company is required to maintain a maximum ratio ("Leverage Ratio") of total funded debt to trailing twelve-month Consolidated Adjusted EBITDA (as defined in the Credit Agreement) at the end of each quarter as follows:

Quarter ending:	Leverage ratio
March 31, 2023	3.75 to 1.00
June 30, 2023	4.75 to 1.00
September 29, 2023	5.00 to 1.00
December 29, 2023	4.75 to 1.00
March 29, 2024	4.50 to 1.00
June 28, 2024	4.25 to 1.00
September 27, 2024	3.75 to 1.00
December 27, 2024 and thereafter	3.25 to 1.00

As of March 31, 2023, the Company was in compliance with this financial covenant. The amendment also provides that the due date for amounts outstanding under the Credit Agreement will be accelerated from January 7, 2027 to November 2, 2023 if, as of that date, the Company does not have cash and cash equivalents plus available unused capacity under its credit facilities that exceed by $1 billion the sum of the outstanding balance of the 1.50% convertible notes due 2024 plus the outstanding principal amount of any other debt maturing within 12 months. In addition, during the Covenant Relief Period, the amendment requires certain subsidiaries of the Company to provide guarantees if the corporate family ratings of the Company from at least two of Standard & Poor's Ratings Services, Moody's Investors Service, Inc. and Fitch, Inc. (the "Credit Rating Agencies") drops below investment grade and includes limits on secured indebtedness and certain types of unsecured subsidiary indebtedness.

In January 2023, the Company entered into a loan agreement (the "Delayed Draw Term Loan Agreement"), which allows the Company to draw a single unsecured loan of up to $875 million (the "Delayed Draw Term Loan") through June 30, 2023. The Delayed Draw Term Loan Agreement may be terminated, at the election of the Company, at any time without premium or penalty, subject to certain conditions. As of March 31, 2023, the Company had not drawn on the Delayed Draw Term Loan.

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Any amount drawn under the Delayed Draw Term Loan Agreement will mature 364 days following the date of the initial draw. However, the due date will be accelerated to November 2, 2023 if conditions for acceleration of amounts due under the Credit Agreement have been triggered as described above.

The Delayed Draw Term Loan will bear interest, at the Company's option, at a per annum rate equal to either (x) the Adjusted Term SOFR Rate (as defined in the Delayed Draw Term Loan Agreement) plus an applicable margin varying from 1.750% to 2.625% or (y) a base rate plus an applicable margin varying from 0.750% to 1.625%, in each case depending on the corporate family ratings of the Company from at least two of the Credit Rating Agencies. The Company will also pay an unused commitment fee on the Delayed Draw Term Loan Agreement of 0.200%.

The key covenants, limitations and requirements provided under the Credit Agreement amendment noted above also apply to the Delayed Draw Term Loan Agreement.

As described in Note 2, *Recent Accounting Pronouncements,* the Company adopted ASU 2020-06 effective July 2, 2022, using a modified retrospective method, which resulted in the elimination of the originally recorded debt discount associated with the conversion feature on its 1.50% convertible notes due 2024.

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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 the 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:

	March 31, 2023	July 1, 2022
	(in millions)	
Benefit obligation at end of period	$ 305	$ 294
Fair value of plan assets at end of period	194	189
Unfunded status	$ 111	$ 105

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

	March 31, 2023	July 1, 2022
	(in millions)	
Current liabilities	$ 1	$ 1
Non-current liabilities	110	104
Net amount recognized	$ 111	$ 105

Net periodic benefit costs were not material for the three and nine months ended March 31, 2023.

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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:

	March 31, 2023	July 1, 2022
	(in millions)	
Notes receivable, Flash Partners	$ 47	$ 27
Notes receivable, Flash Alliance	62	55
Notes receivable, Flash Forward	727	793
Investment in Flash Partners	173	166
Investment in Flash Alliance	253	243
Investment in Flash Forward	117	112
Total notes receivable and investments in Flash Ventures	$ 1,379	$ 1,396

During the three and nine months ended March 31, 2023 and April 1, 2022, the Company made net payments to Flash Ventures of $1.2 billion and $3.2 billion, and $1.1 billion and $3.4 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 March 31, 2023 and July 1, 2022, the Company had accounts payable balances due to Flash Ventures of $265 million and $320 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 March 31, 2023, 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.

	March 31, 2023
	(in millions)
Notes receivable	$ 836
Equity investments	543
Operating lease guarantees	1,876
Inventory and prepayments	1,073
Maximum estimable loss exposure	$ 4,328

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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 January 2022, the Company entered into additional agreements regarding Flash Ventures' investment in a new wafer fabrication facility currently under construction in Yokkaichi, Japan, referred to as "Y7". The primary purpose of Y7 is to provide clean room space to continue the transition of existing flash-based wafer capacity to newer flash technology nodes. The Company is committed to pay, among other items, future building depreciation prepayments aggregating approximately $70 million as follows: $47 million for the remaining three months of 2023 and $23 million in 2024, to be credited against future wafer charges.

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 March 31, 2023.

	Lease Amounts	
	(Japanese yen, in billions)	*(U.S. dollar, in millions)*
Total guarantee obligations	¥ 250	$ 1,876

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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 March 31, 2023 in U.S. dollars, based upon the Japanese yen to U.S. dollar exchange rate as of March 31, 2023:

Annual Installments	Payment of Principal Amortization	Purchase Option Exercise Price at Final Lease Terms	Guarantee Amount
		(in millions)	
Remaining three months of 2023	$ 144	$ 31	$ 175
2024	480	98	578
2025	271	90	361
2026	297	135	432
2027	104	115	219
2028 and thereafter	24	87	111
Total guarantee obligations	$ 1,320	$ 556	$ 1,876

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 March 31, 2023, 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 nine months ended March 31, 2023, the Company recognized approximately 3% of its consolidated revenue on products distributed by the Unis Venture. For both the three and nine months ended April 1, 2022, the Company recognized approximately 5% of its consolidated revenue on products distributed by the Unis Venture. The outstanding accounts receivable due from the Unis Venture were 7% and 5% of Accounts receivable, net as of March 31, 2023 and July 1, 2022, respectively.

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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 March 31, 2023:

	Lease Amounts
	($ in millions)
Minimum lease payments by year:	
Remaining three months of 2023	$ 13
2024	48
2025	46
2026	46
2027	42
Thereafter	149
Total future minimum lease payments	344
Less: Imputed interest	52
Present value of lease liabilities	292
Less: Current portion (included in Accrued expenses)	41
Long-term operating lease liabilities (included in Other liabilities)	$ 251
Operating lease right-of-use assets (included in Other non-current assets)	$ 268
Weighted average remaining lease term in years	7.8
Weighted average discount rate	4.2 %

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

	Three Months Ended		Nine Months Ended	
	March 31, 2023	April 1, 2022	March 31, 2023	April 1, 2022
	(in millions)			
Cost of operating leases	$ 15	$ 15	$ 43	$ 42
Cash paid for operating leases	12	13	38	37
Operating lease assets obtained in exchange for operating lease liabilities	10	9	14	132

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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 March 31, 2023, the Company had the following minimum long-term commitments:

	Long-Term Commitments
	(in millions)
Year:	
Remaining three months of 2023	$ 62
2024	206
2025	182
2026	54
2027	46
Thereafter	159
Total	$ 709

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

Note 12. Shareholders' Equity and Convertible Preferred Stock

Stock-based Compensation Expense

The following tables present the Company's stock-based compensation for equity-settled awards by type (i.e. 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		Nine Months Ended	
	March 31, 2023	April 1, 2022	March 31, 2023	April 1, 2022
	(in millions)			
RSUs and PSUs	$ 63	$ 75	$ 217	$ 220
ESPP	11	11	29	29
Total	$ 74	$ 86	$ 246	$ 249

	Three Months Ended		Nine Months Ended	
	March 31, 2023	April 1, 2022	March 31, 2023	April 1, 2022
	(in millions)			
Cost of revenue	$ 12	$ 13	$ 38	$ 36
Research and development	37	43	116	126
Selling, general and administrative	25	30	92	87
Subtotal	74	86	246	249
Tax benefit	(11)	(9)	(35)	(37)
Total	$ 63	$ 77	$ 211	$ 212

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 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 March 31, 2023:

	Unamortized Compensation Costs	Weighted Average Service Period
	(in millions)	*(years)*
RSUs and PSUs [1]	$ 521	2.4
ESPP	77	1.7
Total unamortized compensation cost	$ 598	

[1] Weighted average service period assumes the performance metrics are met for the PSUs.

WESTERN DIGITAL CORPORATION
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Plan Activities

Stock Options

The following table summarizes stock option activity under the Company's incentive plans. All outstanding options were exercisable at March 31, 2023:

	Number of Shares	Weighted Average Exercise Price Per Share	Weighted Average Remaining Contractual Life
	(in millions)		*(in years)*
Options outstanding at July 1, 2022	0.9	$ 66.76	0.54
Canceled or expired	(0.5)	83.10	
Options outstanding at March 31, 2023	0.4	$ 44.76	0.33

RSUs and PSUs

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

	Number of Shares	Weighted Average Grant Date Fair Value	Aggregate Intrinsic Value at Vest Date
	(in millions)		*(in millions)*
RSUs and PSUs outstanding at July 1, 2022	15.4	$ 52.89	
Granted	6.1	41.52	
Vested	(5.7)	53.78	$ 237
Forfeited	(1.3)	55.61	
RSUs and PSUs outstanding at March 31, 2023	14.5	$ 47.50	

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.

Convertible Preferred Stock

On January 31, 2023, the Board of Directors of the Company authorized the designation of 900,000 shares of Series A Convertible Perpetual Preferred Stock, par value $0.01 per share (the "Preferred Shares"), from the Company's existing five million authorized but unissued shares of preferred stock and issued the Preferred Shares through a private placement for an aggregate purchase price of $900 million, less issuance costs of $24 million.

Dividend provisions

The Preferred Shares will have a stated value of $1,000 per share and accrue a cumulative preferred dividend at an annual rate of 6.25% per annum (increasing to 7.25% per annum on January 31, 2030 and to 8.25% per annum on January 31, 2033) compounded on a quarterly basis. The Preferred Shares will also participate in any dividends declared for common shareholders on an as-converted equivalent basis. As of March 31, 2023, (i) no dividends have been declared or paid since the issuance of the Preferred Shares, and (ii) unpaid and cumulative dividends payable with respect to the Preferred Shares were $9 million.

Conversion rights

The Preferred Shares will be convertible into shares of the Company's common stock at an initial conversion rate of $47.75 per share (the "Conversion Price") (subject to anti-dilution adjustments and certain other one-time adjustments upon the occurrence of various specified spin-off transactions) applied to the aggregate sum of the stated value of the Preferred Shares plus any cumulative accrued but unpaid dividends (the "Accumulated Stated Value"). In the event of a standalone spin-off transaction, the holders of Preferred Shares may have one third of their Preferred Shares converted to a similar class of preferred shares of the spin-off entity. The Preferred Shares will be convertible at the option of the holder upon the earlier of on January 31, 2024, and the date a specified spin-off transaction is completed, unless the Company enters into a definitive agreement with respect to a sale, merger or combination of the spun-off entity, in which case the twelve (12) month period will be extended until the earlier of the consummation of such transaction or the termination of the definitive agreement. The Preferred Shares will be convertible at the option of the Company after January 31, 2026 if the closing price per share of the Company's common stock exceeds 150% of the Conversion Price for at least 20 out of 30 consecutive trading days immediately prior to the Company's conversion notice. As of March 31, 2023, the Preferred Shares outstanding would have been convertible, if otherwise permitted, into 19 million shares of common stock.

Redemption

After January 31, 2030, the Company will have the right, but not the obligation, to redeem the Preferred Shares for an amount in cash equal to 110% of the Accumulated Stated Value. Redemption is contingently mandatory in the event of a fundamental change in the business as defined in the designation of the Preferred Shares.

The Preferred Shares has been classified as mezzanine equity in the Company's Condensed Consolidated Balance Sheets because, in the event of certain fundamental change in the business that are not solely within the control of the Company, the Preferred Shares would become redeemable at the option of the holders. The Company did not adjust the carrying values of the Preferred Shares to the current redemption value of such shares since a liquidation event was not probable at any of the balance sheet dates. Subsequent adjustments to increase or decrease the carrying values to the ultimate redemption value will be made only if and when it becomes probable that such a fundamental change in the business will occur.

Voting right

The Preferred Shares will vote, to the extent permitted under the Nasdaq listing rules, on an as-converted equivalent basis along with holders of the Company's common stock.

Liquidation preference

In the event of any voluntary or involuntary liquidation, holders of the Preferred Shares will be senior to the holders of the Company's common stock and the liquidation preference is the greater of (i) the sum of amount in cash equal to 110% of the Accumulated Stated Value plus accrued and unpaid dividends and (ii) the payment that the holders of Preferred Shares would have received had all Preferred Shares been converted into common stock immediately prior to such liquidation, before any distributions are made to common shareholders and all other classes of junior capital stock of the Company. As of March 31, 2023, the total aggregate liquidation preference was $909 million.

Stock Repurchase Program

The Company's Board of Directors has authorized a stock repurchase program for the repurchase of up to $5.0 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 nine months ended March 31, 2023 and has not repurchased any shares of its common stock pursuant to its stock repurchase program since the first quarter of fiscal 2019. Although the Company will reevaluate the repurchasing of common stock when appropriate, there can be no assurance if, when or at what level the Company may resume such activity. The remaining amount available to be repurchased under the Company's current stock repurchase program as of March 31, 2023 was $4.5 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.

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

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.

On August 16, 2022, President Biden signed into law the Inflation Reduction Act of 2022, which contained significant law changes related to tax, climate, energy, and health care. The tax measures include, among other things, a corporate alternative minimum tax of 15% on corporations with three-year average annual adjusted financial statement income exceeding $1 billion. The corporate alternative minimum tax will not be effective for the Company until fiscal year 2024 and the Company is currently evaluating the potential effects of these legislative changes.

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

	Three Months Ended		Nine Months Ended	
	March 31, 2023	April 1, 2022	March 31, 2023	April 1, 2022
	($ in millions)			
Income (loss) before taxes	$ (529)	$ 262	$ (830)	$ 1,612
Income tax expense	43	237	161	413
Effective tax rate	(8)%	90 %	(19)%	26 %

Beginning in fiscal year 2023, the 2017 Act requires the Company to capitalize and amortize R&D expenses rather than expensing them in the year incurred. The tax effects related to the capitalization of R&D expenses are included in the effective tax rate for the three and nine months ended March 31, 2023 but did not have a material impact on the effective tax rate. The primary drivers of the difference between the effective tax rate for the three and nine months ended March 31, 2023 and the U.S. Federal statutory rate of 21% are the relative mix of earnings and losses by jurisdiction, the deduction for foreign derived intangible income, credits, and tax holidays in Malaysia, the Philippines and Thailand that will expire at various dates during fiscal years 2024 through 2031.

The primary drivers of the difference between the effective tax rate for the three and nine months ended April 1, 2022 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. In addition, the effective tax rate for the three and nine months ended April 1, 2022 includes the discrete effect of an increase to unrecognized tax benefits, which includes interest and offsetting tax benefits, as a result of settlement discussions with various taxing authorities of $194 million and $219 million, respectively.

Uncertain Tax Positions

With the exception of certain unrecognized tax benefits that are directly associated with the tax position taken, unrecognized tax benefits are presented gross in the Condensed Consolidated Balance Sheets.

WESTERN DIGITAL CORPORATION
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(Unaudited)

The following is a tabular reconciliation of the total amounts of unrecognized tax benefits excluding accrued interest and penalties for the three months ended March 31, 2023 (in millions):

Accrual balance at July 1, 2022	$	1,047
Gross increases related to current year tax positions		6
Gross increases related to prior year tax positions		3
Gross decreases related to prior year tax positions		(25)
Settlements		(5)
Lapse of statute of limitations		(3)
Accrual balance at March 31, 2023	$	1,023

As of March 31, 2023, the liability for unrecognized tax benefits (excluding accrued interest and penalties) was $1.02 billion. Interest and penalties related to unrecognized tax benefits are recognized in liabilities recorded for uncertain tax positions and are recorded in the provision for income taxes. Accrued interest and penalties included in the Company's liability related to unrecognized tax benefits as of March 31, 2023 was $280 million. Of these amounts, approximately $1.16 billion could result in potential cash payments.

As previously disclosed, the IRS issued statutory notices of deficiency and notices of proposed adjustments with respect to transfer pricing with the Company's foreign subsidiaries and intercompany payable balances for years 2008 through 2015. The Company and the IRS reached an agreement on the federal tax and interest calculations with respect to years 2008 through 2012 for which the Company expects to pay tax and interest totaling approximately $620 million to $650 million within the next twelve months. The Company and the IRS have also reached a tentative settlement for the years 2013 through 2015 for which the Company expects to pay tax and interest totaling approximately $100 million to $110 million. The Company is uncertain as to when a final agreement for years 2013 through 2015 will be reached and the exact timing of when these payments will be made. However, the Company believes it is reasonably likely that these payments may be made within the next twelve months and has classified that portion of these unrecognized tax benefits, including interest, in Income taxes payable on its Condensed Consolidated Balance Sheets as of March 31, 2023. This classification and amount may be subject to change in the next twelve months depending on when the Company is able to reach a final agreement with the IRS. In connection with these settlements, the Company expects to realize reductions to its mandatory deemed repatriation tax obligations and tax savings from interest deductions aggregating to approximately $100 million to $150 million in future years.

The Company believes that adequate provision has been made for any adjustments that may result from any other tax examinations. However, the outcome of such tax examinations cannot be predicted with certainty. If any issues addressed in the 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. 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.

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

Note 14. Net Income (Loss) Per Common Share

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

	Three Months Ended		Nine Months Ended	
	March 31, 2023	April 1, 2022	March 31, 2023	April 1, 2022
	(in millions, except per share data)			
Net income (loss)	$ (572)	$ 25	$ (991)	$ 1,199
Less: cumulative dividends on Preferred Stock	9	—	9	—
Net income (loss) attributable to common shareholders	$ (581)	$ 25	$ (1,000)	$ 1,199
Weighted average shares outstanding:				
Basic	319	313	318	312
Employee stock options, RSUs, PSUs, and ESPP	—	3	—	4
Diluted	319	316	318	316
Income (loss) per common shares				
Basic	$ (1.82)	$ 0.08	$ (3.14)	$ 3.84
Diluted	$ (1.82)	$ 0.08	$ (3.14)	$ 3.79
Anti-dilutive potential common shares excluded	15	5	15	4

The Company computes basic income (loss) per common share by dividing net income attributable to common shareholders and the weighted average number of common shares outstanding during the period. Diluted income (loss) per common share is computed by using diluted net income attributable to common shareholders, the weighted average number of common shares and potentially dilutive securities outstanding during the period using the treasury stock method or the “if-converted” method based on the nature of the securities.

Basic income (loss) per share attributable to common shareholders is computed using (i) net income (loss) less (ii) dividends paid to holders of Preferred Shares less (iii) net income (loss) attributable to participating securities divided by (iv) weighted average basic shares outstanding. Diluted net income or loss per share attributable to common shareholders is computed as (i) basic net income (loss) attributable to common shareholders plus (ii) diluted adjustments to income allocable to participating securities divided by (iii) weighted average diluted shares outstanding. The "if-converted" method is used to determine the dilutive impact for the Company's convertible Preferred Stock and the treasury stock method is used to determine the dilutive impact of unvested restricted stock.

Potentially dilutive common shares include dilutive outstanding employee stock options, RSUs and PSUs, rights to purchase shares of common stock under the Company’s ESPP, shares issuable in connection with the 1.50% convertible notes due 2024, and the Preferred Shares. For the three and nine months ended March 31, 2023, the Company recorded a net loss and all shares subject to outstanding equity awards were excluded from the calculation of diluted shares for those periods because their impact would have been anti-dilutive. For the three and nine months ended and April 1, 2022, the Company excluded common shares subject to certain outstanding equity awards from the calculation of diluted shares because their impact would have been anti-dilutive based on the Company’s average stock price during the period.

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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		Nine Months Ended	
	March 31, 2023	April 1, 2022	March 31, 2023	April 1, 2022
	(in millions)			
Employee termination benefits	$ 40	$ 4	$ 125	$ 22
Asset impairments and other charges	—	—	15	2
Total employee termination, asset impairment, and other charges	$ 40	$ 4	$ 140	$ 24

The following table presents an analysis of the components of these activities against the reserve during the nine months ended March 31, 2023:

	Employee Termination Benefits
	(in millions)
Accrual balance at July 1, 2022	$ 17
Charges	125
Cash payments	(126)
Accrual balance at March 31, 2023	$ 16

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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 further Amendments to Answers filed by the IRS in June 2021 and January 2022, and the status of 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 1, 2022. 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 on a mission to unlock the potential of data by harnessing the possibility to use it. We are a leading developer, manufacturer, and provider of data storage devices based on both flash-based products ("Flash") and hard disk drives ("HDD") technologies. With dedicated business units driving advancements in NAND flash and magnetic recording technologies, we create and drive innovations needed to help customers capture, preserve, access, and transform an ever-increasing diversity 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 2023, which ends on June 30, 2023, and 2022, which ended on July 1, 2022, are each comprised of 52 weeks, with all quarters presented consisting of 13 weeks.

Key Developments

Network Security Incident

As previously disclosed, on March 26, 2023, we identified a network security incident in which an unauthorized third party gained access to a number of our systems. Upon discovery of the incident, we implemented incident response efforts, which included taking various systems and services offline as a proactive measure to secure our business operations and initiating an investigation with the assistance of leading outside security and forensic experts. Our forensic investigation is ongoing, as we work to understand the nature and scope of the systems accessed and data accessed or obtained by the unauthorized party, and we are coordinating with law enforcement authorities in connection with our investigation. To date, in collaboration with outside forensic experts, we have confirmed that an unauthorized party obtained a copy of a Western Digital database used for our online store that contained some personal information of our online store customers. This information included customer names, billing and shipping addresses, email addresses and telephone numbers. In addition, the database contained, in encrypted format, hashed and salted passwords and partial credit card numbers. We have provided notifications to impacted customers and relevant governmental authorities.

The incident, together with the incident response efforts discussed above, resulted in some disruptions to our business operations, including manufacturing, sales, fulfillment and general corporate activities. We were able to stabilize core operations after a short period of time, and the incident did not have a material impact on the financial results for the three months ended March 31, 2023. We have continued to bring network systems back online in order of operational priority, and the majority of our impacted systems and services are now operational. The impact on revenues from these disruptions cannot be quantified at this time, but is not currently expected to be material or to have a material impact on our future financial results.

We have incurred and expect to continue to incur investigation, recovery, and remediation expenses, including costs for forensics activities, third party consulting and service providers, outside legal advisors, and other IT professionals, as a result of the network security incident. These costs were nominal in the third quarter and will be primarily incurred in subsequent periods.

We maintain cyber insurance, subject to certain deductibles and policy limitations, typical for our size and industry.

Strategic Alternatives

In June 2022, we announced that we are reviewing potential strategic alternatives aimed at further optimizing long-term value for stockholders. The Executive Committee of our Board of Directors is overseeing the assessment process and evaluating a range of alternatives, including options for separating our Flash and HDD business units. As of March 31, 2023, we are still actively working with our financial advisors and our legal counsel in this strategic review process.

Operational Update

Macroeconomic factors such as inflation, higher interest rates and recession concerns have softened demand for our products, with certain customers reducing purchases as they adjust their production levels and right-size their inventories. As a result, we and our industry are experiencing a supply-demand imbalance, which has resulted in reduced shipments and negatively impacted pricing, particularly in Flash. Since the beginning of fiscal 2023, we have scaled back on capital expenditures, consolidated production lines and reduced bit growth to align with market demand and implemented measures to reduce operating expenses. This has resulted in incremental charges for Employee termination, asset impairment and other charges and manufacturing underutilization charges in HDD and Flash in the second and third quarters of 2023, and is expected to impact near-term results. However, we believe digital transformation will continue to drive long-term growth for data storage in both Flash and HDD and believe that the actions we are taking will position us for profitable growth as supply and demand levels begin to balance.

We believe we have made significant progress in strengthening our product portfolio to meet our customers' growing and evolving storage needs. Our hard drive products utilizing OptiNAND and shingled magnetic recording ("SMR") technologies have commenced commercial shipments and our latest 26-terabyte SMR drives are on track to complete the qualifications at multiple cloud and OEM customers. During the third quarter of 2023, our BiCS6 based products have achieved cost crossover. We have announced the next generation, BiCS8 node, the newest 3D-flash memory technology, that builds upon the success of BiCS5 and BiCS6 to deliver improved performance, capacity, and reliability.

We will continue to actively monitor recent developments impacting our business and may take additional responsive actions that we determine to be in the best interests of our business and stakeholders. See "Adverse global or regional conditions could harm 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 year ended July 1, 2022 for more information regarding the risks we face as a result of macroeconomic conditions, and supply chain disruptions.

Financing Activities

In December 2022, we amended the loan agreement governing our revolving credit facility and Term Loan A-2 to modify the leverage ratio requirements of our financial covenant through our quarter ending September 27, 2024 to provide additional financial flexibility as we navigate through the current dynamic economic environment. The amendment also accelerates the due date for amounts outstanding under the loan agreement from January 7, 2027 to November 2, 2023 if, as of that date, our cash and cash equivalents plus available unused capacity under our credit facilities does not exceed by $1 billion the sum of the outstanding balance of our 1.50% convertible notes due 2024 plus the outstanding principal amount of any other debt maturing within 12 months. As of March 31, 2023, our cash and cash equivalents plus available unused capacity under our credit facilities exceeded this requirement. 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 8, *Debt*, of the Notes to Consolidated Financial Statements included in our Annual Report on Form 10-K for the fiscal year ended July 1, 2022.

On January 25, 2023, we entered into a new delayed draw term loan agreement, which allows us to draw a single unsecured loan of up to $875 million any time through June 30, 2023. Any amount drawn will be due 364 days after funding or such earlier date that conditions for acceleration of amounts due under the loan agreement have been triggered as described above.

On January 31, 2023, we issued an aggregate of 900,000 shares of Series A Preferred Stock for an aggregate purchase price of $900 million. Additional information regarding the terms of our Series A Preferred Stock is included in Note 12, *Shareholders' Equity and Convertible Preferred Stock*, of the Notes to Condensed Consolidated Financial Statements included in this Quarterly Report on Form 10-Q.

We believe these transactions will provide us with greater financial flexibility to manage our business.

Tax Resolution

As previously disclosed, we have received statutory notices of deficiency and notices of proposed adjustments from the Internal Revenue Service ("IRS") with respect to 2008 through 2015. During the third quarter of 2023, we and the IRS reached an agreement on the federal tax and interest calculations with respect to the years 2008 through 2012 and a tentative settlement for the years 2013 through 2015. Additional information regarding these settlements and our assessment of the potential tax and interest payments we expect to pay in connection with the settlements is provided in our discussion of Income tax expense in our results of operations below, as well as in Part I, Item 1, Note 13, *Income Tax Expense*, of the Notes to the Condensed Consolidated Financial Statements, and in the "Short- and Long-Term Liquidity-Unrecognized Tax Benefits" section below.

Russia Sanctions

In February 2022, the U.S. and other countries imposed sanctions on Russia. In accordance with these sanctions, we have ceased shipments to distributors for customers located in Russia. Our revenue from distributors for customers in Russia have not been significant. We have no material assets or operations in Russia.

Results of Operations

Third Quarter and Nine Month 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[(1)]:

	Three Months Ended					
	March 31, 2023		April 1, 2022		$ Change	% Change
	$ in millions					
Revenue, net	$ 2,803	100.0 %	$ 4,381	100.0 %	$ (1,578)	(36)%
Cost of revenue	2,517	89.8	3,200	73.0	(683)	(21)
Gross profit	286	10.2	1,181	27.0	(895)	(76)
Operating expenses:						
Research and development	476	17.0	572	13.1	(96)	(17)
Selling, general and administrative	242	8.6	281	6.4	(39)	(14)
Employee termination, asset impairment, and other charges	40	1.4	4	0.1	36	900
Total operating expenses	758	27.0	857	19.6	(99)	(12)
Operating income (loss)	(472)	(16.8)	324	7.4	(796)	(246)
Interest and other income (expense):						
Interest income	10	0.4	1	—	9	900
Interest expense	(80)	(2.9)	(75)	(1.7)	(5)	7
Other income, net	13	0.5	12	0.3	1	8
Total interest and other expense, net	(57)	(2.0)	(62)	(1.4)	5	(8)
Income (loss) before taxes	(529)	(18.9)	262	6.0	(791)	(302)
Income tax expense	43	1.5	237	5.4	(194)	(82)
Net income (loss)	(572)	(0.2)	25	—	(597)	(24)
Less: cumulative dividends allocated to preferred shareholders	9	—	—	—	9	
Net income (loss) attributable to common shareholders	$ (581)	(20.7)%	$ 25	0.6 %	$ (606)	(2,424)%

(1) Percentages may not total due to rounding.

	Nine Months Ended					
	March 31, 2023		April 1, 2022		$ Change	% Change
	$ in millions					
Revenue, net	$ 9,646	100.0 %	$ 14,265	100.0 %	$ (4,619)	(32)%
Cost of revenue	7,851	81.4	9,836	69.0	(1,985)	(20)
Gross profit	1,795	18.6	4,429	31.0	(2,634)	(59)
Operating expenses:						
Research and development	1,551	16.1	1,725	12.1	(174)	(10)
Selling, general and administrative	739	7.7	851	6.0	(112)	(13)
Employee termination, asset impairment, and other charges	140	1.5	24	0.2	116	483
Total operating expenses	2,430	25.2	2,600	18.2	(170)	(7)
Operating income (loss)	(635)	(6.6)	1,829	12.8	(2,464)	(135)
Interest and other income (expense):						
Interest income	15	0.2	4	—	11	275
Interest expense	(223)	(2.3)	(229)	(1.6)	6	(3)
Other income, net	13	0.1	8	0.1	5	63
Total interest and other expense, net	(195)	(2.0)	(217)	(1.5)	22	(10)
Income (loss) before taxes	(830)	(8.6)	1,612	11.3	(2,442)	(151)
Income tax expense	161	1.7	413	2.9	(252)	(61)
Net income (loss)	(991)	(10.3)	1,199	8.4	(2,190)	(2)
Less: cumulative dividends allocated to preferred shareholders	9	—	—	—	9	
Net income (loss) attributable to common shareholders	$ (1,000)	(10.4)%	$ 1,199	8.4 %	$ (2,199)	(183)%

(1) 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		Nine Months Ended	
	March 31, 2023	April 1, 2022	March 31, 2023	April 1, 2022
	$ in millions			
Net revenue:				
Flash	$ 1,307	$ 2,243	$ 4,686	$ 7,353
HDD	1,496	2,138	4,960	6,912
Total net revenue	$ 2,803	$ 4,381	$ 9,646	$ 14,265
Gross profit:				
Flash	$ (65)	$ 798	$ 597	$ 2,665
HDD	363	592	1,237	2,061
Unallocated corporate items:				
Stock-based compensation expense	(12)	(13)	(38)	(36)
Amortization of acquired intangible assets	—	—	(1)	(65)
Contamination related charges	—	(203)	—	(203)
Recoveries from a power outage incident	—	7	—	7
Total unallocated corporate items	(12)	(209)	(39)	(297)
Consolidated gross profit	$ 286	$ 1,181	$ 1,795	$ 4,429
Gross margin:				
Flash	(5.0)%	35.6 %	12.7 %	36.2 %
HDD	24.3 %	27.7 %	24.9 %	29.8 %
Consolidated gross margin	10.2 %	27.0 %	18.6 %	31.0 %

The following table sets forth for the periods presented, summary information regarding our disaggregated revenue:

	Three Months Ended		Nine Months Ended	
	March 31, 2023	April 1, 2022	March 31, 2023	April 1, 2022
	($ in millions)			
Revenue by End Market				
Cloud	$ 1,205	$ 1,774	$ 4,258	$ 5,919
Client	975	1,732	3,293	5,439
Consumer	623	875	2,095	2,907
Total Revenue	$ 2,803	$ 4,381	$ 9,646	$ 14,265
Revenue by Geography				
Asia	$ 1,353	$ 2,400	$ 4,533	$ 7,685
Americas	935	1,377	3,448	4,398
Europe, Middle East and Africa	515	604	1,665	2,182
Total Revenue	$ 2,803	$ 4,381	$ 9,646	$ 14,265

Comparison of Three and Nine Months Ended March 31, 2023 to Three and Nine Months Ended April 1, 2022

Net Revenue

The decrease in consolidated net revenue for the three and nine months ended March 31, 2023 from the comparable periods in the prior year reflected the current supply-demand imbalance and macroeconomic pressures described in “Operational Update” above.

Flash revenue decreased 42% and 36% for the three and nine months ended March 31, 2023, respectively, from the comparable periods in the prior year. Substantially all of the decline was driven by a decline in average selling prices per gigabyte caused by the macroeconomic pressures noted previously.

HDD revenue decreased 30% and 28% for the three and nine months ended March 31, 2023, respectively from the comparable periods in the prior year primarily as a result of a decline in exabytes shipped of 23% and 22% respectively, primarily driven by lower exabyte shipments to customers in our Cloud end market and to a lesser extent in Client and Consumer end markets.

The decrease in Cloud revenue for the three months ended March 31, 2023 from the comparable period in the prior year reflected a decline in capacity enterprise revenues as customers reduced purchases to right-size their inventories, and to a lesser extent, a decline in bits and pricing for our flash based products. In Client, the decrease in revenue for the three months ended March 31, 2023 from the comparable period in the prior year was driven by pricing pressure across Flash, and a decline in client SSD and HDD shipments for PC applications. In Consumer, the decrease in revenue for the three months ended March 31, 2023 from the comparable period in the prior year primarily reflected the decrease in average selling price per gigabyte in Flash, and to the same extent, a decline in retail HDD shipments.

The decreases in Cloud, Client, and Consumer revenue for the nine months ended March 31, 2023 from the comparable period in the prior year primarily reflected the same drivers noted above for the three-month period.

The changes in net revenue by geography for the three and nine months ended March 31, 2023 from the comparable periods in the prior year reflected a larger decline in Asia from lower Client revenue from OEMs in this region as they reduced purchases to align with current market demand, as well as routine variations in the mix of business.

Our top 10 customers accounted for 49% of our net revenue for the three months ended March 31, 2023, compared to 44% of our net revenue for the three months ended April 1, 2022. Our top 10 customers accounted for 45% of our net revenue for the nine months ended March 31, 2023, compared to 43% of our net revenue for the nine months ended April 1, 2022. For each of the three and nine months ended March 31, 2023 and April 1, 2022, 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 22% and 20% of gross revenue for the three and nine months ended March 31, 2023, respectively. The amounts attributed to our sales incentive and marketing programs generally vary according to several factors including industry conditions, list pricing strategies, seasonal demand, competitor actions, channel mix and overall availability of products. Changes in future customer demand and market conditions may require us to adjust our incentive programs as a percentage of gross revenue.

Gross Profit and Gross Margin

Consolidated gross profit decreased by $895 million for the three months ended March 31, 2023 from the comparable period in the prior year, which reflected the decrease in revenue described above as well as approximately $275 million for manufacturing underutilization and related charges and a write down of certain Flash inventory to the lower of cost or market value ($213 million in Flash and $62 million in HDD) during the three months ended March 31, 2023, partially offset by $203 million of charges related to a contamination event in the Flash Ventures' fabrication facilities in the prior year. Consolidated gross margin decreased 16.8 percentage points for the three months ended March 31, 2023 from the comparable period in the prior year, with approximately 5 percentage points of the decline due to the net charges noted above and the remainder primarily driven by the lower average selling prices per gigabyte in Flash. Flash gross margin decreased by 40.6 percentage points year over year, with approximately 7 percentage points of the decline due to the net charges noted above and the remainder driven by the lower average selling prices per gigabyte. HDD gross margin decreased by 3.4 percentage points year over year, substantially all of which related to the charges noted above.

Consolidated gross profit decreased by $2.63 billion for the nine months ended March 31, 2023 from the comparable period in the prior year, which reflected the decrease in revenue described above as well as approximately $375 million for manufacturing underutilization and related charges and a write down of certain Flash inventory to the lower of cost or market value ($213 million in Flash and $162 million in HDD), partially offset by $203 million of charges related to a contamination event in the Flash Ventures' fabrication facilities in the prior year, and a $65 million decrease during the nine months ended March 31, 2023 in charges related to amortization expense on acquired intangible assets, some of which became fully amortized. Consolidated gross margin decreased 12.4 percentage points for the nine months ended March 31, 2023 from the comparable period in the prior year, with approximately 2 percentage points of the decline due to the net charges noted above and the remainder driven by the lower average selling prices per gigabyte in Flash. Flash gross margin decreased by 23.5 percentage points year over year, substantially driven by lower average selling prices per gigabyte in Flash. HDD gross margin decreased by 4.9 percentage points year over year, with approximately 3 percentage points of the decline due to the underutilization charge noted above and the remainder primarily reflecting lower average selling prices per gigabyte and variation in the mix of products.

Operating Expenses

Research and development ("R&D") expense decreased $96 million for the three months ended March 31, 2023, from the comparable period in the prior year. The declines were primarily driven by reductions in variable compensation expenses, headcount, and material use as we took actions to reduce expenses in the current environment. R&D expense decreased $174 million for nine months ended March 31, 2023 from the comparable period in the prior year. The declines were primarily driven by reductions in variable compensation expenses and material use as we took actions to reduce expenses in the current environment.

Selling, general and administrative ("SG&A") expense decreased $39 million and $112 million for the three and nine months ended March 31, 2023, respectively, from the comparable periods in the prior year. The declines were primarily driven by reductions in headcount, variable compensation expenses, and material use as we took actions to reduce expenses in the current environment.

Employee termination, asset impairment and other charges increased $36 million and $116 million for the three and nine months ended March 31, 2023, respectively, from the comparable periods in the prior year. The increases were due to restructuring actions taken to adjust our cost structure to align with the current demand environment. 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 decreased $5 million for the three months ended March 31, 2023 from the comparable period in the prior year, reflecting higher interest income resulting from increases in interest rates as well as available cash from our issuance of the Series A Preferred Stock as discussed in "Key Developments - Financing Activities". Total interest and other expense, net decreased $22 million for the nine months ended March 31, 2023 from the comparable period in the prior year, reflecting higher interest income noted above as well as lower interest expense as a result of the reduction in debt made late in the prior year, partially offset by higher interest rates.

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 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.

On August 16, 2022, President Biden signed into law the Inflation Reduction Act of 2022, which contained significant law changes related to tax, climate, energy, and health care. The tax measures include, among other things, a corporate alternative minimum tax of 15% on corporations with three-year average annual adjusted financial statement income exceeding $1 billion. The corporate alternative minimum tax will not be effective for us until fiscal year 2024. We are currently evaluating the potential effects of these legislative changes.

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

	Three Months Ended		Nine Months Ended	
	March 31, 2023	April 1, 2022	March 31, 2023	April 1, 2022
	$ in millions			
Income (loss) before taxes	$ (529)	$ 262	$ (830)	$ 1,612
Income tax expense	43	237	161	413
Effective tax rate	(8)%	90 %	(19)%	26 %

Beginning in fiscal year 2023, the 2017 Act requires us to capitalize and amortize R&D expenses rather than expensing them in the year incurred. The tax effects related to the capitalization of R&D expenses are included in the effective tax rate for the three and nine months ended March 31, 2023, but did not have a material impact on our effective tax rate. The primary drivers of the difference between the effective tax rate for the three and nine months ended March 31, 2023 and the U.S. Federal statutory rate of 21% are the relative mix of earnings and losses by jurisdiction, the deduction for foreign derived intangible income, credits, and tax holidays in Malaysia, the Philippines and Thailand that will expire at various dates during fiscal years 2024 through 2031.

The primary drivers of the difference between the effective tax rate for the three and nine months ended April 1, 2022 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 nine months ended April 1, 2022 includes the discrete effect of a net increase to the liability for unrecognized tax benefits, which includes interest and offsetting tax benefits, as a result of settlement discussions with various tax authorities of $194 million and $219 million, respectively.

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. The 2017 Act requires us to capitalize and amortize R&D expenses rather than expensing them in the year incurred. As described above, these capitalized expenses are included in our effective tax rate for the three and nine months ended March 31, 2023, but did not have a material impact on the effective tax rate in those periods due to our reduced profitability. Mandatory capitalization of R&D is expected to materially increase our effective tax rate and taxes paid in future periods, if not repealed or otherwise modified. In addition, our total tax expense in future 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:

	Nine Months Ended	
	March 31, 2023	April 1, 2022
	(in millions)	
Net cash provided by (used in):		
Operating activities	$ (340)	$ 1,585
Investing activities	(620)	(822)
Financing activities	856	(1,623)
Effect of exchange rate changes on cash	(3)	(5)
Net decrease in cash and cash equivalents	$ (107)	$ (865)

We and the IRS reached a final agreement resolving the statutory notices of deficiency with respect to fiscal years 2008 through 2012 and have tentatively reached a basis for resolving the notices of proposed adjustments with respect to fiscal years 2013 through 2015. We currently expect to pay tax and interest totaling approximately $720 million to $760 million, within the next twelve months, which we expect to be partially offset by reductions to our mandatory deemed repatriation tax obligations and tax savings from interest deductions aggregating to approximately $100 million to $150 million in future years. 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 for further details.

We have an existing 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 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.

As noted previously, we are scaling back on capital expenditures and consolidating production lines and reducing bit growth to align with market demand. We have reduced our expected 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 $2.2 billion for 2023. After consideration of the Flash Ventures' lease financing of its capital expenditures and net operating cash flow, we have reduced the expected net cash used for our purchases of property, plant and equipment and net activity in notes receivable relating to Flash Ventures to $800 million during 2023. 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.

We believe our cash, and cash equivalents including the proceeds from the issuance of our Series A Preferred Stock as discussed in "Key Developments - Financing Activities," as well as our available credit facilities, including the availability under our new delayed term loan agreement, will be sufficient to meet our working capital, debt and capital expenditure needs for at least the next twelve months and for the foreseeable future thereafter, as we navigate the current market downturn before returning to profitable operations and positive cash flows when the market normalizes. We believe we can also access the various debt capital markets to further supplement our liquidity position if necessary. 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 year ended July 1, 2022.

A total of $1.86 billion and $1.82 billion of our Cash and cash equivalents was held by our foreign subsidiaries as of March 31, 2023 and July 1, 2022, respectively. There are no material tax consequences that were not previously accrued for on the repatriation of this cash.

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.

Operating Activities

Net cash provided by or used in operating activities primarily consists of net income or loss, adjusted for non-cash charges, plus or minus changes in operating assets and liabilities. Net cash used for changes in operating assets and liabilities was $298 million for the nine months ended March 31, 2023, as compared to $674 million for the nine months ended April 1, 2022, which largely reflects the reduction in volume of our business. Changes in our operating assets and liabilities are largely affected by our working capital requirements, which are dependent on our volume of business and the effective management of our cash conversion cycle as well as timing of payments for taxes. Our cash conversion cycle measures how quickly we can convert our products into cash through sales. The cash conversion cycles were as follows (in days):

	Three Months Ended	
	March 31, 2023	April 1, 2022
Days sales outstanding	52	49
Days in inventory	144	104
Days payables outstanding	(57)	(63)
Cash conversion cycle	139	90

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, including 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 modify the timing of payments to our vendors. We make modifications primarily to manage our vendor relationships and to manage our cash flows, including our cash balances. Generally, we make the payment term modifications through negotiations with our vendors or by granting to, or receiving from, our vendors' payment term accommodations.

For the three months ended March 31, 2023, DSO increased by 3 days from the comparable period in the prior year, primarily reflecting the timing of shipments and customer collections. DIO increased by 40 days from the comparable period in the prior year primarily reflecting a decline in products shipped in light of the current market environment. DPO decreased by 6 days from the comparable period in the prior year primarily due to reductions in capital expenditures and routine variations in the timing of purchases and payments during the period.

Investing Activities

Net cash used in investing activities for the nine months ended March 31, 2023 primarily consisted of $688 million in capital expenditures, net of disposals, partially offset by a $46 million net decrease in notes receivable issuances to Flash Ventures. Net cash used in investing activities for the nine months ended April 1, 2022 primarily consisted of $829 million in capital expenditures, net of disposals, partially offset by a $23 million net decrease in notes receivable issuances to Flash Ventures.

Financing Activities

During the nine months ended March 31, 2023, net cash provided by financing activities primarily consisted of $882 million from issuance of the Series A Preferred Stock and $49 million from the issuance of stock under employee stock plans, partially offset by $69 million used for taxes paid on vested stock awards under employee stock plans. In addition, we drew and repaid $1.18 billion under our revolving credit facility within the period. Cash used in financing activities for the nine months ended April 1, 2022 primarily consisted of $3.47 billion for repayment of debt, as well as $85 million for taxes paid on vested stock awards under employee stock plans offset by net proceeds of $1.89 billion from the issuance of new debt, and $62 million from the issuance of stock under employee stock plans.

Off-Balance Sheet Arrangements

Other than the commitments related to Flash Ventures incurred in the normal course of business and certain indemnification provisions (see "Short and Long-term Liquidity-Purchase Obligations and Other Commitments" below), we do not have any other material off-balance sheet financing arrangements or liabilities, guarantee contracts, retained or contingent interests in transferred assets, or any other obligation arising out of a material variable interest in an unconsolidated entity. We do not have any majority-owned subsidiaries that are not included in the Condensed Consolidated Financial Statements. Additionally, with the exception of Flash Ventures and our joint venture with Unisplendour Corporation Limited and Unissoft (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

Material Cash Requirements

In addition to cash requirements for unrecognized tax benefits and dividend rights with respect to the Series A Preferred Stock discussed below, the following is a summary of our known material cash requirements, including those for capital expenditures, as of March 31, 2023:

	Total	1 Year (Remaining Three Months of 2023)	2-3 Years (2024-2025)	4-5 Years (2026-2027)	More than 5 Years (Beyond 2027)
			(in millions)		
Long-term debt, including current portion[1]	$ 7,100	$ —	$ 1,363	$ 4,738	$ 999
Interest on debt	1,180	44	629	401	106
Flash Ventures related commitments[2]	4,616	1,144	2,480	1,041	(49)
Operating leases	344	13	94	88	149
Purchase obligations and other commitments	3,115	2,284	571	101	159
Mandatory Deemed Repatriation Tax	661	—	404	257	—
Total	$ 17,016	$ 3,485	$ 5,541	$ 6,626	$ 1,364

(1) Principal portion of debt, excluding discounts and issuance costs.

(2) 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.

Dividend rights

On January 31, 2023, we issued an aggregate of 900,000 shares of Series A Preferred Stock for an aggregate purchase price of $900 million. These shares are entitled to cumulative preferred dividends. See Part I, Item 1, Note 12, *Shareholders' Equity and Convertible Preferred Stock*, of the Notes to Condensed Consolidated Financial Statements included in this Quarterly Report on Form 10-Q for more information regarding the dividend provisions.

Debt

In addition to our existing debt, as of March 31, 2023, we had $2.25 billion available for borrowing under our revolving credit facility until January 2027, subject to customary conditions under the loan agreement. Furthermore, we entered into a delayed draw term loan agreement as noted in "Key Developments - Financing Activities" which provides us with an additional $875 million unsecured term loan available to borrow through June 30, 2023, subject to customary conditions and certain financial covenants under the loan agreement. The agreements governing these credit facilities each include limits on secured indebtedness and certain types of unsecured subsidiary indebtedness and require certain of our subsidiaries to provide guarantees to the extent the conditions providing for such guarantees are met. Additional information regarding our indebtedness, including information about principal repayment terms, interest rates, covenants and other key terms of our outstanding indebtedness, is included in Part II, Item 8, Note 8, *Debt*, of the Notes to Consolidated Financial Statements included in our Annual Report on Form 10-K for the year ended July 1, 2022. Our delayed draw term loan agreement and the loan agreement governing our revolving credit facility and our Term Loan A-2 due 2027 require us to comply with a leverage ratio financial covenant. As of March 31, 2023, we were in compliance with the applicable financial covenant.

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 March 31, 2023, 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 years:

	March 31, 2023
	(in millions)
2024	$ 199
2025	205
2026	257
Total	$ 661

For additional information regarding our estimate of the total tax liability for the mandatory deemed repatriation tax, see Part II, Item 8, Note 13, *Income Tax Expense*, of the Notes to Consolidated Financial Statements included in our Annual Report on Form 10-K for the year ended June 28, 2019.

Unrecognized Tax Benefits

As of March 31, 2023, the liability for unrecognized tax benefits (excluding accrued interest and penalties) was $1.02 billion. Accrued interest and penalties related to unrecognized tax benefits are recognized in liabilities for uncertain tax positions and are recorded in the provision for income taxes. Accrued interest and penalties included in our liability related to unrecognized tax benefits as of March 31, 2023 was $280 million. Of these amounts, approximately $1.16 billion could result in potential cash payments.

As previously disclosed, the IRS issued statutory notices of deficiency and notices of proposed adjustments with respect to transfer pricing with our foreign subsidiaries and intercompany payable balances for years 2008 through 2015. We and the IRS reached an agreement on the federal tax and interest calculations with respect to years 2008 through 2012 for which we expect to pay tax and interest totaling approximately $620 million to $650 million within the next twelve months. We and the IRS have also reached a tentative settlement for the years 2013 through 2015 for which we expect to pay tax and interest totaling approximately $100 million to $110 million. We are uncertain as to when a final agreement for years 2013 through 2015 will be reached and the exact timing of when these payments will be made. However, we believe it is reasonably likely that these payments may be made within the next twelve months and have classified that portion of these unrecognized tax benefits, including interest, in Income taxes payable on our Condensed Consolidated Balance Sheets as of March 31, 2023. This classification and amount may be subject to change in the next twelve months depending on when we are able to reach a final agreement with the IRS. In connection with these settlements, we expect to realize reductions to our mandatory deemed repatriation tax obligations and tax savings from interest deductions aggregating to approximately $100 million to $150 million in future years.

Mandatory Research and Development Expense Capitalization

Beginning in 2023, the 2017 Act requires us to capitalize and amortize R&D expenses rather than expensing them in the year incurred, which is expected to result in materially higher cash tax payments in future periods, if not repealed or otherwise modified.

Foreign Exchange Contracts

We purchase foreign exchange contracts to hedge the impact of foreign currency fluctuations on certain underlying assets, liabilities and commitments for Operating expenses and product costs denominated in foreign currencies. See Part I, Item 3, *Quantitative and Qualitative Disclosures About Market Risk* included in this Quarterly Report on Form 10-Q for additional information.

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 ("IP") 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 nine months ended March 31, 2023 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 March 31, 2023 was $4.5 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 year ended July 1, 2022. Please refer to Part II, Item 7 of our Annual Report on Form 10-K for the year ended July 1, 2022 for a discussion of our critical accounting policies and estimates. In addition, as disclosed in Part I, Item 1, Note 3, *Business Segments, Geographic Information, and Concentrations of Risk*, of the Notes to Condensed Consolidated Financial Statements included in this Quarterly Report on Form 10-Q, as of March 31, 2023, our management has performed assessments of goodwill for impairment for both the Flash and HDD reporting units. Please refer to that disclosure for additional information on the judgments and estimates included in our assessments.

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 nine months ended March 31, 2023. See Part II, Item 7A, *Quantitative and Qualitative Disclosures About Market Risk* in our Annual Report on Form 10-K for the year ended July 1, 2022 for further information about our exposure to market risk.

Foreign Currency Risk

Due to macroeconomic changes and volatility experienced in the foreign exchange market recently, we believe sensitivity analysis is more informative in representing the potential impact to the portfolio as a result of market movement. Therefore, we have performed sensitivity analyses as of March 31, 2023 and July 1, 2022 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 March 31, 2023 and July 1, 2022. 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 $306 million at March 31, 2023 and July 1, 2022, respectively.

Interest Rate Risk

We have generally held a balance of fixed and variable rate debt. As of March 31, 2023, our only variable rate debt outstanding was our Term Loan A-2, which 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, Moody's Investors Service, Inc. and Fitch Ratings, Inc., with an initial interest rate of Adjusted Term SOFR plus 1.375%. As of March 31, 2023, the outstanding balance on our Term Loan A-2 was $2.7 billion and a one percent increase in the variable rate of interest would increase annual interest expense by $27 million.

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 third quarter of 2023 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 in June 2018 and December 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 further Amendments to Answers filed by the IRS in June 2021 and January 2022, 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 year ended July 1, 2022 a number of 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. Except as discussed below, there have been no material changes from these risk factors previously described in our Annual Report on Form 10-K for the year ended July 1, 2022. 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.

The compromise, damage or interruption of our technology infrastructure, systems or products by cyber incidents, data security breaches, other security problems, design defects or system failures could have a material negative impact on our business.

We experience cyber incidents of varying degrees on our technology infrastructure and systems and, as a result, unauthorized parties have obtained in the past, and may obtain in the future, access to our computer systems and networks, including cloud-based platforms. As disclosed in Part I, Item 2, *Management's Discussion and Analysis of Financial Condition and Results of Operations*, an unauthorized third party gained access to a number of our systems in March 2023, which caused disruption to parts of our business operations and resulted in various investigation, recovery, and remediation expenses. In addition, the technology infrastructure and systems of some of our suppliers, vendors, service providers, cloud solution providers and partners have in the past experienced, and may in the future experience, such incidents. Cyber incidents can be caused by ransomware, computer denial-of-service attacks, worms, and other malicious software programs or other attacks, including the covert introduction of malware to computers and networks, and the use of techniques or processes that change frequently, may be disguised or difficult to detect, or are designed to remain dormant until a triggering event, and may continue undetected for an extended period of time. Cyber incidents have in the past resulted from, and may in the future result from, social engineering or impersonation of authorized users, and may also result from efforts to discover and exploit any design flaws, bugs, security vulnerabilities or security weaknesses, intentional or unintentional acts by employees or other insiders with access privileges, intentional acts of vandalism or fraud by third parties and sabotage. In some instances, efforts to correct vulnerabilities or prevent incidents have in the past and may in the future reduce the functionality or performance of our computer systems and networks, which could negatively impact our business. We believe malicious cyber acts are increasing in number and that cyber threat actors are increasingly organized and well-financed or supported by state actors, and are developing increasingly sophisticated systems and means to not only infiltrate systems, but also to evade detection or to obscure their activities. Geopolitical tensions or conflicts may create heightened risk of cyber incidents.

Our products are also targets for malicious cyber acts, including those products utilized in cloud-based environments as well as our cloud service offerings. Our cloud services have in the past and may in the future be taken offline as a result of or in order to prevent or mitigate cyber incidents. While some of our products contain encryption or security algorithms to protect third-party content or user-generated data stored on our products, these products could still be hacked or the encryption schemes could be compromised, breached, or circumvented by motivated and sophisticated attackers. Further, our products contain sophisticated hardware and operating system software and applications that may contain security problems, security vulnerabilities, or defects in design or manufacture, including "bugs" and other problems that could interfere with the intended operation of our products. To the extent our products include design defects, suffer system failure or are hacked, or if the encryption schemes are compromised or breached, this could harm our business by requiring us to employ additional resources to fix the errors or defects, exposing us to litigation and indemnification claims and hurting our reputation.

As discussed in Part I, Item 2, *Management's Discussion and Analysis of Financial Condition and Results of Operations* with respect to the March 2023 cyber incident, if efforts to breach our infrastructure, systems or products are successful or we are unable to protect against these risks, we could suffer interruptions, delays, or cessation of operations of our systems, and loss or misuse of proprietary or confidential information, IP, or sensitive or personal information. Compromises of our infrastructure, systems or products could also cause our customers and other affected third parties to suffer loss or misuse of proprietary or confidential information, IP, or sensitive or personal information, and could harm our relationships with customers and other third parties and subject us to liability. As a result of actual or perceived breaches, we have in the past experienced and may in the future experience additional costs, notification requirements, civil and administrative fines and penalties, indemnification claims, litigation, or damage to our brand and reputation. All of these consequences could harm our reputation and our business and materially and negatively impact our operating results and financial condition.

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
3.1	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)
3.2	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)
3.3	Certificate of Designations, Preferences and Rights of Series A Convertible Perpetual Preferred Stock (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 1, 2023)
10.1	Investment Agreement, dated January 31, 2023, by and between Western Digital Corporation and AP WD Holdings, L.P.†
10.2	Investment Agreement, dated January 31, 2023, by and among Western Digital Corporation, Elliott Associates, L.P. and Elliott International, L.P.†
10.3	Registration Rights Agreement, dated January 31, 2023, by and among Western Digital Corporation, AP WD Holdings, L.P., Elliott Associates, L.P. and Elliott International, L.P. (Filed as Exhibit 10.3 to the Company's Current Report on Form 8-K (File No. 1-08703) with the Securities and Exchange Commission on February 1, 2023)
10.4	Amended and Restated Letter Agreement, dated January 31, 2023, by and between Western Digital Corporation and Elliott Investment Management L.P. (Filed as Exhibit 10.4 to the Company's Current Report on Form 8-K (File No. 1-08703) with the Securities and Exchange Commission on February 1, 2023)
31.1	Certification of Principal Executive Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002†
31.2	Certification of Principal Financial Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002†
32.1	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**
32.2	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.
** Furnished with this report.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the Registrant has duly caused this Quarterly Report on Form 10-Q to be signed on its behalf by the undersigned thereunto duly authorized.

WESTERN DIGITAL CORPORATION

By: /s/ Gene Zamiska
Gene Zamiska
Senior Vice President, Global Accounting and Chief Accounting Officer
(Principal Accounting Officer and Duly Authorized Officer)

Dated: May 10, 2023

Exhibit 10.1

INVESTMENT AGREEMENT
by and between

WESTERN DIGITAL CORPORATION

and

AP WD HOLDINGS, L.P.

Dated as of January 31, 2023

THIS DOCUMENT IS INTENDED SOLELY TO FACILITATE DISCUSSIONS BETWEEN THE PARTIES. IT IS NOT INTENDED TO CREATE, AND WILL NOT BE DEEMED TO CREATE, A LEGALLY BINDING OR ENFORCEABLE OFFER OR AGREEMENT OF ANY TYPE OR NATURE PRIOR TO THE DULY AUTHORIZED AND APPROVED EXECUTION OF THIS DOCUMENT BY EACH OF THE PARTIES AND THE DELIVERY OF AN EXECUTED COPY BY EACH OF THE PARTIES.

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INVESTMENT AGREEMENT, dated as of January 31, 2023 (this "Agreement"), by and between Western Digital Corporation, a Delaware corporation (the "Company"), and AP WD Holdings, L.P., a Delaware limited partnership (together with its successors and any Affiliate that becomes a party hereto pursuant to Section 7.03, the "Investor").

WHEREAS, subject to the terms and conditions set forth herein, the Company desires to issue, sell and deliver to the Investor, and the Investor desires to purchase and acquire from the Company, an aggregate of 665,000 shares of the Company's Series A Convertible Perpetual Preferred Stock, par value $0.01 per share (the "Preferred Stock"), having the designation, preferences, rights, privileges, powers, and terms and conditions, as specified in the form of the Certificate of Designations, Preferences and Rights of Series A Convertible Perpetual Preferred Stock attached hereto as Exhibit A (the "Certificate of Designations"); and

WHEREAS, contemporaneously with the execution and delivery of this Agreement, the Company is entering into the Elliott Investment Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, representations, warranties and agreements contained in this Agreement, the receipt and sufficiency of which are hereby acknowledged, the parties to this Agreement hereby agree as follows:

Article I

Definitions

Section 1.01 Definitions. (a) As used in this Agreement (including the recitals hereto), the following terms shall have the following meanings:

"25% Beneficial Holding Requirement" means that the Investor Parties continue to beneficially own shares of Preferred Stock and/or shares of Common Stock issued upon conversion of shares of Preferred Stock that represent, in the aggregate and on an as-converted basis, at least 25% of the number of shares of Common Stock beneficially owned by the Investor Parties in the aggregate on an as-converted basis as at the Closing, in each case as appropriately adjusted to account for any event that results in an adjustment to the Conversion Price in accordance with the applicable section of the Certificate of Designations; provided, that, to the extent the Company undertakes a Standalone Spin-Off, from and after such Spin-Off, for purposes of calculating this 25% Beneficial Holding Requirement, the number of shares of Preferred Stock and/or Common Stock beneficially owned by the Investor Parties as of the Closing shall equal (a) the Acquired Shares (as defined below) *less* (b) the SpinCo Preferred Stock (as defined below).

"50% Beneficial Holding Requirement" means that the Investor Parties continue to beneficially own shares of Preferred Stock and/or shares of Common Stock issued upon conversion of shares of Preferred Stock that represent, in the aggregate and on an as-converted basis, at least 50% of the number of shares of Common Stock beneficially owned by the Investor Parties in the aggregate on an as-converted basis as at the Closing, in each case as appropriately adjusted to account for any event that results in an adjustment to the Conversion Price in accordance with the applicable section of the Certificate of Designations; provided, that, to the extent the Company undertakes a Standalone Spin-Off, from and after such Spin-Off, for purposes of calculating this 50% Beneficial Holding Requirement, the number of shares of Preferred Stock and/or Common Stock beneficially owned by the Investor Parties as of the Closing shall equal (a) the Acquired Shares (as defined below) *less* (b) the SpinCo Preferred Stock (as defined below).

"Acquisition" means any transaction or series of related transactions for the purpose of or resulting, directly or indirectly, in (a) the acquisition of all or substantially all of the assets of a Person, or of any line of business or division of a Person, (b) the acquisition of in excess of 50.00% of the capital stock, partnership interests, membership interests or equity of any Person (other than a Person that is a Subsidiary of the Company), but, at the Company's option, including acquisitions of Equity Securities increasing the ownership of the Company or a Subsidiary of the Company in an existing Subsidiary of the Company, or (c) a merger or consolidation or any other combination with another Person (other than a Person that is already a Subsidiary of the Company); provided that the Company or a Subsidiary of the Company is the surviving entity or the surviving entity becomes a Subsidiary of the Company.

"Adjusted EBITDA" means, for any period, the Consolidated Net Income for such period, *plus*:

(a) without duplication and to the extent already deducted (and not added back) in arriving at such Consolidated Net Income (other than in the case of clause (xii) below), the sum of the following amounts for such period:

(i) interest expense (including, to the extent deducted and not added back in computing Consolidated Net Income, (A) amortization of original issue discount resulting from the issuance of Indebtedness at less than par, (B) all commissions, discounts and other fees and charges owed with respect to letters of credit or bankers' acceptances, (C) non-cash interest payments, (D) the interest component of Capitalized Lease Obligations, (E) net payments, if any, made (less net amounts, if any, received) pursuant to interest rate hedging obligations with respect to Indebtedness, (F) amortization or write-off of deferred financing fees, debt issuance costs, commissions, fees and expenses, including commitment, letter of credit and administrative fees and charges with respect to Indebtedness permitted to be incurred hereunder and (G) any expensing of bridge, commitment and other financing fees), after giving effect to the impact of interest rate risk hedging, and, to the extent not reflected in such interest expense, unused line fees and letter of credit fees payable hereunder,

(ii) provision for taxes based on income, profits or capital, including federal, foreign, state, franchise, excise and similar taxes paid or accrued during such period (including in respect of repatriated funds),

(iii) depreciation and amortization, including amortization of intangible assets established through purchase accounting and amortization of deferred financing fees or costs (which shall include, without duplication, payments by the Company or its Subsidiaries to Flash Partners Ltd., Flash Alliance Ltd., Flash Forward Ltd. or any other joint venture with Toshiba Corporation or Toshiba Memory Corporation (or any of their Affiliates) with respect to the Company or a Subsidiary of the Company's 50% (or other) share of such joint venture's expense related to equipment depreciation),

(iv) any Charges (other than depreciation or amortization expense) related to any equity offering, investment, acquisition, disposition, recapitalization or the incurrence or repayment of Indebtedness (including a refinancing or amendment, waiver or other modification thereof) (whether or not successful),

(v) Non-Cash Charges,

(vi) (A) extraordinary Charges and (B) unusual or nonrecurring Charges, in each case, to the extent not of a type described in clause (viii),

(vii) [reserved],

(viii) Charges attributable to the undertaking and/or implementation of cost savings initiatives, operating expense reductions and other restructuring, integration or transformational charges (including inventory optimization expenses, business optimization expenses, transaction costs and costs related to the opening, closure, consolidation or separation of facilities and curtailments, costs related to entry into new markets, consulting fees, recruiter fees, signing costs, retention or completion bonuses, transition costs, relocation costs, severance payments, and modifications to pension and post-retirement employee benefit plans); provided that amounts added back pursuant to this clause (viii), together with any amounts added back pursuant to clause (xii) below and the amount of any Pro Forma Adjustment to Adjusted EBITDA for such period, shall not exceed the greater of $500 million and 15% of Adjusted EBITDA for such period (calculated prior to giving effect to any such add-back),

(ix) the amount of any minority interest expense consisting of subsidiary income attributable to minority Equity Securities of any non-Wholly-owned Subsidiary held by third parties,

(x) [reserved],

(xi) [reserved],

(xii) expected cost savings, operating expense reductions, restructuring charges and expenses and synergies (net of the amount of actual amounts realized) reasonably identifiable and factually supportable and reasonably anticipated to be realized within 18 months of the date thereof (in the good faith determination of the Company) related to permitted asset sales, acquisitions, investments, dispositions, operating improvements, restructurings, cost savings initiatives and certain other similar initiatives and specified transactions conducted after the Original Issue Date (as defined in the Certificate of Designations); provided that amounts added back pursuant to this clause (xii), together with any amounts added back pursuant to clause (viii) above and the amount of any Pro Forma Adjustment to Adjusted EBITDA for such period, shall not exceed the greater of $500 million and 15% of Adjusted EBITDA for such period (calculated prior to giving effect to any such add-back),

(xiii) transaction fees, costs and expenses incurred to the extent reimbursable by third parties pursuant to indemnification provisions or insurance; provided that the Company in good faith expects to receive reimbursement for such fees, costs and expenses within the next four (4) fiscal quarters (it being understood that to the extent not actually received within such fiscal quarters, such reimbursement amounts shall be deducted in calculating Adjusted EBITDA at the end of such four fiscal quarter period),

(xiv) earn-out obligations incurred in connection with any Acquisitions or other investment and paid or accrued during the applicable period and on similar acquisitions, and

(xv) casualty or business interruption insurance in an amount representing the losses for the applicable period that such proceeds are intended to replace (whether or not yet received so long as the Company in good faith expects to receive the same within the next four (4) fiscal quarters (it being understood that to the extent not actually received within such fiscal quarters, such proceeds shall be deducted in calculating Adjusted EBITDA for such fiscal quarters in the future)); *less*

(b) without duplication and to the extent included in arriving at such Consolidated Net Income, the sum of the following amounts for such period:

(i) extraordinary gains and unusual or non-recurring gains, and

(ii) non-cash gains (excluding any non-cash gain to the extent it represents the reversal of an accrual or reserve for a potential cash item that reduced Adjusted EBITDA in any prior period); provided, in each case, that, if any non-cash gain represents an accrual or asset for future cash items in any future period, the cash payment in respect thereof shall in such future period be added to Adjusted EBITDA for such period to the extent excluded from Adjusted EBITDA in any prior period,

(c) increased or decreased by (without duplication):

(i) any net gain or loss resulting in such period from Hedging Obligations and the application of Accounting Standards Codification Topic 815 and International Accounting Standards No. 39 and their respective related pronouncements and interpretations; *plus* or *minus*, as applicable,

(ii) any net gain or loss resulting in such period from currency translation gains or losses related to currency remeasurements of indebtedness (including any net loss or gain resulting from hedge agreements for currency exchange risk),

(iii) any effects of purchase accounting adjustments (including the effects of such adjustments pushed down to such person and such Subsidiaries) in amounts required or permitted by GAAP, resulting from the application of purchase accounting in relation to any consummated acquisition or the amortization or write-off of any amounts thereof, net of Taxes, and

(iv) any adjustments resulting from the application of Accounting Standards Codification Topic 460, Guarantees, or any comparable regulation;

in each case, as determined on a consolidated basis for the Company and its Subsidiaries in accordance with GAAP.

"Affiliate" means, as to any Person, any other Person that, directly or indirectly, controls, or is controlled by, or is under common control with, such Person; provided, however, (i) that the Company and its Subsidiaries shall not be deemed to be Affiliates of any Investor Party or any of its Affiliates, and (ii) other than in the case of the definitions of "Third Party", "Investor Party" and "Investor Related Party", Section 4.08, Section 5.08(j), Section 5.08(k), Section 5.16, Article VI, Section 7.03 or Section 7.13, in no event shall any of the Investor Parties or any of their respective Subsidiaries be considered an Affiliate of any portfolio company or investment fund affiliated with or managed by affiliates of Apollo, nor shall any other portfolio company or investment fund affiliated with or managed by affiliates of Apollo be considered to be an Affiliate of an Investor Party or any of their respective Affiliates. For this

purpose, "control" (including, with its correlative meanings, "controlled by" and "under common control with") shall mean the possession, directly or indirectly, of the power to direct or cause the direction of management or policies of a Person, whether through the ownership of securities or partnership or other ownership interests, by contract or otherwise.

"Apollo" means Apollo Global Management, Inc.

"Apollo Funds" means Apollo Investment Fund X, L.P., Apollo Overseas Partners (Delaware) X, L.P., Apollo Overseas Partners (Delaware 892) X, L.P., Apollo Overseas Partners X, L.P. and Apollo Overseas Partners (Lux) X, SCSp.

"as-converted basis" means (i) with respect to the outstanding shares of Common Stock as of any date, all outstanding shares of Common Stock calculated on a basis in which all shares of Common Stock issuable upon conversion of the outstanding shares of Preferred Stock (at the Conversion Price in effect on such date as set forth in the Certificate of Designations) are assumed to be outstanding as of such date and (ii) with respect to any outstanding shares of Preferred Stock as of any date, the number of shares of Common Stock issuable upon conversion of such shares of Preferred Stock on such date (at the Conversion Price in effect on such date as set forth in the Certificate of Designations).

"beneficially own", "beneficial ownership of", or "beneficially owning" any securities shall have the meaning set forth in Rule 13d-3 of the rules and regulations under the Exchange Act; provided, that any Person shall be deemed to beneficially own any securities that such Person has the right to acquire, whether or not such right is exercisable immediately (including assuming conversion of all Preferred Stock, if any, owned by such Person to Common Stock).

"Board" means the Board of Directors of the Company.

"Business Day" means any day except a Saturday, a Sunday or other day on which the SEC or banks in the City of New York are authorized or required by Law to be closed.

"Capital Lease" means any lease of Property, which in accordance with GAAP, is required to be capitalized on the balance sheet of the lessee; provided that, notwithstanding the foregoing, only those leases and obligations that would constitute Capital Leases prior to the implementation of Accounting Standards Codification 842, Leases, will be considered to be Capital Leases for purposes of this Agreement.

"Capitalized Lease Obligation" means, for any Person, the amount of the liability shown on the balance sheet of such Person in respect of a Capital Lease determined in accordance with GAAP.

"Charges" means any charge, expense, cost, accrual or reserve of any kind.

"Code" means the United States Internal Revenue Code of 1986, as amended.

"Common Stock" means the common stock, par value $0.01 per share, of the Company.

"Company Charter Documents" means the Company's certificate of incorporation and bylaws, each as amended to the date of this Agreement.

"Company ESPP" means the Amended and Restated 2005 Employee Stock Purchase Plan.

"Company Plan" means each "employee benefit plan" (as defined in Section 3(3) of ERISA, whether or not subject to ERISA) and each other plan, program, arrangement, policy or contract relating to severance, termination, garden leave, pay in lieu, gross-up, pension, profit-sharing, savings, retirement, death benefit, group insurance, hospitalization, medical, dental, life, employee loan, restrictive covenant, relocation, clawback, fringe benefit, cafeteria, disability, consulting, change in control, employment, compensation, incentive, bonus, retention, stock option, restricted stock, restricted or deferred stock unit, stock purchase, phantom stock or other equity or equity-based compensation (including the Company Stock Plans and all outstanding awards granted thereunder, and the Company ESPP), deferred compensation or other benefit or compensation, in each case, that is sponsored, maintained or contributed to by the Company or any of its Subsidiaries or to which the Company or any of its Subsidiaries contributes or is obligated to contribute to, or has or may have any current or contingent liability or obligation, including on account of an ERISA Affiliate, other than any plan, program, policy, agreement or arrangement sponsored and administered by a Governmental Authority.

"Company Related Party" means the Company and its former, current or future Affiliates and any of the foregoing's respective former, current or future, direct or indirect, officers, other fiduciary, directors, employees, affiliates, stockholders, equityholders, managers, members, partners, agents, attorneys, advisors, lenders or other representatives or any of the foregoing's respective successors or assigns.

"Company Stock Plans" means the Amended and Restated Western Digital Corporation 2021 Long-Term Incentive Plan, the Western Digital Corporation Amended and Restated 2017 Performance Incentive Plan, the 2021 Long-Term Incentive Plan Non-Employee Director Restricted Stock Unit Grant Program, the SanDisk Corporation 2013 Incentive Plan, the Virident Systems, Inc. 2006 Stock Plan and the Amended and Restated Western Digital Corporation Non-Employee Directors Stock For Fees Plan, each as may be amended from time to time.

"Confidentiality Agreement" means that certain letter agreement between Apollo Management IX, L.P. and the Company dated as of March 14, 2022, as may be amended from time to time in accordance with its terms.

"Consolidated Net Income" means, for any period, the net income (loss) attributable to the Company and its Subsidiaries for such period determined on a consolidated basis in accordance with GAAP, excluding, without duplication, (a) the cumulative effect of a change in accounting principles during such period to the extent included in net income (loss), (b) the income (or loss) of any Person in which any other Person has an ownership interest, except to the extent of the amount of dividends or other distributions actually paid to the Company or any of its Subsidiaries by such Person during such period, (c) the income of any Subsidiary of the Company to the extent that the declaration or payment of dividends or similar distributions by that Subsidiary of that income is subject to an absolute prohibition during such period by operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to that Subsidiary (other than any prohibition that has been waived or otherwise released), except to the extent of the amount of dividends or other distributions actually paid by such Subsidiary or any other Subsidiary of the Company that is not subject to such prohibitions, (d) the income (or loss) of any Person accrued prior to the date it becomes a Subsidiary of the Company or is merged into or consolidated with the Company or any of its Subsidiaries or that Person's assets are acquired by the Company or any of its Subsidiaries (except as provided in the definition of "Pro Forma Basis"), (e) after tax gains or Charges (less all fees and expenses chargeable thereto) attributable to any asset dispositions outside the ordinary course of business (including asset retirement costs) or of returned surplus assets of any employee benefit plan, (f) any net gains or Charges with respect to (i) disposed, abandoned, divested and/or discontinued assets, properties or operations (other than

assets, properties or operations pending the disposal, abandonment, divestiture and/or termination thereof) and (ii) facilities that have been closed during such period, (g) any net income or loss (less all fees and expenses or charges related thereto) attributable to the early extinguishment of Indebtedness, hedging obligations or other derivative instruments and (h) any write-off or amortization made in such period of deferred financing costs and premiums paid or other expenses incurred directly in connection with any early extinguishment of Indebtedness.

"Consolidated Net Total Leverage Ratio" means the quotient of (a) the total consolidated amount of Indebtedness of the Company and its consolidated Subsidiaries under clauses (a), (c), (d) and (e) of such definition, minus the unrestricted cash and cash equivalents of the Company and its consolidated Subsidiaries, divided by (b) the Company's consolidated Adjusted EBITDA for the last four (4) fiscal quarters for which internal financial statements are available.

"Consolidated Total Assets" means, at any time, all assets that would, in conformity with GAAP, be set forth under the caption "total assets" (or any like caption) on a consolidated balance sheet of the Borrower and its Subsidiaries at such date.

"Contingent Obligation**"** means as to any Person, any obligation of such Person guaranteeing any Indebtedness ("*primary obligations*") of any other Person (the "*primary obligor*") in any manner, whether directly or indirectly, including, without limitation, any obligation of such Person, whether or not contingent, (i) to purchase any such primary obligation or any Property constituting direct or indirect security therefor, (ii) to advance or supply funds (x) for the purchase or payment of any such primary obligation or (y) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor, (iii) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation or (iv) otherwise to assure or hold harmless the holder of such primary obligation against loss in respect thereof; provided, however, that the term Contingent Obligation shall not include endorsements of instruments for deposit or collection in the ordinary course of business. The amount of any Contingent Obligation shall be deemed to be an amount equal to the stated or determinable amount of the primary obligation in respect of which such Contingent Obligation is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof (assuming such Person is required to perform thereunder) as determined by such Person in good faith.

"Conversion Price" has the meaning set forth in the Certificate of Designations.

"Convertible Notes" means $1,100,000,000 of the Company's 1.50% Convertible Senior Notes due 2024 and any successor debt securities issued to refinance the Convertible Notes.

"Credit Agreement" means the Amended and Restated Loan Agreement, dated as of January 7, 2022 (as amended by Amendment No. 1, dated as of December 23, 2022 and as further amended, modified or restated from time to time), among the Company, the various institutions party thereto from time to time and J.P. Morgan Chase Bank, N.A., as administrative agent.

"Delayed Draw Facility" means that certain Loan Agreement, dated as of January 25, 2023 (as amended, modified or restated from time to time), among the Company, the various institutions party thereto from time to time and J.P. Morgan Chase Bank, N.A., as administrative agent.

"DGCL" means the Delaware General Corporation Law, as amended, supplemented or restated from time to time.

"Elliott Transaction Documents" means, collectively, the (a) Investment Agreement, dated as of the date hereof (the "Elliott Investment Agreement"), by and among the Company, Elliott Associates, L.P., a Delaware limited partnership ("EALP"), and Elliott International, L.P., a Cayman Islands limited partnership ("EILP" and, together with EALP and their respective successors and any Affiliate that becomes a party to the Elliott Investment Agreement pursuant to Section 7.03 thereof, the "Elliott Investors", (b) Certificate of Designations, and (c) Registration Rights Agreement.

"Equity Securities" has the meaning set forth in the Certificate of Designations.

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

"ERISA Affiliate" means, with respect to the Company or any of its Subsidiaries, any member of any group of organizations described in Section 414(b), (c), (m), (n) or (o) of the Code of which the Company or such Subsidiary is a member. "Exchange Act" means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

"Fair Market Value" means, with respect to any security or other property, the fair market value of such security or other property as reasonably determined in good faith by a majority of the Board, or an authorized committee thereof.

"Fall-Away of Board Rights" means the first day on which the 50% Beneficial Holding Requirement is not satisfied.

"Fitch" means Fitch, Inc.

"Flash Business" means the "Flash" operating segment of the Company described in the Company's Form 10-K for the fiscal year ended July 1, 2022.

"Fundamental Change" has the meaning set forth in the Certificate of Designations.

"Fundamental Representations" means the representations and warranties of the Company set forth in Sections 3.01, 3.02, 3.03(a), 3.12, 3.13 and 3.18.

"GAAP" means generally accepted accounting principles in the United States, consistently applied.

"Governmental Authority" means any government, court, regulatory or administrative agency, commission, arbitrator (public or private) or authority or other legislative, executive or judicial governmental entity (in each case including any self-regulatory organization), whether federal, state or local, domestic, foreign or multinational.

"Hedge Agreement" means any interest rate, currency or commodity swap agreements, cap agreements, collar agreements, floor agreements, exchange agreements, forward contracts, option contracts or similar interest rate or currency or commodity arrangements or precious metal hedging arrangements.

"Hedging Obligations" means, with respect to any Person, the obligations of such Person under Hedge Agreements.

"HSR Act" means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the rules and regulations promulgated thereunder.

"Indebtedness" means for any Person (without duplication): (a) all indebtedness of such Person for borrowed money, whether current or funded, or secured or unsecured, (b) all indebtedness for the deferred purchase price of Property, (c) all indebtedness secured by a purchase money mortgage or other Lien to secure all or part of the purchase price of Property subject to such mortgage or Lien, (d) all obligations under leases which shall have been or must be, in accordance with GAAP, recorded as Capital Leases in respect of which such Person is liable as lessee, (e) any liability in respect of banker's acceptances or letters of credit, (f) any indebtedness of another Person, whether or not assumed, of the types described in clauses (a) through (c) above or clause (g) below, secured by Liens on Property acquired by the Company or its Subsidiaries at the time of acquisition thereof, and (g) all Contingent Obligations in respect of indebtedness of the types described in clauses (a) through (f) hereof, provided that the term "Indebtedness" shall not include (i) trade payables and accrued expenses arising in the ordinary course of business, (ii) any earn-out obligation in connection with an Acquisition except to the extent that the amount payable pursuant to such earnout becomes payable, (iii) prepaid or deferred revenue arising in the ordinary course of business, (iv) purchase price holdbacks arising in the ordinary course of business in respect of a portion of the purchase price of an asset to satisfy warrants or other unperformed obligations of the seller of such asset and (v) any leases or guarantees of leases, in each case that is not a Capital Lease, including of joint ventures. The amount of Indebtedness of any person for purposes of clause (f) above shall (unless such indebtedness has been assumed by such person or is otherwise recourse to such person) be deemed to be equal to the lesser of (A) the aggregate unpaid amount of such indebtedness and (B) the fair market value of the property encumbered thereby.

"Indenture" means, collectively, (i) the indenture dated February 13, 2018 (as amended or supplemented from time to time) among the Company, as issuer, the subsidiary guarantors party thereto, and U.S. Bank National Association, as trustee (the "Base Indenture") in connection with the Company's issuance of the Convertible Notes and the $2,300,000,000 aggregate principal amount 4.750% Senior Unsecured Notes due 2026 (the "2026 Notes"), and (ii) the First Supplement Indenture to Base Indenture dated December 10, 2021 among the Company, as issuer, and U.S. Bank National Association as trustee in connection with the Company's issuance of the $500,000,000 aggregate principal amount 2.85% Senior Unsecured Notes due 2029 (the "2029 Notes"), and the $500,000,000 aggregate principal amount 3.10% Senior Unsecured Notes due 2032 (the "2032 Notes"), and any successor indenture or other loan agreement entered into to refinance the Convertible Notes, the 2026 Notes, the 2029 Notes or the 2032 Notes.

"Investor Director" means a member of the Board who was elected to the Board as an Investor Director Designee.

"Investor Material Adverse Effect" means any effect, change, event or occurrence that would reasonably be expected to, individually or in the aggregate, prevent or materially delay or impair (i) the consummation by the Investor of any of the Transactions on a timely basis or (i) the compliance by the Investor with its obligations under this Agreement.

"Investor Parties" means the Investor and each Affiliate of the Investor to whom shares of Preferred Stock or Common Stock are transferred in accordance with the terms of this Agreement.

"Investor Related Party" means the Investor and any other financing sources of the Investor, the Apollo Funds and any of the foregoing's respective former, current or future Affiliates and any of the foregoing's respective former, current or future, direct or indirect, officers, other fiduciary, directors, employees, affiliates, stockholders, equityholders, managers, members, partners, agents, attorneys, advisors, lenders or other representatives or any of the foregoing's respective successors or assigns.

"IRS" means the United States Internal Revenue Service.

"Knowledge" means, with respect to the Company, the actual knowledge of the individuals listed on Exhibit C, in each case after reasonable inquiry with his or her direct reports.

"Labor Laws" means all Laws relating to labor and employment, including but not limited to, all Law relating to employment and independent contractor practices, wages, equal employment opportunity, affirmative action and other hiring practices, immigration (including the completion of I-9s for all employees and the proper confirmation of employee visas), workers' compensation, unemployment, the payment of social security and other employment-related taxes, employment standards, employment of minors, occupational health and safety, labor relations, unions, withholdings, payment of wages and overtime, meal and rest periods, workplace safety, employee benefits, pay equity, employee and worker classification (including the classification of independent contractors and exempt and non-exempt employees), leaves of absence, family and medical leave, civil rights, retaliation, discrimination, sexual or other workplace harassment, the Worker Adjustment and Retraining Notification Act of 1988, and the regulations promulgated thereunder and any similar state, local or foreign Law, the National Labor Relations Act, the Labor Management Relations Act, the Occupational Safety and Health Act, Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the Family Medical Leave Act, the Fair Labor Standards Act, the Equal Pay Act, the Rehabilitation Act, the Employee Retirement Income Security Act, the Uniform Services Employment and Reemployment Rights Act, the Genetic Information Nondiscrimination Act, 42 U.S.C. §§ 1981, 1983, 1985 and 1986, the Sarbanes-Oxley Act and the Immigration Reform and Control Act, or any similar state, local or foreign Law.

"Leased Real Property" means all right, title and interest of the Company and its Subsidiaries to any leasehold interests in any real property, together with all buildings, structures, improvements and fixtures thereon.

"Lien" means, with respect to any real, tangible, intangible or mixed property or asset of any Person, any deed of trust, mortgage, lien, security interest, pledge, charge or encumbrance in the nature of security in respect of such real, tangible, intangible or mixed property or asset, including the interests of a vendor or lessor under any conditional sale, capital lease or other title retention arrangement; provided that in no event shall an operating lease be deemed to constitute a Lien.

"Material Adverse Effect" means any effect, change, event or occurrence that has or would reasonably be expected to have, individually or in the aggregate, a material adverse effect on (x) the business, results of operations, assets, liabilities or condition (financial or otherwise) of the Company and its Subsidiaries, taken as a whole or (y) the ability of the Company to (i) consummate the Transactions on a timely basis or (ii) comply with its obligations under this Agreement; provided, however, that, for purposes of clause (x) above, none of the following, and no effect, change, event or occurrence arising out of, or resulting from, the following, shall constitute or be taken into account in determining whether a Material Adverse Effect has occurred or would reasonably be expected to occur: any effect, change, event or

occurrence (A) generally affecting (1) the industry in which the Company and its Subsidiaries operate or (2) the economy, credit or financial or capital markets, in the United States or elsewhere in the world, including changes in interest or exchange rates, or (B) to the extent arising out of, resulting from or attributable to (1) changes or prospective changes in Law or in GAAP or in accounting standards, or any changes or prospective changes in the interpretation or enforcement of any of the foregoing, or any changes or prospective changes in general legal, regulatory or political conditions, in each case occurring after the date hereof, (2) the public announcement of a Spin-Off, this Agreement, the Elliott Transaction Documents, the Transaction Documents or the consummation of the Transactions, (3) acts of war (whether or not declared), sabotage or terrorism, or any escalation or worsening of any such acts of war (whether or not declared), sabotage or terrorism, (4) volcanoes, tsunamis, pandemics, earthquakes, hurricanes, tornados or other natural disasters, (5) any action taken by the Company or its Subsidiaries (w) that is expressly required by this Agreement or the Transaction Documents, (x) to negotiate and consummate a Spin-Off and any Subsequent Transaction (except as otherwise expressly prohibited by this Agreement or the Transaction Documents), (y) with the Investor's express written consent, or (z) at the Investor's express prior written request, (6) any decline in the market price, or change in trading volume, of the capital stock of the Company (it being understood that this clause (6) shall not prevent a determination that the underlying cause of any such change or decline is a Material Adverse Effect), (7) any failure to meet any internal or public projections, forecasts, guidance, estimates, milestones, budgets or internal or published financial or operating predictions of revenue, earnings, cash flow or cash position (it being understood that this clause (7) shall not prevent or otherwise affect a determination that the underlying cause of any such failure is a Material Adverse Effect), (8) any change or prospective change in the Company's credit ratings (it being understood that this clause (8) shall not prevent or otherwise affect a determination that the underlying cause of any such change or prospective change is a Material Adverse Effect), (9) any change resulting or arising from the identity of the Investor or any of its Affiliates or (10) any actions taken at the written request of the Investor; provided, further, however, that any effect, change, event or occurrence referred to in clause (A) or clauses (B)(1), (B)(3) or (B)(4) may be taken into account in determining whether there has been, or would reasonably be expected to be, individually or in the aggregate, a Material Adverse Effect to the extent such effect, change, event or occurrence has a disproportionate adverse effect on the business, results of operations, assets or financial condition of the Company and its Subsidiaries, taken as a whole, as compared to other participants in the industry in which the Company and its Subsidiaries operate (in which case the incremental disproportionate impact or impacts may be taken into account in determining whether there has been, or would reasonably be expected to be, a Material Adverse Effect).

"Moody's" means Moody's Investors Service, Inc.

"NASDAQ" means the NASDAQ Global Select Market.

"Non-Cash Charges" means (a) any impairment charge or asset write-off or write-down related to intangible assets (including goodwill), long-lived assets, and investments in debt and equity securities pursuant to GAAP, (b) all non-cash losses from investments recorded using the equity method, (c) all Non-Cash Compensation Expenses, (d) the non-cash impact of purchase or recapitalization accounting and (e) all other non-cash charges (provided that, in each case, if any non-cash charges represent an accrual or reserve for potential cash items in any future period, the cash payment in respect thereof in such future period shall be subtracted from Adjusted EBITDA to such extent, and excluding amortization of a prepaid cash item that was paid in a prior period).

"Non-Cash Compensation Expense" means any non-cash expenses and costs that result from the issuance of stock-based awards, limited liability company or partnership interest-based awards and similar incentive-based compensation awards or arrangements.

"Owned Intellectual Property" means any and all Intellectual Property Rights owned or purported to be owned by the Company or any of its Subsidiaries.

"Parity Securities" has the meaning set forth in the Certificate of Designations.

"Person" means an individual, corporation, limited liability company, partnership, joint venture, association, trust, unincorporated organization or any other entity, including a Governmental Authority.

"Post-Transaction Period" means, with respect to any Specified Transaction, the period beginning on the date such Specified Transaction is consummated and ending on the last day of the fourth consecutive full fiscal quarter immediately following the date on which such Specified Transaction is consummated.

"Pro Forma Adjustment" means, for any period that includes all or any part of a fiscal quarter included in any Post-Transaction Period, the pro forma increase or decrease in Adjusted EBITDA projected by the Company in good faith based on the Company's reasonable assumptions as a result of (a) actions taken, prior to or during such Post-Transaction Period, for the purposes of realizing reasonably identifiable and factually supportable cost savings within 18 months of the date thereof, or (b) any additional costs incurred prior to or during such Post-Transaction Period to effect operating expense reductions and other operating improvements or synergies reasonably expected to result from a Specified Transaction; provided that, (A) so long as such actions are taken prior to or during such Post-Transaction Period or such costs are incurred prior to or during such Post-Transaction Period it may be assumed, for purposes of projecting such pro forma increase or decrease to Adjusted EBITDA, that such cost savings will be realizable during the entirety of such period, or such additional costs will be incurred during the entirety of such period, and (B) any such pro forma increase or decrease to Adjusted EBITDA shall be without duplication for cost savings or additional costs already included in Adjusted EBITDA for such period. Notwithstanding the foregoing, any Pro Forma Adjustment to Adjusted EBITDA for any period, together with any amounts added back pursuant to clauses (a)(viii) and (a)(xii) of the definition of "Adjusted EBITDA" for such period, shall not exceed the greater of $500 million and 15% of Adjusted EBITDA for such period (calculated prior to such add-back).

"Pro Forma Basis" and "Pro Forma Effect" means, with respect to compliance with any test or covenant hereunder, that (A) to the extent applicable, the Pro Forma Adjustment shall have been made and (B) all Specified Transactions and the following transactions in connection therewith shall be deemed to have occurred as of the first day of the applicable period of measurement in such test or covenant: (a) income statement items (whether positive or negative) attributable to the property or Person subject to such Specified Transaction, (i) in the case of a sale, transfer or other disposition of all or substantially all capital stock in any Subsidiary of the Company or any division or product line of the Company or any of its Subsidiaries, shall be excluded, and (ii) in the case of an Acquisition or investment described in the definition of the term "Specified Transaction," shall be included, (b) any retirement or repayment of Indebtedness, (c) any Indebtedness incurred by the Company or any of its Subsidiaries in connection therewith and if such indebtedness has a floating or formula rate, shall have an implied rate of interest for the applicable period for purposes of this definition determined by utilizing the rate that is or would be in effect with respect to such Indebtedness at the relevant date of determination and (d) the acquisition of any Consolidated Total Assets, whether pursuant to any Specified Transaction or any Person becoming a Subsidiary or merging, amalgamating or consolidating with or into the Borrower or any of its Subsidiaries or the Borrower or any of its Subsidiaries; provided that, without limiting the application of the Pro Forma Adjustment pursuant to clause (A) above (but without duplication thereof or in addition thereto), the foregoing pro forma adjustments described in clause (a) above may be applied to

any such test or covenant solely to the extent that such adjustments are consistent with the definition of "Adjusted EBITDA" and give effect to events (including operating expense reductions) that are (i) (x) directly attributable to such transaction, (y) expected to have a continuing impact on the Company and its Subsidiaries and (z) factually supportable or (ii) otherwise consistent with the definition of the term "Pro Forma Adjustment."

"Property" means, as to any Person, all types of real, personal, tangible, intangible or mixed property owned by such Person whether or not included in the most recent balance sheet of such Person and its Subsidiaries under GAAP.

"Registration Rights Agreement" means that certain Registration Rights Agreement to be entered into by the Company and the Investor, the form of which is set forth as Exhibit B hereto.

"Regulatory Laws" means, collectively, any Laws that are designed or intended to prohibit, restrict or regulate actions having the purpose or effect of monopolization or lessening of competition through merger or acquisition or restraint of trade or that affect foreign investment, outbound investment, foreign exchange, national security or national interest of any jurisdiction.

"Representatives" means, with respect to any Person, its officers, directors, principals, partners, managers, members, employees, consultants, agents, financial advisors, investment bankers, attorneys, accountants, other advisors and other representatives.

"Restricted Persons" means (i) any transferee listed on Exhibit D hereto and its controlled Affiliates, which list may be updated in writing from time to time by the Board with respect to additional bona fide competitors of the Company (each, a "Competitor"), or (ii) any of the Persons who, as of the time of the applicable proposed Transfer, has been listed on the "SharkWatch 50" list (or, if publication of such list has been discontinued, such other list of significant activist investors selected by the Board to replace such list unless and until such time as the publication of such replacement list is discontinued) during the immediately preceding three (3) year period; provided, that for the purposes hereof, none of the Elliott Investors nor their respective Affiliates will be deemed a Restricted Person.

"Revolving Credit Facility" means the credit facility pursuant to the Credit Agreement.

"S&P" means Standard & Poor's Ratings Services, a Standard & Poor's Financial Services LLC business.

"SEC" means the Securities and Exchange Commission.

"Securities Act" means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

"Senior Securities" has the meaning set forth in the Certificate of Designations.

"Specified Assumed Amount" means, in a Standalone Spin-Off, one-third of the then-outstanding shares of Preferred Stock owned by the Investor Parties.

"Specified Spin-Off Transaction" has the meaning set forth in the Certificate of Designations.

"Specified Transaction" means, with respect to any period, (a) any Acquisition or the making of other investments pursuant to which all or substantially all of the assets or stock of a Person (or any line of business or division thereof) are acquired, (b) the disposition of all or substantially all of the assets or stock of a Subsidiary of the Company (or any line of business or division of the Company or such Subsidiary of the Company), (c) any retirement or repayment of Indebtedness or (d) any other event that by the terms of the Certificate of Designations requires a test or covenant hereunder to be calculated on a Pro Forma Basis or after giving Pro Forma Effect thereto.

"SpinCo" means the entity that will directly or indirectly own the applicable assets and liabilities of the Flash Business in connection with the anticipated contribution or transfer of all or substantially all of such business in a Spin-Off.

"Spin-Off" means the consummation of a separation of all or substantially all of the Flash Business through a contribution, directly or indirectly, of the applicable assets and liabilities of such business and/or through a contribution, directly or indirectly, of the applicable legal entities comprising such business to a wholly-owned Subsidiary of the Company and the distribution of all of the outstanding equity securities of such Subsidiary to the holders of Common Stock as of a record date to be determined by the Board, in each case of the foregoing, in a transaction qualifying under Section 355 or Section 361 of the Code, together with any transactions related thereto or contemplated thereby (it being understood that such a distribution shall be a Spin-Off only to the extent that the Company has obtained a Tax Opinion or Ruling with respect to such distribution).

"Spin-Off Transaction Documents" means all transaction documents prepared in connection with, arising out of, or relating to, a Spin-Off or any transactions related thereto or undertaken in connection therewith.

"Standalone Spin-Off" means a Spin-Off where the Company does not enter into a definitive agreement with respect to a Subsequent Transaction prior to the closing of such Spin-Off.

"Standstill Period" means the period from and after the Closing Date and until the later of (a) ninety (90) days following the date on which no Investor Director is serving on the Board (and as of such time the Investor no longer has rights pursuant to this Agreement to designate an Investor Director Designee or otherwise has irrevocably waived in a writing delivered to the Company its rights under Section 5.08 to nominate an Investor Director Designee), and (b) thirty-six (36) months following the Closing Date; provided, that, in each case, the Standstill Period shall immediately terminate and expire (and the restrictions of Section 5.05 shall cease to apply and shall be of no further force and effect) at the earlier of: (i) the Company entering into a definitive written agreement to consummate a Fundamental Change (regardless of the form of such transaction) and (ii) the Board approving (or, in the case of a tender or exchange offer, failing to recommend against such tender or exchange offer within ten (10) Business Days of the commencement thereof) a transaction that, if consummated, would result in a Fundamental Change.

"Subsequent Transaction" means the sale, merger, combination or other transfer of all or substantially all of the Flash Business, in one or more related transactions, to or with a Third Party, which sale, merger, combination or other transfer occurs subsequent to a Spin-Off, but pursuant to a plan agreed to prior to the closing of such Spin-Off.

"Subsidiary", when used with respect to any Person, means any corporation, limited liability company, partnership, association, trust or other entity of which (x) securities or other ownership interests representing more than 50% of the ordinary voting power (or, in the

case of a partnership, more than 50% of the general partnership interests) or (y) sufficient voting rights to elect at least a majority of the board of directors or other governing body are, as of such date, owned by such Person or one or more Subsidiaries of such Person or by such Person and one or more Subsidiaries of such Person.

"Tax" or "Taxes" means any and all United States federal, state, local or non-United States taxes, fees, levies, duties, tariffs, imposts, and other similar charges (together with any and all interest, penalties and additions to tax) imposed by any Governmental Authority, including taxes or other charges on or with respect to income, franchises, windfall or other profits, gross receipts, property, sales, use, capital stock, payroll, employment, social security, workers' compensation, unemployment compensation or net worth; taxes or other charges in the nature of excise, withholding, ad valorem, stamp, transfer, value added or gains taxes; license, registration and documentation fees; and customs duties, tariffs and similar charges, together with any interest, penalties, and additions to tax imposed by any Governmental Authority.

"Tax Opinion or Ruling" means a "will" level opinion from national recognized tax counsel or a U.S. Internal Revenue Service private letter ruling to the effect that a distribution meets the requirements of Section 355 or Section 361, as the case may be, and is not a distribution to which Section 355(d) or (e) applies.

"Tax Return" means returns, reports, claims for refund, declarations of estimated Taxes and information statements, including any schedule or attachment thereto or any amendment thereof, with respect to Taxes filed or required to be filed with any Taxing Authority, including consolidated, combined and unitary tax returns.

"Taxing Authority" means any Governmental Authority or any subdivision, agency, commission or entity thereof or any quasi-governmental or private body having jurisdiction over the assessment, determination, collection or imposition of any Tax (including the IRS).

"Third Party" means a Person other than the Investor, the Apollo Funds and each of their respective Affiliates.

"Transaction Documents" means this Agreement, the Certificate of Designations, the Registration Rights Agreement and all other documents, certificates or agreements executed in connection with the transactions contemplated by this Agreement, the Certificate of Designations and the Registration Rights Agreement.

"Transactions" means the transactions expressly contemplated by this Agreement and the other Transaction Documents; provided, that, for the avoidance of doubt, "Transactions" shall not include a Spin-Off or any Subsequent Transaction.

"Transfer" by any Person means, directly or indirectly, to sell, transfer, assign, pledge, encumber, hypothecate or otherwise dispose of or transfer, either voluntarily or involuntarily (by the operation of law or otherwise), or to enter into any contract, option or other arrangement, agreement or understanding with respect to the sale, transfer, assignment, pledge, encumbrance, hypothecation or other disposition or transfer (by the operation of law or otherwise), of any voting interest in any equity securities beneficially owned by such Person; provided, however, that, notwithstanding anything to the contrary in this Agreement, a Transfer shall not include (i) the conversion of one or more shares of Preferred Stock into shares of Common Stock pursuant to the Certificate of Designations, (ii) the redemption or other acquisition of Common Stock or Preferred Stock by the Company or (iii) the transfer (other than by an Investor Party) of any limited partnership interests or other equity interests in the Investor Party (or any direct or indirect parent entity of such Investor Party) (provided that if any

transferor or transferee referred to in this clause (iii) ceases to be controlled (directly or indirectly) by the Person (directly or indirectly) controlling such Person immediately prior to such transfer, such event shall be deemed to constitute a "Transfer").

(a) In addition to the terms defined in Section 1.01(a), the following terms have the meanings assigned thereto in the Sections set forth below:

Term	**Section**
Acquired Shares	2.01
Action	3.07
Agreement	Preamble
Announcement	5.03
Apollo Entity	5.08(j)
Apollo Indemnitors	5.08(j)
Balance Sheet Date	3.05(c)
Bankruptcy and Equity Exception	3.03(a)
Board Observer	5.08(h)
Capitalization Date	3.02(a)
Certificate of Designations	Recitals
Closing	2.02(a)
Closing Date	2.02(a)
Company	Preamble
Company Disclosure Letter	Article III
Company Preferred Stock	3.02(a)
Company SEC Documents	3.05(a)
Company Securities	3.02(b)
Contract	3.03(b)
DOJ	5.01(c)
Excluded Stock	5.15(a)
Ex-Im Laws	3.08(e)
Filed SEC Documents	Article III
Foreclosure	5.06(e)
FTC	5.01(c)
Hedging Arrangements	5.06(b)
Identified Person	5.08(k)
Identified Persons	5.08(k)
Initial Investor Rights	7.03(b)
Intellectual Property Rights	3.22
Investor	Preamble
Investor Director Designee	5.08(a)
IT Systems and Data	3.23
J.P. Morgan	3.13

Judgments	3.07
Laws	3.08(a)
Material Contract	3.09
Multiemployer Plan	3.14(a)
Organizational Documents	5.08(j)
Participation Portion	5.15(b)(ii)
Permits	3.08(a)
Permitted Loan	5.06(e)
Preferred Stock	Recitals
Proposed Securities	5.15(b)(i)
Purchase Price	2.01
Related Companies	5.08(k)
Related Company	5.08(k)
Required Regulatory Approvals	5.01(a)
Restricted Issuance Information	5.15(b)(ii)
Sanctioned Country	3.08(b)
Sanctioned Person	3.08(b)
Sanctions	3.08(b)
SpinCo Preferred Stock	5.10(b)(i)
Subsequent Transaction Announcement	5.06(b)
Transfer	1.01
USRPHC	3.11

Article II

Purchase and Sale

Section 2.01 Purchase and Sale. On the terms of this Agreement and subject to the conditions set forth herein, at the Closing, the Investor shall purchase and acquire from the Company an aggregate of 665,000 shares of Preferred Stock, and the Company shall issue, sell and deliver to the Investor, the shares of Preferred Stock (the "Acquired Shares") for a purchase price per Share equal to $1,000 and an aggregate purchase price of $665,000,000 (such aggregate purchase price, the "Purchase Price").

Section 2.02 Closing.

(a) On the terms of this Agreement, and subject to the conditions set forth herein, the closing of the sale and purchase of the Acquired Shares (the "Closing") shall occur simultaneously with the execution and delivery of this Agreement at the offices of Paul, Weiss, Rifkind, Wharton & Garrison LLP at 1285 Avenue of the Americas, New York, NY 10019 (the date on which the Closing occurs, the "Closing Date").

(b) At the Closing:

(i) the Company shall:

(1) file with the Secretary of State of the State of Delaware the Certificate of Designations, and shall deliver to the Investor a certified copy thereof;

(2) deliver to the Investor (A) evidence of book-entry shares representing the Acquired Shares credited to book-entry accounts maintained by the transfer agent of the Company, free and clear of all Liens, except restrictions imposed by applicable securities Laws, the Company Charter Documents and the Transaction Documents, and (B) the Registration Rights Agreement, duly executed by the Company;

(3) pay the structuring fee set forth in Section 7.11 to an Affiliate of the Investor, by wire transfer in immediately available U.S. federal funds, to the account designated by the Investor in writing at least one (1) Business Day prior to the Closing Date; and

(4) pay the expense reimbursement amount set forth in Section 7.11 to the Investor (or its designee), by wire transfer in immediately available U.S. federal funds, to the account(s) designated by the Investor in writing at least one (1) Business Day prior to the Closing Date;

(ii) the Board shall take all actions necessary and appropriate to cause to be elected to the Board, effective immediately upon the Closing, the initial Investor Director Designee; and

(iii) the Investor shall (1) pay the Purchase Price to the Company, by wire transfer in immediately available U.S. federal funds, to the account designated by the Company in writing at least one (1) Business Day prior to the Closing Date, (2) deliver to the Company the Registration Rights Agreement, duly executed by the Investor and/or its applicable Affiliates and (3) deliver to the Company or its paying agent a duly executed, valid, accurate and properly completed IRS Form W-9 or an appropriate IRS Form W-8, as applicable.

Article III

Representations and Warranties of the Company

The Company represents and warrants to the Investor that, except as (A) set forth in the confidential disclosure letter delivered by the Company to the Investor prior to the execution of this Agreement (the "Company Disclosure Letter") (it being understood that any information, item or matter set forth on one section or subsection of the Company Disclosure Letter shall only be deemed disclosure with respect to, and shall only be deemed to apply to and qualify, the section or subsection of this Agreement to which it corresponds in number and each other section or subsection of this Agreement to the extent that it is reasonably apparent on the face of such disclosure that such information, item or matter is relevant to such other section or subsection) or (B) disclosed in any report, schedule, form, statement or other document (including exhibits) filed with, or furnished to, the SEC and publicly available on or after July 2, 2022 and prior to the date hereof (the "Filed SEC Documents"), other than any disclosures in any such Filed SEC Document contained in the "Risk Factors" section thereof or any forward-looking statements within the meaning of the Securities Act or the Exchange Act thereof (it being acknowledged that nothing disclosed in the Filed SEC Documents shall be deemed to qualify or modify the representations and warranties set forth in Sections 3.01, 3.02, 3.03(a), 3.06, 3.12, 3.13 and 3.18):

Section 3.01 Organization; Standing.

(a) The Company is a corporation duly incorporated and validly existing and in good standing under the Laws of the State of Delaware and has all requisite corporate power and corporate authority necessary to carry on its business as it is now being conducted, except (other than with respect to the Company's due organization, valid existence and good standing) as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. The Company is duly licensed or qualified as a foreign corporation for the transaction of business and is in good standing (if applicable) under the Laws of each other jurisdiction in which it owns or leases properties or conducts any business so as to require such qualification. True and complete copies of the Company Charter Documents are included in the Filed SEC Documents.

(b) Each of the Company's Subsidiaries that is a "significant subsidiary" (as defined in Rule 405 under the Securities Act) is duly organized, validly existing and in good standing (where such concept is recognized under applicable Law) under the Laws of the jurisdiction of its organization, except where the failure to be so organized, existing and in good standing would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 3.02 Capitalization.

(a) The authorized capital stock of the Company consists of 450,000,000 shares of Common Stock and 5,000,000 shares of preferred stock, par value $0.01 per share ("Company Preferred Stock"). At the close of business on January 27, 2023 (the "Capitalization Date"), (i) 319,327,848 shares of Common Stock were issued and outstanding, (ii) 25,319,401 shares of Common Stock were reserved and available for issuance pursuant to the Company Stock Plans, (iii) 8,289,015 shares of Common Stock were reserved and available for issuance under the Company ESPP, (iv) 12,632,063 shares of Common Stock could be issued upon conversion of the Convertible Notes and (v) no shares of Company Preferred Stock were issued or outstanding.

(b) Except as described in this Section 3.02, as of the Capitalization Date, there were (i) no outstanding shares of capital stock of, or other equity or voting interests in, the Company, (ii) no outstanding securities convertible into or exchangeable for shares of capital stock of, or other equity or voting interests in, the Company other than obligations under the Company Stock Plans, (iii) no outstanding options, warrants, rights or other commitments or agreements to acquire from the Company or any Subsidiary, or that obligate the Company or any Subsidiary to issue, any capital stock of, or other equity or voting interests (or voting debt) in, or any securities convertible into or exchangeable for shares of capital stock of, or other equity or voting interests in, the Company other than obligations under the Company Stock Plans, (iv) no obligations of the Company or any Subsidiary to grant, extend or enter into any subscription, warrant, right, debt, convertible or exchangeable security or other similar agreement or commitment relating to any capital stock of, or other equity or voting interests in, the Company (the items in clauses (i), (ii), (iii) and (iv) being referred to collectively as "Company Securities") and (v) no other obligations by the Company or any of its Subsidiaries to make any payments based on the price or value of any Company Securities.

(c) As of the date of this Agreement, there are no outstanding agreements of any kind which obligate the Company or any of its Subsidiaries to repurchase, redeem or otherwise acquire any Company Securities, or obligate the Company to grant, extend or enter into any such agreements relating to any Company Securities, including any agreements granting any preemptive rights, subscription rights, anti-dilutive rights, rights of first refusal or similar rights with respect to any Company Securities. None of the Company or any Subsidiary

of the Company is a party to any stockholders' agreement, voting trust agreement, registration rights agreement or other similar agreement or understanding relating to any Company Securities or any other agreement relating to the disposition, voting or dividends with respect to any Company Securities. All outstanding shares of Common Stock have been duly authorized and validly issued and are fully paid, nonassessable and free of preemptive rights.

(d) The Acquired Shares and the shares of Common Stock issuable upon conversion of the Acquired Shares will be, when issued, duly authorized and validly issued, fully paid and nonassessable and issued in compliance with all applicable federal and state securities laws, and such shares will not be issued in violation of any purchase option, call option, preemptive right, resale right, subscription right, right of first refusal or similar right, and will be free and clear of all Liens, except restrictions imposed by the Securities Act and any applicable foreign and state securities Laws, Liens contemplated by the Transaction Documents and Section 5.06. The Acquired Shares, when issued, and the shares of Common Stock issuable upon conversion of the Acquired Shares, if and when issued, will have the terms and conditions and entitle the holders thereof to the rights set forth in the Company Charter Documents, as amended by the Certificate of Designations. The shares of Common Stock issuable upon conversion of the Acquired Shares have been duly reserved for such issuance.

(e) Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, all of the outstanding shares of capital stock of, or other equity or voting interests in, each Subsidiary of the Company (except for directors' qualifying shares or the like) are owned directly or indirectly, beneficially and of record, by the Company free and clear of all Liens.

Section 3.03 Authority; Non-contravention.

(a) The Company has all necessary corporate power and corporate authority to execute and deliver this Agreement and the other Transaction Documents and to perform its obligations hereunder and thereunder and to consummate the Transactions. The execution, delivery and performance by the Company of this Agreement and the other Transaction Documents, and the consummation by it of the Transactions, have been duly authorized by the Board and the Board has duly reserved (x) the shares of Preferred Stock to be issued in accordance with the terms and conditions of the Certificate of Designations and (y) the shares of Common Stock to be issued upon any conversion of shares of Preferred Stock into Common Stock. No other action on the part of the Company or its stockholders is necessary to authorize the execution, delivery and performance by the Company of this Agreement and the other Transaction Documents and the consummation by it of the Transactions. This Agreement has been duly executed and delivered by the Company and, assuming due authorization, execution and delivery hereof by the Investor, constitutes a legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, except that such enforceability (i) may be limited by bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other similar Laws of general application affecting or relating to the enforcement of creditors' rights generally and (ii) is subject to general principles of equity, whether considered in a proceeding at law or in equity (the "Bankruptcy and Equity Exception").

(b) Neither the execution and delivery of this Agreement or the other Transaction Documents by the Company, nor the consummation by the Company of the Transactions, nor performance or compliance by the Company with any of the terms or provisions hereof or thereof, will (i) conflict with or violate any provision of the Company Charter Documents or (ii) assuming that the authorizations, consents and approvals referred to in Section 3.04 are obtained at or prior to the Closing Date (other than the authorizations, consents and approvals referred to in Section 3.04(b), which are to be obtained following the Closing in accordance with Section 5.01) and the filings referred to in Section 3.04 are made and any

waiting periods thereunder have terminated or expired at or prior to the Closing Date (other than the filings referred to in Section 3.04(b), which are to be made and any waiting periods thereunder are to terminate or expire following the Closing in accordance with Section 5.01), (x) violate any Law or Judgment applicable to the Company or any of its Subsidiaries or (y) violate or constitute a default (or constitute an event which, with notice or lapse of time or both, would violate or constitute a default) or accelerate the performance required by the Company under any of the terms or provisions of any loan or credit agreement, indenture, debenture, note, bond, mortgage, deed of trust, lease, sublease, license, contract or other agreement (a "Contract") to which the Company or any of its Subsidiaries is a party or accelerate the Company's or, if applicable, any of its Subsidiaries' obligations under any such Contract, except, in the case of clause (ii), as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 3.04 Governmental Approvals. Except for (a) the filing of the Certificate of Designations with the Secretary of State of the State for Delaware, (b) filings required under, and compliance with other applicable requirements of the HSR Act and any other applicable Regulatory Laws, (c) filings with the SEC under the Securities Act and Exchange Act and (d) compliance with any applicable state securities or blue sky laws, no consent or approval of or filing, license, permit or authorization, declaration or registration with, or notice to any Governmental Authority or any stock market or stock exchange is necessary for the execution and delivery of this Agreement and the other Transaction Documents by the Company, the performance by the Company of its obligations hereunder and thereunder and the consummation by the Company of the Transactions, other than such other consents, approvals, filings, licenses, permits or authorizations, declarations or registrations that, if not obtained, made or given, would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 3.05 Company SEC Documents; Undisclosed Liabilities.

(a) The Company has filed with the SEC, on a timely basis, all required reports, schedules, forms, statements and other documents required to be filed by the Company with the SEC pursuant to the Exchange Act since July 3, 2021 (collectively, the "Company SEC Documents"). As of their respective SEC filing dates, the Company SEC Documents complied in all material respects with the requirements of the Securities Act, the Exchange Act or the Sarbanes-Oxley Act of 2002 (and the regulations promulgated thereunder), as the case may be, applicable to such Company SEC Documents, and none of the Company SEC Documents as of such respective dates (or, if amended prior to the date hereof, the date of the filing of such amendment, with respect to the disclosures that are amended) contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. As of the date hereof, (i) the Company is eligible to file a registration statement on Form S-3, (ii) none of the Company's Subsidiaries is required to file any documents with the SEC, (iii) there are no outstanding or unresolved comments in comment letters from the SEC staff with respect to any of the Company SEC Documents and (iv) to the Knowledge of the Company, none of the Company SEC Documents is the subject of ongoing SEC review, outstanding SEC comment or outstanding SEC investigation. Each of the certifications and statements relating to the Company SEC Documents required by: (A) Rule 13a-14 or Rule 15d-14 under the Exchange Act; (B) 18 U.S.C. §1350 (Section 906 of the Sarbanes-Oxley Act); or (C) any other rule or regulation promulgated by the SEC or applicable to the Company SEC Documents is accurate and complete, and complies as to form and content in all material respects with all applicable Laws.

(b) The consolidated financial statements of the Company (including all related notes or schedules) included or incorporated by reference in the Company SEC Documents (i) complied as to form, as of their respective dates of filing with the SEC in all

material respects with the published rules and regulations of the SEC with respect thereto, (ii) have been prepared in accordance with GAAP (except, in the case of unaudited quarterly statements, as permitted by Form 10-Q of the SEC or other rules and regulations of the SEC) applied on a consistent basis during the periods involved (except (i) as may be indicated in the notes thereto or (ii) as permitted by Regulation S-X), and (iii) fairly present in all material respects the consolidated financial position of the Company and its Subsidiaries as of the dates thereof and the consolidated results of their operations and cash flows for the periods shown (subject, in the case of unaudited quarterly financial statements, to normal year-end adjustments).

(c) Neither the Company nor any of its Subsidiaries has any liabilities of any nature (whether accrued, absolute, contingent or otherwise) that would be required under GAAP, as in effect on the date hereof, to be reflected on a consolidated balance sheet of the Company (including the notes thereto) except liabilities (i) reflected or reserved against in the balance sheet (or the notes thereto) of the Company and its Subsidiaries as of July 1, 2022 (the "Balance Sheet Date") included in the Filed SEC Documents, (ii) incurred after the Balance Sheet Date in the ordinary course of business (other than any such liabilities related to any breach of Contract, violation of Law or tort) or (iii) as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(d) The Company has established and maintains, and at all times since July 3, 2021 has maintained, disclosure controls and procedures and a system of internal controls over financial reporting (as such terms are defined in paragraphs (e) and (f), respectively, of Rule 13a-15 under the Exchange Act) as required by Rule 13a-15 under the Exchange Act. Neither the Company nor, to the Knowledge of the Company, the Company's independent registered public accounting firm, has identified or been made aware of "significant deficiencies" or "material weaknesses" (as defined by the Public Company Accounting Oversight Board) in the design or operation of the Company's internal controls over and procedures relating to financial reporting which would reasonably be expected to adversely affect in any material respect the Company's ability to record, process, summarize and report financial data, in each case which has not been subsequently remediated. The Company is, and has been at all times since July 3, 2021, in compliance in all material respects with the applicable listing requirements and corporate governance rules and regulations of the NASDAQ.

Section 3.06 Absence of Certain Changes. Since July 2, 2022, except for the execution and performance of this Agreement and any other agreements contemplated hereby and the discussions, negotiations and transactions related thereto, there has not been any Material Adverse Effect.

Section 3.07 Legal Proceedings. Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, there is no (a) pending legal or administrative proceeding, suit, audit, charge, claim, investigation, arbitration or action (an "Action") against the Company or any of its Subsidiaries and, to the Knowledge of the Company, no such Actions have been threatened by any Governmental Authority or any other Person or (b) outstanding order, judgment, injunction, ruling, writ or decree of any Governmental Authority ("Judgments") imposed upon the Company or any of its Subsidiaries, in each case, by or before any Governmental Authority.

Section 3.08 Compliance with Laws; Permits.

(a) Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, the Company and each of its Subsidiaries are and since July 3, 2021 (or such later date as the applicable Laws may have come into effect) have been, in compliance with all state or federal laws, common law, statutes, ordinances, codes, rules or regulations, orders, executive orders, judgments, injunctions, governmental guidelines or

interpretations having the force of law, Permits, decrees, or other similar requirement enacted, adopted, promulgated, or applied by any Governmental Authority ("Laws") or Judgments, in each case, that are applicable to the Company or any of its Subsidiaries, including the General Data Protection Regulation (EU) 2016/679, the Privacy and Electronic Communications Directive (2002/58/EC), and any national legislation implementing or supplementing the foregoing in the European Union, to the extent applicable. The Company and each of its Subsidiaries hold all licenses, franchises, permits, certificates, approvals and authorizations from Governmental Authorities ("Permits") necessary for the lawful conduct of their respective businesses, except where the failure to hold the same would not individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(b) None of the Company nor any of its Subsidiaries nor, to the Knowledge of the Company, any directors, officers, agents, employees or affiliates of the Company or any of its Subsidiaries is currently a person with whom dealings are prohibited under, or who is a subject of, any economic or other trade sanctions administered or enforced by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the U.S. Department of Commerce or the U.S. Department of State, the United Nations Security Council, the European Union or His Majesty's Treasury of the United Kingdom, or other relevant sanctions authority (collectively, "Sanctions" and any such person, a "Sanctioned Person"), nor is the Company or any of its Subsidiaries located or organized in a country or territory that is the subject or target of country-wide or territory-wide Sanctions (currently, Cuba, Iran, North Korea, Syria and the Crimea, Donetsk and Luhansk regions of Ukraine) (each, a "Sanctioned Country"). The Company and its Subsidiaries have not for the past two years engaged in any dealings or transactions in violation of Sanctions.

(c) None of the Company nor any of its Subsidiaries, nor, to the Knowledge of the Company, any director, officer, agent, employee, affiliate or other person associated with or acting on behalf of the Company or any of its Subsidiaries has (i) used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expense relating to political activity; (ii) made any direct or indirect unlawful payment or benefit to any foreign or domestic government official or employee from corporate funds; or (iii) violated or is in violation of the United States Foreign Corrupt Practices Act of 1977, as amended. The Company and its Subsidiaries have instituted, maintained and enforced and will continue to maintain and enforce policies and procedures designed to promote compliance with all applicable anti-bribery and anti-corruption laws.

(d) The operations of the Company and its Subsidiaries are and have been conducted at all times in material compliance with applicable anti-money laundering laws, and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company or any of its Subsidiaries with respect to any applicable anti-money laundering law is pending or, to the Knowledge of the Company, threatened.

(e) The operations of the Company and its Subsidiaries are and have been conducted at all times in material compliance with all Laws applicable to the Company and its Subsidiaries relating to export, reexport, transfer, and import controls, including the Export Administration Regulations, the International Traffic in Arms Regulations, and the customs and import Laws administered by U.S. Customs and Border Protection (collectively, "Ex-Im Laws"), and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company or any of its Subsidiaries with respect to any applicable anti-money laundering law is pending or, to the Knowledge of the Company, threatened.

Section 3.09 Contracts. Each Contract that is material to the business of the Company and its Subsidiaries, taken as a whole (each, a "Material Contract"), and to which the Company or any of its Subsidiaries is a party or by which the Company, any of its Subsidiaries or any of their respective properties or assets is bound is valid, binding and enforceable on the Company and any of its Subsidiaries to the extent such Person is a party thereto, as applicable, and to the Knowledge of the Company, each other party thereto, and is in full force and effect, except where the failure to be valid, binding or in full force and effect, individually or in the aggregate, has not had and would not reasonably be expected to have a Material Adverse Effect. The Company and each of its Subsidiaries, and, to the Knowledge of the Company, any other party thereto, is in compliance in all material respects with all Material Contracts and has performed all obligations required to be performed by it, except where such noncompliance, individually or in the aggregate, has not had and would not reasonably be expected to have a Material Adverse Effect.

Section 3.10 Tax Matters. Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect: (a) the Company and each of its Subsidiaries has prepared (or caused to be prepared) and timely filed (taking into account valid extensions of time within which to file) all Tax Returns required to be filed by any of them, and all such filed Tax Returns (taking into account all amendments thereto) are true, complete and accurate, (b) all Taxes owed by the Company and each of its Subsidiaries that are due (whether or not shown on any Tax Return) have been timely paid except for Taxes which are being contested in good faith by appropriate proceedings which have been adequately reserved against in accordance with GAAP, (c) no examination or audit of any Tax Return relating to any Taxes of the Company or any of its Subsidiaries or with respect to any Taxes due from or with respect to the Company or any of its Subsidiaries by any Taxing Authority is currently in progress or threatened in writing, (d) none of the Company or any of its Subsidiaries has engaged in, or has any liability or obligation with respect to, any "listed transaction" within the meaning of Treasury Regulations Section 1.6011-4(b)(2) and (e) neither the Company nor any of its Subsidiaries has distributed stock of another Person, or has had its stock distributed by another Person, in a transaction that was or was purported or intended to be governed in whole or in part by Section 355 or 361 of the Code.

Section 3.11 Real Property Holding Corporation. The Company is not currently and has not been during the prior five (5) years a United States real property holding corporation (a "USRPHC") within the meaning of Section 897 of the Code. If the Flash Business were, as of the date hereof, owned by a single domestic corporation which held no other businesses or assets, such corporation would not be a USRPHC within the meaning of Section 897 of the Code.

Section 3.12 No Rights Agreement; Anti-Takeover Provisions. The Company is not party to a stockholder rights agreement, "poison pill" or similar anti-takeover agreement or plan.

Section 3.13 Brokers and Other Advisors. Except for Qatalyst Partners LP ("Qatalyst"), Lazard Ltd ("Lazard") and J.P. Morgan Securities LLC ("J.P. Morgan"), no broker, investment banker, financial advisor or other Person is entitled to any broker's, finder's, financial advisor's or other similar fee or commission, or the reimbursement of expenses in connection therewith, in connection with the Transactions based upon arrangements made by or on behalf of the Company or any of its Subsidiaries.

Section 3.14 Employee Benefit Plans.

(a) Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, (i) each material Company Plan has been established, operated, maintained and administered in accordance with its terms and in

compliance with the applicable provisions of ERISA, the Code and other applicable Laws; (ii) no material Company Plan subject to the Laws outside of the United States which covers individual service providers located outside of the United States has any unfunded or underfunded liabilities or obligations; and (iii) to the Knowledge of the Company, each "multiemployer plan" (as defined in Section 4001 of ERISA) to which the Company, its Subsidiaries or their respective ERISA Affiliates contributes (a "Multiemployer Plan") is in compliance with ERISA. Except as would not, individually or in the aggregate, have a Material Adverse Effect, (i) no "reportable event" (within the meaning of Section 4043(c) of ERISA) has occurred or, to the Knowledge of the Company, is reasonably expected to occur with respect to any "employee pension benefit plan" (as defined under Section 3(2) of ERISA) established or maintained by the Company, its Subsidiaries or any of their respective ERISA Affiliates; (ii) no "single-employer plan" (as defined in Section 4001 of ERISA) established or maintained by the Company, its Subsidiaries or any of their respective ERISA Affiliates, if such "single-employer plan" were terminated, would have any "amount of unfunded benefit liabilities" (as defined under Section 4001 of ERISA); (iii) neither the Company, its Subsidiaries nor any of their respective ERISA Affiliates has incurred or, to the Knowledge of the Company, reasonably expects to incur (A) any liability under Title IV of ERISA with respect to termination of, or withdrawal from, any "employee benefit plan" or (B) any liability under Section 412 of the Code or tax imposed by Section 4971, 4975 or 4980B of the Code; and (iv) each "employee pension benefit plan" established or maintained by the Company, its Subsidiaries or any of their respective ERISA Affiliates that is intended to be qualified under Section 401 of the Code is so qualified and, to the Knowledge of the Company, nothing has occurred, whether by action or failure to act, which would reasonably be expected to cause the loss of such qualification.

(b) Neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby will (either alone or together with the occurrence of a subsequent event (*e.g.*, a termination of employment or service)) (i) result in any material payment becoming due, or materially increase the amount of any compensation or benefits due, to any current or former employee of the Company and its Subsidiaries or with respect to any Company Plan; or (ii) result in the acceleration of the time of payment or vesting of any compensation or benefits.

Section 3.15 Labor Matters. The Company and its Subsidiaries, taken as a whole, have not sustained since the date of the latest audited financial statements any material loss or interference with its business from (i) fire, explosion, flood or other calamity, whether or not covered by insurance, (ii) any labor dispute or court or governmental action, order or decree or (iii) any Actions against the Company or any of its Subsidiaries alleging violation of any Labor Laws or breach of any collective bargaining agreement. Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, each of the Company and its Subsidiaries is in compliance with all Labor Laws. Except as disclosed on Schedule I hereto, neither the Company nor any of its Subsidiaries is party to or bound by any collective bargaining agreement or Contract with any labor organization, labor union, or works council, nor to the Knowledge of the Company, are there any union organizational activities or proceedings to organize any employees of the Company or any of its Subsidiaries. There are no active, nor, to the Knowledge of the Company, threatened, labor strikes, slowdowns, work stoppages, pickets, walkouts, lockouts or other collective labor actions by or with respect to the employees of the Company or any of its Subsidiaries.

Section 3.16 Sale of Securities. Based in part on the representations and warranties set forth in Section 4.05, the sale and offer of the Acquired Shares pursuant to this Agreement is exempt from the registration and prospectus delivery requirements of the Securities Act. Without limiting the foregoing, neither the Company nor, to the Knowledge of the Company, any other Person authorized by the Company to act on its behalf, has engaged in a general solicitation or general advertising (within the meaning of Regulation D of the Securities

Act) of investors with respect to offers or sales of Preferred Stock, and neither the Company nor, to the Knowledge of the Company, any Person acting on its behalf has made any offers or sales of any security or solicited any offers to buy any security, under circumstances that would cause the offering or issuance of Preferred Stock under this Agreement to be integrated with prior offerings by the Company for purposes of the Securities Act that would result in none of Regulation D or any other applicable exemption from registration under the Securities Act to be available, nor will the Company take any action or steps that would cause the offering or issuance of Preferred Stock under this Agreement to be integrated with other offerings by the Company.

Section 3.17 Listing and Maintenance Requirements. The Common Stock is registered pursuant to Section 12(b) of the Exchange Act and listed on the NASDAQ, and the Company has taken no action designed to, or which to the Knowledge of the Company is reasonably likely to have the effect of, terminating the registration of the Common Stock under the Exchange Act or delisting the Common Stock from the NASDAQ, nor has the Company received as of the date of this Agreement any notification that the SEC or the NASDAQ is contemplating terminating such registration or listing or otherwise.

Section 3.18 Status of Securities. As a result of the approval by the Board referred to in Section 3.03(a), the Acquired Shares to be issued pursuant to this Agreement, and the shares of Common Stock to be issued upon conversion of the Acquired Shares, have been duly authorized and reserved for issuance by all necessary corporate action of the Company. The respective rights, preferences, privileges, and restrictions of the Preferred Stock and the Common Stock are as stated in the Company Charter Documents (including the Certificate of Designations).

Section 3.19 NASDAQ Notification. The Company has provided the applicable listing of additional shares notification to NASDAQ, and received oral confirmation from NASDAQ that the listing of additional shares review process has been completed, and NASDAQ has not made any objection (not subsequently withdrawn) that the consummation of the transactions contemplated by this Agreement would violate NASDAQ listing rules applicable to the Company and that if not withdrawn would result in the delisting of the shares of Common Stock issuable upon the conversion of the Preferred Stock issued to the Investor pursuant to this Agreement and pursuant to the Certificate of Designations.

Section 3.20 Indebtedness.

(a) Except for (i) the Credit Agreement,(ii) the Indenture or (iii) the Delayed Draw Facility, the Company is not party to any Contract, and is not subject to any provision in the Company Charter Documents or other governing documents or resolutions of the Board that, in each case, by its terms restricts, limits, prohibits or prevents the Company from paying dividends in form and the amounts contemplated by the Certificate of Designations.

(b) The Company and its Subsidiaries and, to the Knowledge of the Company, each of the other parties thereto, are not in material breach of, default or violation under, the Revolving Credit Facility or the Indenture and no event has occurred that with notice or lapse of time, or both, would constitute such a material breach, default or violation.

Section 3.21 Real Property. The Company and its Subsidiaries collectively have good and marketable title in fee simple to all real property and good and marketable title to all items of personal property owned by them which are material to the business of the Company and its Subsidiaries, taken as a whole, in each case free and clear of all liens, encumbrances and defects, except such as do not materially interfere with the use of such property by the Company and its Subsidiaries; and any material real property and buildings held under lease by the

Company and its Subsidiaries are held by them under valid, subsisting and enforceable leases with such exceptions as are not material and do not materially interfere with the use of such property by the Company and its Subsidiaries. Except as, individually or in the aggregate, has not had and would not reasonably be expected to have a Material Adverse Effect, there have been no releases of hazardous substances at, on, or under any facility currently owned by the Company or any of its Subsidiaries or any Leased Real Property that would reasonably be expected to give rise to liability under applicable Laws regarding pollution or protection of the environment.

Section 3.22 Intellectual Property. Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect (i) the Company and each of its Subsidiaries possess valid and enforceable rights to use all trademarks, logos, trade names, Internet domain names, patent rights, copyrights, trade secrets, know-how, rights in computer software and other similar intellectual property rights (together with all goodwill associated with, any registrations of, or applications for registration of any of the foregoing, collectively, "Intellectual Property Rights") that are used in the operation of the Company and its Subsidiaries as currently conducted; (ii) all Owned Intellectual Property are valid and enforceable; (iii) to the Knowledge of the Company, no Person has infringed upon, misappropriated or otherwise violated any of the Owned Intellectual Property; (iv) the conduct of the business of the Company and its Subsidiaries has not infringed, misappropriated, or violated at any time since July 3, 2021, and does not infringe, misappropriate or violate, the Intellectual Property Rights of any other Person; (v) the Company and its Subsidiaries have taken commercially reasonable steps to maintain the confidentiality of the material trade secrets owned (or purported to be owned) by the Company or any of its Subsidiaries; (vi) no material source code owned (or purported to be owned) by the Company or any of its Subsidiaries has been disclosed or otherwise made available to any Person (excluding an escrow agent), and, to the Knowledge of the Company, no circumstance or condition exists that (with or without notice or lapse of time, or both) would result in a requirement that any such source code be disclosed, licensed or made available to any third party (other than an escrow agent); and (vii) neither the Company nor any of its Subsidiaries has received any notice of any third-party allegations or claims that (A) the Company or any of its Subsidiaries or the conduct of their respective businesses infringe or conflict with asserted Intellectual Property Rights of others or (B) challenge the ownership or validity of any Owned Intellectual Property.

Section 3.23 Data Security; Privacy. Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, (i) to the Knowledge of the Company and its Subsidiaries, since July 3, 2021, there has been no security breach or incident, unauthorized access or disclosure, or other compromise of the Company's and its Subsidiaries' information technology and computer systems, networks, equipment, hardware, software, data and databases, including all personally identifiable information and sensitive and confidential data maintained, processed or stored by the Company and its Subsidiaries (collectively, "IT Systems and Data"), and any such personally identifiable information and sensitive and confidential data of the Company and its Subsidiaries that is processed or stored by third parties on behalf of the Company and its Subsidiaries, except for those that have been remedied; (ii) the Company and its Subsidiaries have implemented and maintain controls, policies, procedures, and technological safeguards designed to maintain and protect the integrity, continuous operation, redundancy and security of their IT Systems and Data reasonably consistent with industry standards, or as required by applicable laws or statutes; and (iii) the Company and its Subsidiaries are presently in compliance with, and since July 3, 2021 have complied with, all applicable laws or statutes relating to privacy and security of IT Systems and Data.

Section 3.24 Affiliate Transactions. None of the officers or directors of the Company is presently a party to any transaction with the Company or any of its Subsidiaries (other than as holders of options, and/or other grants or awards under the Company Stock Plans,

and for services as employees, officers and directors) that is material to the Company and its Subsidiaries, taken as a whole. Since July 3, 2021, neither the Company nor any Subsidiary has entered into any transaction between the Company or any of its Subsidiaries, on the one hand, and any Affiliate of the Company (other than (i) between the Company itself and any of its Subsidiaries or (ii) between any of the Subsidiaries themselves), on the other hand, except in compliance with the Company's related party transaction policy.

Section 3.25 Elliott Transaction Documents. As of the date hereof, the Elliott Transaction Documents have not been amended, waived or modified by or with the consent of the Company or any of its Subsidiaries, and no such amendment, waiver, modification, withdrawal or rescission is contemplated. Except for the Elliott Transaction Documents, neither the Company nor any of its Subsidiaries has entered into any side letters or other contracts, instruments or other commitments, obligations or arrangements (whether written or oral) related to the transactions contemplated by the Elliott Transaction Documents.

Section 3.26 No Other Representations or Warranties. Except for the representations and warranties made by the Company in this Article III, in any Transaction Documents or in any certificate or other document delivered in connection with this Agreement or the Transaction Documents, neither the Company nor any other Person acting on its behalf makes any other express or implied representation or warranty with respect to the Preferred Stock, the Common Stock, the Company or any of its Subsidiaries or their respective businesses, operations, properties, assets, liabilities, condition (financial or otherwise) or prospects, notwithstanding the delivery or disclosure to the Investor or its Representatives of any documentation, forecasts or other information with respect to any one or more of the foregoing, and the Investor acknowledges the foregoing. In particular, and without limiting the generality of the foregoing, except for the representations and warranties made by the Company in this Article III, the Transaction Documents, or in any certificate or other document delivered in connection with this Agreement or the Transaction Documents, neither the Company nor any other Person makes or has made any express or implied representation or warranty to the Investor or its Representatives with respect to (a) any financial projection, forecast, estimate, budget or prospect information relating to the Company, any of its Subsidiaries or their respective businesses or (b) any oral or written information presented to the Investor or its Representatives in the course of its due diligence investigation of the Company, the negotiation of this Agreement or the course of the Transactions or any other transactions or potential transactions involving the Company and the Investor.

Article IV

Representations and Warranties of the Investor

The Investor represents and warrants to the Company:

Section 4.01 Organization; Standing. The Investor is duly organized, validly existing and in good standing under the Laws of its jurisdiction of organization and has all requisite limited partnership power and authority to carry on its business as presently conducted.

Section 4.02 Authority; Non-contravention.

(a) The Investor has all necessary power and authority to execute and deliver this Agreement and the other Transaction Documents to which it is a party and to perform its obligations hereunder and thereunder and to consummate the Transactions. The execution, delivery and performance by the Investor of this Agreement and the other Transaction Documents and the consummation by the Investor of the Transactions have been duly authorized and approved by all necessary action on the part of the Investor, and no further action, approval

or authorization by any of its partners, is necessary to authorize the execution, delivery and performance by the Investor of this Agreement and the other Transaction Documents and the consummation by the Investor of the Transactions. This Agreement has been duly executed and delivered by the Investor and, assuming due authorization, execution and delivery hereof by the Company, constitutes a legal, valid and binding obligation of the Investor, enforceable against the Investor in accordance with its terms, except that such enforceability may be limited by the Bankruptcy and Equity Exception.

(b) Neither the execution and delivery of this Agreement or the other Transaction Documents by the Investor, nor the consummation of the Transactions by the Investor, nor performance or compliance by the Investor with any of the terms or provisions hereof or thereof, will (i) conflict with or violate any provision of the certificate of incorporation, bylaws or other comparable organizational documents of the Investor, or (ii) assuming that the authorizations, consents and approvals referred to in Section 4.03 are obtained at or prior to the Closing Date (other than the authorizations, consents and approvals referred to in Section 4.03(b), which are to be obtained following the Closing in accordance with Section 5.01) and the filings referred to in Section 4.03 are made and any waiting periods with respect to such filings have terminated or expired at or prior to the Closing Date (other than the filings referred to in Section 4.03(b), which are to be made and any waiting periods thereunder are to terminate or expire following the Closing in accordance with Section 5.01), (x) violate any Law or Judgment applicable to the Investor or (y) violate or constitute a default (or constitute an event which, with notice or lapse of time or both, would violate or constitute a default) under any of the terms, conditions or provisions of any Contract to which the Investor is a party or accelerate the Investor's obligations under any such Contract, except, in the case of clause (ii), as would not, individually or in the aggregate, reasonably be expected to have an Investor Material Adverse Effect.

Section 4.03 Governmental Approvals

. Except for (a) the filing by the Company of the Certificate of Designations with the Delaware Secretary of State and (b) filings required under, and compliance with other applicable requirements of, the HSR Act and any other applicable Regulatory Laws, based on the information provided to the Investor's Representatives by the Company and its Representatives, no consent or approval of, or filing, license, permit or authorization, declaration or registration with, any Governmental Authority is necessary for the execution and delivery of this Agreement and the other Transaction Documents by the Investor, the performance by the Investor of its obligations hereunder and thereunder and the consummation by the Investor of the Transactions, other than such other consents, approvals, filings, licenses, permits, authorizations, declarations or registrations that, if not obtained, made or given, would not, individually or in the aggregate, reasonably be expected to have an Investor Material Adverse Effect.

Section 4.04 Brokers and Other Advisors. No broker, investment banker, financial advisor or other Person is entitled to any broker's, finder's, financial advisor's or other similar fee or commission, or the reimbursement of expenses in connection therewith, in connection with the Transactions based upon arrangements made by or on behalf of the Investor, except for Persons, if any, whose fees and expenses will be paid by the Investor.

Section 4.05 Purchase for Investment. The Investor acknowledges that the offer and sale of the Acquired Shares and the Common Stock issuable upon the conversion of the Acquired Shares have not been registered under the Securities Act or under any state or other applicable securities laws. The Investor (a) acknowledges that it is acquiring the Acquired Shares and the Common Stock issuable upon the conversion of the Acquired Shares pursuant to an exemption from registration under the Securities Act solely for investment with no intention to distribute any of the foregoing to any Person, (b) will not sell, transfer, or otherwise dispose of

any of the Acquired Shares or the Common Stock issuable upon the conversion of the Acquired Shares, except in compliance with this Agreement and the registration requirements or exemption provisions of the Securities Act and any other applicable securities Laws, (c) has such knowledge and experience in financial and business matters and in investments of this type that it is capable of evaluating the merits and risks of its investment in the Acquired Shares and the Common Stock issuable upon the conversion of the Acquired Shares and of making an informed investment decision, (d) is an "accredited investor" (as that term is defined by Rule 501 of the Securities Act) and an "Institutional Account" (as that term is defined by FINRA Rule 4512(c)), and (e) (1) has reviewed the information that it considers necessary or appropriate to make an informed investment decision with respect to the Acquired Shares and the Common Stock issuable upon conversion of the Acquired Shares, (2) has had an opportunity to discuss with the Company and its Representatives the intended business and financial affairs of the Company and to obtain information necessary to verify the information furnished to it or to which it had access and (3) can bear the economic risk of (i) an investment in the Acquired Shares and the Common Stock issuable upon the conversion of the Acquired Shares indefinitely and (ii) a total loss in respect of such investment. The Investor has such knowledge and experience in business and financial matters so as to enable it to understand and evaluate the risks of, and form an investment decision with respect to its investment in, the Acquired Shares and the Common Stock issuable upon the conversion of the Acquired Shares.

Section 4.06 Non-Reliance on Company Estimates, Projections, Forecasts, Forward-Looking Statements and Business Plans. In connection with the due diligence investigation of the Company by the Investor and its respective Representatives, the Investor and its respective Representatives have received and may continue to receive from the Company and its Representatives certain estimates, projections, forecasts and other forward-looking information, as well as certain business plan information, in each case containing forward-looking information, regarding the Company and its Subsidiaries and their respective businesses and operations. The Investor hereby acknowledges that there are uncertainties inherent in attempting to make such estimates, projections, forecasts and other forward-looking statements, as well as in such business plans to the extent each of them contain forward-looking information with which the Investor is familiar, that the Investor is making its own evaluation of the adequacy and accuracy of such forward-looking information so furnished to the Investor (including the reasonableness of the assumptions underlying such forward-looking information), and that except for the representations and warranties made by the Company in Article III, the Transaction Documents and in any certificate or other document delivered in connection with this Agreement or the Transaction Documents, and other than for fraud, the Investor will have no claim against the Company or any of its Subsidiaries, or any of their respective Representatives, with respect thereto.

Section 4.07 Financial Advisor. Each of (a) J.P. Morgan, Qatalyst and Lazard is acting as a financial advisor to the Company and is not acting as an underwriter or in any other capacity and is not and shall not be construed as a fiduciary for the Investor, the Company or any other person or entity in connection with the Transactions, (b) J.P. Morgan, Qatalyst and Lazard has not made and will not make any representation or warranty, whether express or implied, of any kind or character and has not provided any advice or recommendation in connection with the Transactions, (c) J.P. Morgan, Qatalyst and Lazard will have no responsibility with respect to (i) any representations, warranties or agreements made by any person or entity under or in connection with the Transactions or any of the documents furnished pursuant thereto or in connection therewith, or the execution, legality, validity or enforceability (with respect to any person) or any thereof, or (ii) the business, affairs, financial condition, operations, properties or prospects of, or any other matter concerning the Company or the Transactions, and (d) J.P. Morgan, Qatalyst and Lazard shall have no liability or obligation (including without limitation, for or with respect to any losses, claims, damages, obligations, penalties, judgments, awards, liabilities, costs, expenses or disbursements incurred by the Investor, the Company or any other

person or entity), whether in contract, tort or otherwise, to the Investor, or to any person claiming through the Investor, in respect of the Transactions.

Section 4.08 No Other Representations or Warranties. Except for the representations and warranties made by the Investor in this Article IV, the Transaction Documents and in any certificate or other document delivered in connection with this Agreement or the Transaction Documents, neither the Investor nor any other Person acting on its behalf makes any other express or implied representation or warranty with respect to the Investor or any of its Affiliates or their respective businesses, operations, properties, assets, liabilities, condition (financial or otherwise) or prospects, notwithstanding the delivery or disclosure to the Company or its Representatives of any documentation, forecasts or other information with respect to any one or more of the foregoing, and the Company acknowledges the foregoing. In particular, and without limiting the generality of the foregoing, except for the representations and warranties made by the Investor in this Article IV, the Transaction Documents and in any certificate or other document delivered in connection with this Agreement or the Transaction Documents, neither the Investor nor any other Person makes or has made any express or implied representation or warranty to the Investor or its Representatives with respect to any oral or written information presented to the Company or its Representatives in the course of its due diligence investigation of the Company, the negotiation of this Agreement or the course of the Transactions or any other transactions or potential transactions involving the Company and the Investor.

Article V

Additional Agreements

Section 5.01 Reasonable Best Efforts; Filings.

(a) As set forth in the Certificate of Designations, the Acquired Shares shall be initially issued to the Investor without voting rights or conversion rights into Common Stock. After issuance and following the expiration or termination of the waiting period (and any extension thereof) under the HSR Act and any other applicable Regulatory Laws (collectively, the "Required Regulatory Approvals"), the Acquired Shares shall gain the right to vote on an as-converted basis with the Common Stock and shall be convertible into Common Stock, in each case, pursuant to, and in accordance with, the terms of the Certificate of Designations. Subject to the terms and conditions of this Agreement, including the terms of this Section 5.01, each of the Company and the Investor shall cooperate with each other and use (and shall cause its Subsidiaries to use) its reasonable best efforts (unless, with respect to any action, another standard of performance is expressly provided for herein) to obtain or submit, as the case may be, as promptly as practicable following the date hereof, all Required Regulatory Approvals. In furtherance of the foregoing, each of the parties hereto shall cooperate with each other to evaluate and identify any filings, consents, clearances or approvals required under or in connection with any Regulatory Law.

(b) The Company and the Investor agree to make any required filings pursuant to the HSR Act and any other Required Regulatory Approvals with respect to the Transactions as promptly as reasonably practicable following the date of this Agreement and, with respect to filings under (i) the HSR Act, no later than ten (10) Business Days after the date hereof and (ii) Italian Law Decree 21/2012 (as subsequently amended and supplemented), no later than 10 calendar days after the date hereof, and to supply as promptly as reasonably practicable any additional information and documentary material that may be requested pursuant to the HSR Act or any other Required Regulatory Approvals, as applicable, and to promptly take any and all steps necessary to avoid or eliminate each and every impediment and obtain all consents that may be required pursuant to the HSR Act or any other Required Regulatory Approvals, as applicable, so as to enable the parties hereto to consummate the Transactions.

(c) Each of the Company and the Investor shall use its reasonable best efforts to (i) cooperate in all respects with the other party in connection with any filing or submission with a Governmental Authority in connection with the Transactions and in connection with any investigation or other inquiry by or before a Governmental Authority relating to the Transactions, including any proceeding initiated by a private person, (ii) keep the other party informed in all material respects and on a reasonably timely basis of any material communication received by the Company or the Investor, as the case may be, from or given by the Company or the Investor, as the case may be, to the Federal Trade Commission ("FTC"), the Department of Justice ("DOJ") or any other Governmental Authority and of any material communication received or given in connection with any proceeding by a private Person, in each case regarding the Transactions, (iii) subject to applicable Laws relating to the exchange of information, and to the extent reasonably practicable, consult with the other party with respect to information relating to such party and its respective Subsidiaries, as the case may be, that appears in any filing made with, or written materials submitted to, any third Person or any Governmental Authority in connection with the Transactions, and (iv) to the extent permitted by the FTC, the DOJ or such other applicable Governmental Authority or other Person, give the other party the opportunity to attend and participate in such meetings and conferences. Any documents or other materials provided pursuant to this Section 5.01(c) may be redacted or withheld as necessary to address reasonable privilege or confidentiality concerns, and to remove references concerning the valuation of the Company or other competitively sensitive material, and the parties may, as each deems advisable, reasonably designate any material provided under this Section 5.01(c) as "outside counsel only material".

(d) Notwithstanding anything to the contrary in this Agreement, nothing in this Section 5.01 or elsewhere in this Agreement shall require the Investor to take any action with respect to any of its controlled Affiliates or its direct or indirect portfolio companies, including selling, divesting, conveying, holding separate, or otherwise limiting its freedom of action with respect to any assets, rights, products, licenses, businesses, operations, or interest therein, of any such Affiliates or any direct or indirect portfolio companies of investment funds advised or managed by one or more Affiliates of the Investor. The parties agree that all obligations of other parties related to regulatory approvals shall be governed exclusively by this Section 5.01.

Section 5.02 Corporate Actions. At any time that any Preferred Stock is outstanding, the Company shall (i) from time to time take all lawful action within its control to cause the authorized capital stock of the Company to include a sufficient number of authorized but unissued shares of Common Stock to satisfy the conversion requirements of all shares of the Preferred Stock then outstanding, and (ii) not effect any voluntary deregistration under the Exchange Act or any voluntary delisting with the NASDAQ (or any other national securities exchange upon which the Common Stock may subsequently be listed) in respect of the Common Stock other than in connection with a Fundamental Change (other than a delisting pursuant to the definition thereof) pursuant to which the Company satisfies in full its obligations under the Certificate of Designations.

Section 5.03 Public Disclosure. The Investor and the Company shall consult with each other before issuing, and give each other the opportunity to review and comment upon, any press release or other public statements with respect to the Transaction Documents or the Transactions, and shall not issue any such press release or make any such public statement prior to such consultation, except as may be required by applicable Law, Judgment, court process or the rules and regulations of any national securities exchange or national securities quotation system. The Investor and the Company agree that the initial press release to be issued with respect to the Transactions following execution of this Agreement shall be in a form agreed to by the parties hereto (the "Announcement"). Notwithstanding the forgoing, this Section 5.03 shall not apply to any press release or other public statement made by the Company or the Investor

(a) which is consistent with the Announcement and does not contain any information relating to the Transactions that has not been previously announced or made public in accordance with the terms of this Agreement or (b) is made in the ordinary course of business and does not relate specifically to the signing of the Transaction Documents or the Transactions. Notwithstanding the foregoing, (i) this Section 5.03 shall not prohibit any disclosure of information concerning this Agreement in connection with any dispute between the parties hereto regarding this Agreement and (ii) the Investor Parties may, without consulting the Company, provide ordinary course communications regarding this Agreement and the transactions contemplated hereby in connection with financial reporting and fundraising activities to existing or prospective general and limited partners, equity holders, members, managers and investors of any Affiliates of such Person, which in each case are subject to customary confidentiality obligations.

Section 5.04 Confidentiality. The Investor's confidentiality obligations under the Confidentiality Agreement shall survive the Closing Date and the confidential information thereunder (including oral, written and electronic information) shall include information concerning the Company, its Subsidiaries or its Affiliates that has been, or may be, furnished to the Investor, its Affiliates or their respective Representatives by or on behalf of the Company or any of its Representatives pursuant to, or in connection with, this Agreement and/or the Transactions and Transaction Documents.

Section 5.05 Standstill. The Investor agrees that during the Standstill Period, without the prior written approval of the Board, the Investor will not, directly or indirectly, and will cause its Affiliates not to:

(a) acquire, offer or seek to acquire, agree to acquire or make a public proposal to acquire, by purchase or otherwise, beneficial ownership of any Company Securities, any securities convertible into or exchangeable for any such equity securities, any options or other derivative securities or contracts or instruments in any way related to the price of such Company Securities (but in any case other than (i) as a result of any stock split, stock dividend or distribution, subdivision, reorganization, reclassification or similar capital transaction involving Company Securities, (ii) the acquisition of shares of Common Stock issuable upon conversion of the Preferred Stock, (iii) pursuant to or in connection with (A) an acquisition of Company Securities from another Investor Party or one of its Affiliates or (B) a Permitted Loan, and (iv) as a result of the acquisition by any Investor Director of any Company Securities pursuant to (x) the grant or vesting of any equity compensation awards granted by the Company to any Investor Director, or (y) the exercise of any stock options, restricted stock units, or similar awards relating to any Company Securities granted by the Company to any Investor Director;

(b) make or in any way participate in or knowingly encourage any "solicitation" of "proxies" (whether or not relating to the election or removal of directors), as such terms are used in the rules of the SEC, to vote, or knowingly seek to advise or influence any Person with respect to voting of, any voting securities of the Company or call or seek to call a meeting of the Company's stockholders or initiate any stockholder proposal or action by the Company's stockholders, or seek election to or to place a representative on the Board (other than pursuant to Section 5.08) or seek the removal of any director from the Board;

(c) propose, offer, seek or indicate an interest in (in each case, with or without conditions) any merger or business combination, tender or exchange offer, recapitalization, reorganization or purchase of a material portion of the assets, properties or securities of the Company or any Subsidiary, or any other extraordinary transaction involving the Company or any Subsidiary or any of their respective securities, or enter into any discussions, negotiations, arrangements, understandings or agreements whether written or oral) with any other Person (other than its Representatives) regarding any of the foregoing;

(d) otherwise act, alone or in concert with others, to seek to control or influence, in any manner, the management, Board or policies of the Company or any Subsidiary (for the avoidance of doubt, excluding any such act in their capacity as a commercial counterparty, customer, supplier or the like);

(e) make any public proposal or statement of inquiry or publicly disclose any intention, plan or arrangement consistent with the foregoing;

(f) advise or knowingly assist or encourage or direct any Person to do any of the foregoing;

(g) enter into any discussions, negotiations, arrangements or understandings with any third party (including security holders of the Company, but excluding, for the avoidance of doubt, any Investor Parties) with respect to any of the foregoing, including forming, joining or in any way participating in a "group" (as defined in Section 13(d)(3) of the Exchange Act) with any third party with respect to any of the foregoing

(h) request the Company or any of its Representatives to amend or waive any provision of this Section 5.05, provided that this clause shall not prohibit the Investor Parties from making a confidential request to the Company seeking an amendment or waiver of the provisions of this Section 5.05, which the Company may accept or reject in its sole discretion, so long as any such request is made in a manner that does not require public disclosure thereof by the Company; or

(i) contest the validity of this Section 5.05 or make, initiate, take or participate in any Action to amend, waive or terminate any provision of this Section 5.05;

provided, however, that nothing in this Section 5.05 will limit (1) the Investor Parties' ability to vote, Transfer (subject to Section 5.06), convert (subject to Article VIII of the Certificate of Designations), purchase Proposed Securities (subject to Section 5.17) or otherwise exercise rights under, its Common Stock or Preferred Stock, or (2) the ability of any Investor Director to vote or otherwise exercise its fiduciary duties or otherwise act in its capacity as a member of the Board; provided, further that notwithstanding anything to the contrary in this Section 5.05, the Investor and its Affiliates may at any time communicate privately with the Company's directors, officers or advisors or submit to the Board one or more confidential proposals or offers for a transaction (including a transaction that, if consummated, would result in a Fundamental Change), so long as, in each case, such communications and submissions are not intended to, and would not reasonably be expected to, require any public disclosure by the Company of such communications or submissions, as applicable.

Section 5.06 Transfer Restrictions.

(a) Until the thirty six (36)-month anniversary of the Closing Date, the Investor Parties will not Transfer:

(i) any Preferred Stock (or any Common Stock issued upon conversion of any Preferred Stock) to a Person who is known to be a Restricted Person (after reasonable inquiry); provided, that the foregoing shall not restrict the Investor Parties from Transferring their Preferred Stock (or any Common Stock issued upon conversion of any Preferred Stock) to a Restricted Person in connection with a merger, tender offer or exchange offer or other business combination, acquisition of assets or similar transaction or any Fundamental Change involving the Company or any of its Subsidiaries that, in each case, is approved by the Board;

(ii) any Common Stock issued upon conversion of any Preferred Stock to a Person or "group" (as defined in Section 13(d)(3) of the Exchange Act) that the Investor Parties know that, after giving effect to a proposed Transfer, would beneficially own greater than five percent (5%) of the then outstanding Common Stock; provided, that the foregoing shall not restrict the Investor Parties from Transferring any Common Stock issued upon conversion of any Preferred Stock to a Person or group in connection with a merger, tender offer or exchange offer or other business combination, acquisition of assets or similar transaction or any Fundamental Change involving the Company or any of its Subsidiaries that, in each case, is approved by the Board; or

(iii) any Preferred Stock to a Person or "group" (as defined in Section 13(d)(3) of the Exchange Act) that the Investor Parties know, at the time of the proposed Transfer, beneficially own at least three percent (3%) of the then outstanding Common Stock; provided, that the foregoing shall not restrict the Investor Parties from Transferring any Preferred Stock to a Person or group in connection with a merger, tender offer or exchange offer or other business combination, acquisition of assets or similar transaction or any Fundamental Change involving the Company or any of its Subsidiaries that, in each case, is approved by the Board;

provided, that, the forgoing restrictions will not apply to any Transfer undertaken (x) in any underwritten offering (including an underwritten block trade) or (y) in broker transactions effected pursuant to Rule 144 of the Securities Act.

(b) Until the later of (i) the date that is six (6) months after the Closing Date and (ii) ninety (90) days following the date on which no Investor Director is serving on the Board (and as of such time the Investor no longer has rights pursuant to this Agreement to designate an Investor Director Designee or otherwise has irrevocably waived in a writing delivered to the Company its rights under Section 5.08 to nominate an Investor Director Designee), the Investor Parties will not make any "short sale" (as defined in Rule 200 of Regulation SHO under the Exchange Act) of, grant any option for the purchase of, or enter into any hedging or similar transaction with the same economic effect as a "short sale" (as defined in Rule 200 of Regulation SHO under the Exchange Act) of or the purpose of which is to offset the loss which results from a decline in the market price of, any Preferred Stock (or any Common Stock issued upon conversion of any Preferred Stock), or otherwise establish or increase, directly or indirectly, a put equivalent position, as defined in Rule 16a-1(h) under the Exchange Act (collectively, "Hedging Arrangements"); provided, that, to the extent the foregoing restrictions are applicable, if the Company enters into a definitive agreement with respect to a Subsequent Transaction (a "Subsequent Transaction Announcement") on or prior to the date that is twelve (12) months after the Closing Date, then following the date that is nine (9) months after the Subsequent Transaction Announcement, the Investor Parties will be permitted to enter into Hedging Arrangements other than "short sales" (as defined in Rule 200 of Regulation SHO under the Exchange Act).

(c) The Investor agrees that, from the date that the Investor Director is appointed to the Board until the date on which the Investor Director ceases to be a member of the Board, except as otherwise set forth in this Agreement, the Investor shall comply with the Company's trading policies and guidelines applicable to all directors of the Company.

(d) The restrictions set forth in this Section 5.06 shall terminate automatically upon the commencement by the Company or one of its significant Subsidiaries (as such term is defined in Rule 12b-2 under the Exchange Act) of bankruptcy, insolvency or other similar proceedings.

(e) Notwithstanding anything to the contrary (including any of the Company's policies), at any time from and after the Closing Date, (i) the Investor Parties shall be

permitted to Transfer any or all of its Preferred Stock (or any Common Stock issued upon conversion of any Preferred Stock) in connection with a total return swap or a bona fide loan or other financing arrangement, including pledging, hypothecating or otherwise granting a security interest in shares of Preferred Stock and/or shares of Common Stock issued upon conversion of shares of Preferred Stock to one or more lending institutions as collateral or security for any bona fide loan, advance or extension of credit and any Transfer upon foreclosure (or in lieu of foreclosure) upon such shares of Preferred Stock or Common Stock (a "Permitted Loan"), and (ii) nothing shall prohibit or otherwise restrict the ability of any lender or other creditor or collateral agent under a Permitted Loan (including any agent or trustee on their behalf) or any Affiliate of the foregoing to foreclose upon, or accept a Transfer in lieu of foreclosure, and sell, dispose of or otherwise Transfer the applicable Preferred Stock or Common Stock mortgaged, hypothecated and/or pledged to secure the obligations of the borrower following an event of default (any of the foregoing, collectively, a "Foreclosure") under a Permitted Loan; provided, that, except if undertaken in a registered offering or an offering exempt from registration under Rule 144 or Rule 144A of the Securities Act, such lender or other creditor or collateral agent under a Permitted Loan or any Affiliate of the foregoing shall not sell, dispose of or otherwise Transfer such Preferred Stock or Common Stock to a Restricted Person without the Company's prior written consent; provided further, that in the event that any lender or other creditor or collateral agent under a Permitted Loan transaction (including any agent or trustee on their behalf) or any Affiliate of the foregoing exercises any rights or remedies in respect of the applicable Preferred Stock or Common Stock or any other collateral for any Permitted Loan, no lender, creditor, agent or trustee on their behalf or Affiliate of any of the foregoing (other than, for the avoidance of doubt, the Investor Parties) shall be entitled to any rights or have any obligations or be subject to any restrictions or limitations set forth in this Agreement

(f) Any attempted Transfer in violation of this Section 5.06 shall be null and void *ab initio.*

(g) So long as such Transfer is not violation of this Section 5.06, the Company shall cooperate with the Investor Parties in connection with the Transfer of any Preferred Stock (or any Common Stock issued upon conversion of any Preferred Stock), including providing reasonable and customary information (i) in connection with the relevant Investor Party's marketing efforts or any such potential transferee's due diligence or (ii) in order to comply with applicable securities Laws.

Section 5.07 Legend. (a) All certificates or other instruments representing the Preferred Stock or Common Stock issued upon conversion of the Preferred Stock will bear a legend substantially to the following effect:

THE SECURITIES REPRESENTED BY THIS INSTRUMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR THE SECURITIES LAWS OF ANY STATE AND MAY NOT BE TRANSFERRED, SOLD OR OTHERWISE DISPOSED OF EXCEPT PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER SUCH ACT OR SUCH LAWS, OR EXCEPT, WITH RESPECT TO ANY COMMON STOCK, WHILE A REGISTRATION STATEMENT RELATING THERETO IS IN EFFECT UNDER SUCH ACT AND APPLICABLE STATE SECURITIES LAWS.

THE SECURITIES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO TRANSFER AND OTHER RESTRICTIONS SET FORTH IN AN INVESTMENT AGREEMENT, DATED AS OF JANUARY 31, 2023, COPIES OF WHICH ARE ON FILE WITH THE SECRETARY OF THE ISSUER.

(h) Upon request of the applicable Investor Party, upon receipt by the Company of an opinion of counsel reasonably satisfactory to the Company to the effect that such legend is no longer required under the Securities Act and applicable state securities laws, the Company shall promptly cause the first paragraph of the legend to be removed from any certificate for any Preferred Stock or Common Stock to be Transferred in accordance with the terms of this Agreement and the second paragraph of the legend shall be removed upon the expiration of such transfer and other restrictions set forth in this Agreement (and, for the avoidance of doubt, immediately prior to any termination of this Agreement).

Section 5.08 Board Matters; Election of Directors.

(a) Effective as of the Closing, the Company and the Board will increase the size of the Board to nine (9) members (unless there is a vacancy in the Board at such time) and, subject to Section 5.08(b), the Board shall elect a designated representative of the Investor Parties who shall be Reed Rayman (such individual, the "Investor Director Designee") to the Board to serve for a term expiring at the next annual meeting of the Company's stockholders and until his successor is duly elected and qualified. Following the Closing, the Investor shall not be required to comply with the advance notice provisions generally applicable to the nomination of directors by the Company so long as the Investor provides reasonable advance notice to the Company of the Investor Director Designee prior to the mailing of the proxy statement by the Company (provided, that the Company shall provide reasonable advance notice to the Investor of the expected mailing date). For the avoidance of doubt, failure of the stockholders of the Company to elect any Investor Director Designee to the Board shall not affect the right of the Investor to nominate a director for election pursuant to this Section 5.08 in any future election of directors; provided, that the Investor shall nominate a different person as the Investor Director Designee. Prior to the Fall-Away of Board Rights and subject to Section 5.08(b), the Investor Director serve as a member of such committees of the Board as determined by the Governance Committee of the Board after good faith consultation with the Investor Director Designee.

(b) Each Investor Director Designee shall, at the time of his or her nomination or appointment as a Director and at all times thereafter until such individual ceases to serve as an Investor Director:

(i) meet and comply with any and all policies, procedures, processes, codes, rules, standards and guidelines of the Company applicable to all non-employee Board members, including the Company's code of business conduct and ethics, securities trading policies and corporate governance guidelines;

(ii) to the extent applicable, meet and comply with any requirements under applicable Law or stock exchange listing rules for membership on the applicable Committee;

(iii) not be subject to any order, decree or judgment of any Governmental Authority prohibiting service as a director of any public company;

(iv) not be an employee, officer, or director of, or consultant to, or be receiving any compensation or benefits from, any Competitor (unless otherwise agreed to by the Governance Committee of the Board); and

(v) to the extent such attendance would reasonably be expected to present an actual or likely conflict of interest for the Investor Director in the good faith opinion of the Board or the applicable committee thereof, waive notice of and recuse himself or herself from any meetings, deliberations or discussion of the Board or any committee thereof, as

applicable, regarding any Transaction Document, the Transactions (other than a Spin-Off or Subsequent Transaction) or any other transactions involving the Investor Parties.

(c) Upon the occurrence of the Fall-Away of Board Rights, at the written request of the Board, the Investor Director shall resign, and the Investor shall cause the Investor Director promptly to resign, from the Board and each Committee effective as of the date of the Fall-Away of Board Rights, and the Investor shall no longer have any designation and nomination rights under this Section 5.08.

(d) If the Investor exercises its designation rights in accordance with the provisions of this Section 5.08, the Company and the Board shall (i) include the Investor Director Designee designated by the Investor in accordance with this Section 5.08 in the Company's slate of nominees (whether in the Company's proxy statement or otherwise) for the applicable meeting of the Company's stockholders or action by written consent at which directors are to be elected, and use its reasonable best efforts to cause the election of the Investor Director Designee to the Board, (ii) recommend that the Company's stockholders vote in favor of such Investor Director Designee, (iii) support such nominee with the same level of efforts and support as is used and/or provided for the other director nominees of the Company with respect to the applicable meeting of stockholders or action by written consent, and (iv) cause the Board to have sufficient vacancies to permit such Investor Director Designee to be elected as a member of the Board.

(e) The Investor shall have the right to remove, whether with or without cause, any Investor Director at any time; provided, that the Investor shall provide at least five (5) Business Days' notice of any such removal, which notice shall include the reason for removal and any other information required to be disclosed pursuant to Item 5.02 of Form 8-K and for so long as the Investor Parties are entitled to designate an Investor Director Designee in accordance with this Section 5.08, the Board shall not remove any Investor Director from his or her directorship (except as required by Law, the Certificate of Designations or the Company Charter Documents).

(f) In the event that a vacancy is created at any time by the death, resignation, removal, disqualification or other cause of an Investor Director, including the failure of an Investor Director Designee to be elected at a meeting of stockholders of the Company, the Investor shall have the right to designate a replacement to fill such vacancy (but only if the Investor would be then entitled to nominate such designee pursuant to the provisions of this Section 5.08). The Board and the Company shall, to the fullest extent permitted by applicable Law and stock exchange listing rules, take all actions necessary at any time and from time to time to cause the vacancy created thereby to be filled by the individual so designated and to cause the Board to elect such designee to the Board as soon as possible.

(g) Other than with respect the appointment of the initial Investor Director Designee at the Closing, the Company's obligations to have any Investor Director Designee elected to the Board or nominate any Investor Director Designee for election as a director at any meeting of the Company's stockholders pursuant to this Section 5.08, as applicable, shall in each case be subject to such Investor Director Designee's satisfaction of all applicable requirements regarding service as a director of the Company under applicable Law and stock exchange listing rules regarding service as a director of the Company and all other criteria and qualifications for service as a director applicable to all directors of the Company. The Investor Parties will cause each Investor Director Designee to make himself or herself reasonably available for interviews by the applicable committee of the Board on the same basis as any other new or returning, as applicable, candidate for appointment or election to the Board, and to consent to such reference and background checks or other investigations as the Board may reasonably request on the same basis as any other new or returning, as applicable, candidate for

appointment or election to the Board to determine the Investor Director Designee's eligibility and qualification to serve as a director of the Company. No Investor Director Designee shall be eligible to serve on the Board if he or she has been involved in any of the events enumerated under Item 2(d) of Schedule 13D under the Exchange Act or Item 401(f) of Regulation S-K under the Securities Act. Other than with respect the appointment of the initial Investor Director Designee at the Closing, as a condition to any Investor Director Designee's election to the Board or nomination for election as a director of the Company at any meeting of the Company's stockholders, the Investor Parties and the Investor Director Designee must provide to the Company: (x) all information reasonably requested by the Company that is required to be or is customarily disclosed for all new or returning, as applicable, candidates for appointment or election to the Board and their respective Affiliates in a proxy statement or other filings required by applicable Law, any stock exchange listing rules or listing standards or the Company Charter Documents or corporate governance guidelines, in each case, (1) to the extent relating to the Investor Director Designee's election as a director of the Company or the Company's operations in the ordinary course of business and (2) to the same extent requested or required of other candidates for appointment or election to the Board and (y) all information reasonably requested by the Company in connection with assessing eligibility and other criteria applicable to all new or returning, as applicable, candidates for appointment or election to the Board or satisfying compliance and legal or regulatory obligations, in each case, (1) to the extent relating to the Investor Director Designee's nomination or election, as applicable, as a director of the Company or the Company's operations in the ordinary course of business and (2) to the same extent requested or required of other candidates for appointment or election to the Board.

(h) For so long as the 25% Beneficial Holding Requirement is satisfied by the Investor Parties, at any time after the Closing that there is no Investor Director serving on the Board, the Investor Parties shall be entitled to appoint one Person strictly as an observer to the Board (the "Board Observer"). The Board Observer shall be entitled to attend and be notified of all meetings of the Board and any committees thereof in a non-voting capacity, and to receive copies of all notices, minutes, consents and other materials provided to the non-management members of the Board or such committees; provided, that the Company reserves the right to withhold any information and/or materials and to exclude the Board Observer from access to any such material or meeting or portion thereof if the Board reasonably determines in good faith and upon the advice of counsel, that such exclusion is reasonably necessary to (x) preserve the attorney client or like privilege between the Company (or the Board or such committee, as applicable, and its counsel), (y) comply with applicable Law or stock exchange listing rules or (z) comply with the terms of any confidentiality agreement or other contract with a Third Party. The Board Observer shall not have voting rights or fiduciary obligations to the Company or its stockholders, or be entitled to receive any compensation or reimbursement of expenses in his or her capacity as Board Observer, but shall be bound by the same confidentiality obligations as the members of the Board. Any action taken by the Board or committee thereof at any meeting will not be invalidated by the absence of the Board Observer at such meeting. To the extent such attendance would reasonably be expected to present an actual or likely conflict of interest for the Board Observer in the good faith opinion of the Board or the applicable committee thereof, the Board Observer shall agree to waive notice of and recuse himself or herself from any meetings, deliberations or discussion of the Board or any committee thereof, as applicable, regarding any Transaction Document, the Transactions (other than a Spin-Off or Subsequent Transaction) or any other transactions involving the Investor Parties.

(i) The Company shall at all times provide each Investor Director (in his or her capacity as a member of the Board) with the same rights to indemnification and exculpation that it provides to other members of the Board. In addition, in his or her capacity as a member of the Board or any applicable Committee on which he or she formally serves as a member, such Investor Director shall be entitled to receive, unless waived by the Investor Director, (i) any and all applicable director and Committee fees and compensation that are

payable to the Company's non-management directors as part of the Company's director compensation plan, and (ii) reimbursement of all reasonable, documented out-of-pocket expenses that he or she incurs in connection with performing Board and any applicable Committee duties consistent with the Company's expense reimbursement policy applicable to non-management directors.

(j) The Company shall maintain directors' and officers' liability insurance as determined by the Board. The Company acknowledges and agrees that any Investor Director who are partners, members, employees, or consultants of Apollo and/or any of its Affiliates (each, an "Apollo Entity") may have certain rights to indemnification, advancement of expenses and/or insurance provided by the applicable Apollo Entity (collectively, the "Apollo Indemnitors"). The Company acknowledges and agrees that the Company shall be the indemnitor of first resort with respect to any indemnification, advancement of expenses and/or insurance provided in the certificate of incorporation, bylaws or any other organizational documents (collectively, the "Organizational Documents") of the Company and/or any of its Subsidiaries and/or any indemnification agreements to any Investor Director in his or her capacity as a director of the Company or any of its Subsidiaries (such that the Company's obligations to such indemnitees in their capacities as directors are primary and any obligation of the Apollo Indemnitors to advance expenses or to provide indemnification or insurance for the same expenses or liabilities incurred by such indemnitees are secondary). Such indemnitees shall, in their capacities as directors, be entitled to all the rights to indemnification, advancement of expenses and entitled to insurance to the extent provided under (i) Organizational Documents of the Company and/or any of its Subsidiaries in effect from time to time and/or (ii) such other agreement, if any, between the Company and/or any of its Subsidiaries, on the one hand, and such indemnitees, on the other hand, without regards to any rights such indemnitees may have against the Apollo Indemnitors. No advancement or payment by the Apollo Indemnitors on behalf of such indemnitees with respect to any claim for which such indemnitees have sought indemnification, advancement of expenses or insurance from the Company in their capacities as directors shall affect the foregoing and the Apollo Indemnitors shall have a right of contribution and/or be subrogated to the extent of such advancement or payment to all of the rights of recovery of such indemnitees against the Company and/or its applicable Subsidiaries.

(k) In recognition and anticipation that (i) certain directors, principals, officers, employees, members, partners and/or other representatives of the Investor, any Investor Party or Apollo Entity, or of investment funds or vehicles affiliated with an Apollo Entity or any of its respective Affiliates may be an Investor Director Designee and, accordingly, serve as Directors, and (ii) each of Apollo or investment funds or vehicles affiliated with Apollo may now engage, may continue to engage, and/or may, in the future, decide to engage, in the same or similar activities or related lines of business as those in which the Company or any of its Subsidiaries, directly or indirectly, now engage or may engage and/or other business activities that overlap with, are complementary to or compete with those in which the Company or any of its Subsidiaries, directly or indirectly, now engage or may engage, the provisions of this Section 5.08(k) are set forth to regulate and define the conduct of certain affairs of the Company and its Subsidiaries with respect to certain classes or categories of business opportunities as they may involve any Investor Party or its Affiliates and the powers, rights, duties and liabilities of the Company, its Subsidiaries, and their respective directors, officers and stockholders in connection therewith. To the fullest extent permitted by applicable Law, the Company, on behalf of itself and each of its Subsidiaries, hereby renounces any interest or expectancy in, or right to be offered an opportunity to participate in, any business opportunity which may be a corporate (or analogous) or business opportunity for any Investor Party, any of its Affiliates, or any Investor Director Designees or Investor Director (collectively, "Identified Persons" and, individually, an "Identified Person") and the Company or any of its Affiliates. To the fullest extent permitted by applicable Law, in the event that any Identified Person acquires knowledge of a potential transaction or other corporate (or analogous) or business opportunity which may be a corporate

(or analogous) or business opportunity for itself, herself or himself and the Company or any of its Affiliates, such Identified Person shall have no duty to communicate, offer or otherwise make available such transaction or other corporate (or analogous) or business opportunity to the Company or any of its Affiliates and shall not be liable to the Company or its stockholders or to any Affiliate of the Company for breach of any purported fiduciary duty solely by reason of the fact that such Identified Person pursues or acquires such corporate (or analogous) or business opportunity for itself, herself or himself, or offers or directs such corporate (or analogous) or business opportunity to another Person (including any Affiliate of such Identified Person). The Company, on behalf of itself and each of its Subsidiaries, (x) acknowledges that the Identified Persons may now own, may continue to own, and from time to time may acquire and own, investments in one or more other entities (each such entity, a "Related Company" and all such entities, collectively, "Related Companies") that are direct competitors of, or that otherwise may have interests that do or could conflict with those of, the Company, any of its Subsidiaries, any of the Company's stockholders or any of their respective Affiliates, and (y) agree that (A) the enjoyment, exercise and enforcement of the rights, interests, privileges, powers and benefits granted or available to the Identified Persons under this Agreement shall not be in any manner reduced, diminished, affected or impaired, and the obligations of the Identified Persons under this Agreement (if any) shall not be in any manner augmented or increased, by reason of any act, circumstance, occurrence or event arising from or in any respect relating to (1) the ownership by an Identified Person of any interest in any Related Company, (2) the affiliation of any Related Company with an Identified Person or (3) any action taken or omitted by any Related Company or an Identified Person in respect of any Related Company, (B) no Identified Person who is not an Investor Director shall, by reason of such ownership, affiliation or action, become subject to any fiduciary duty to the Company, any of its Subsidiaries, any of the Company's stockholders or any of their respective Affiliates, (C) none of the duties imposed on an Identified Person who is not an Investor Director, whether by contract or law, do or shall limit or impair the right of any Identified Person lawfully to compete with the Company, any of its Subsidiaries, any of the Company's stockholders or any of their respective Affiliates as if the Identified Persons were not a party to this Agreement, and (D) to the fullest extent permitted by Delaware Law, the Identified Persons are not and shall not be obligated to disclose to the Company, any of its Subsidiaries, any of the Company's stockholders or any of their respective Affiliates any information related to their respective businesses or opportunities, including acquisition opportunities, or to refrain from or in any respect to be restricted in competing against the Company, any of its Subsidiaries, any of the Company's stockholders or any of their respective Affiliates in any such business or as to any such opportunities.

Section 5.09 Tax Matters.

(a) The Company and its paying agent shall be entitled to withhold Taxes on all payments on the Preferred Stock or Common Stock or other securities issued upon conversion of the Preferred Stock in each case to the extent required by applicable Law; provided, that to the extent that the Investor has previously delivered an appropriate IRS Form W-8 or W-9 to the Company establishing an exemption for U.S. federal withholding (including backup withholding), the Company shall not be permitted to withhold unless the Company has provided the Investor advance written notice of its intent to withhold at least five (5) days prior to the payment of the amount subject to withholding, and has given the Investor a reasonable opportunity to provide any form or certificate available to reduce or eliminate such withholding. Within a reasonable amount of time after making such withholding payment, the Company shall furnish the Investor with copies of any tax certificate, receipt or other documentation reasonably acceptable to the Investor evidencing such payment.

(b) The Company shall pay any and all documentary, stamp and similar issue or transfer Tax due on (x) the issuance of the Preferred Stock and (y) the issuance of shares of Common Stock upon conversion of the Preferred Stock. However, in the case of

conversion of Preferred Stock, the Company shall not be required to pay any Tax or duty that may be payable in respect of any transfer involved in the issuance and delivery of shares of Common Stock or Preferred Stock to a beneficial owner other than the beneficial owner of the Preferred Stock immediately prior to such conversion, and no such issue or delivery shall be made unless and until the person requesting such issue has paid to the Company the amount of any such Tax or duty, or has established to the satisfaction of the Company that such Tax or duty has been paid.

(c) The parties shall, and shall cause each of their Affiliates to, treat the Acquired Shares as "common stock" rather than as "preferred stock" for purposes of Section 305 of the Code. Without the prior written consent of the Investor Parties, the Company shall not (and the Board shall not authorize the Company to) take any action that would reasonably be expected to cause an Investor Party (or its direct or indirect equityholders) to recognize taxable income by reason of the operation of Section 305(b)(2) of the Code. Neither party will, nor will permit their Affiliates to, take a contrary position without the other party's prior written consent.

Section 5.10 Spin-Off Matters.

(a) The Company shall, and shall cause each of its Affiliates to, (i) consult in good faith with the Investor with respect to the structuring of a Spin-Off, and give reasonable and good faith consideration to any proposals or comments made by the Investor and its counsel, (ii) provide the Investor with a reasonable opportunity to review and comment upon (A) all Spin-Off Transaction Documents (including any amendment or waiver to the Spin-Off Transaction Documents) prior to execution (or waiver) thereof, (B) any registration statement (including any amendments or supplements thereto), to be filed by SpinCo with the SEC in connection such Spin-Off prior to such filing, and, in each case, give reasonable and good faith consideration to any comments made by the Investor and its counsel and (C) any information, other than publicly available information filed with the SEC in connection with the transactions contemplated hereby, contained in any filings with a Governmental Authority (including the SEC and the IRS or any other Taxing Authority) that relates to the Investor or this Agreement (which approval will not be unreasonably withheld, delayed or conditioned), (iii) keep the Investor apprised on a reasonably current basis of (A) the anticipated date and time of the consummation of such Spin-Off, (B) progress of any antitrust, regulatory or other notification or filing required in connection with the transactions contemplated by the Spin-Off Transaction Documents, (C) any material disputes that arise under or relate to the Spin-Off Transaction Documents and (D) material communications or submissions with the IRS or other Taxing Authority concerning the matters set forth herein, and (iv) not, without the consent of the Investor (not to be unreasonably withheld, delayed or conditioned), consummate a Spin-Off without obtaining a Tax Opinion or Ruling.

(b) In the event a Standalone Spin-Off is consummated, in connection with the consummation of such Spin-Off:

(i) (A) the Company shall cause SpinCo to issue to the Company a number of shares of convertible preferred stock of SpinCo having an aggregate liquidation preference equal to the Specified Assumed Amount (the "SpinCo Preferred Stock") and having the designation, preferences, rights, privileges, powers, and terms and conditions, that are identical to those specified in the Certificate of Designations and (B) the Company shall, immediately following such issuance, issue such SpinCo Preferred Stock to the applicable Investor Parties in exchange for a number of shares of Preferred Stock having an aggregate liquidation preference equal to the Specified Assumed Amount provided, that, in each case of the foregoing clauses (A) and (B), such transactions shall be structured for U.S. federal income tax purposes as a distribution of preferred shares in SpinCo to the Investor Parties in respect of the Investor Parties' Preferred Stock in a transaction qualifying as tax-deferred to the Investor under

Section 355 or Section 361 of the Code and the Investor, the Company and SpinCo shall otherwise use good faith efforts to structure such transactions in a tax efficient manner; and

(ii) the Company shall cause SpinCo to enter into an investor rights agreement and a registration rights agreement, in each case, with the Investor and/or its applicable Affiliates, and duly adopt and file a certificate of designation with the Secretary of State of the State of Delaware (or such other applicable jurisdiction), that provides the Investor Parties with rights and obligations that are identical to those set forth in Section 5.02, Section 5.04, Section 5.05, Section 5.06, Section 5.07, Section 5.09, Section 5.13, Section 5.15, Section 5.16, Section 5.17 (if requested in writing by the Investor) and Section 5.18 (provided that Section 5.18(d) shall be revised in form and substance reasonably acceptable to the Investor Parties and shall be no more restrictive than any restriction on indebtedness covenant to be set forth in any revolving credit facility that is entered into by SpinCo), the Registration Rights Agreement and the Certificate of Designations, as applicable, in each case, with such changes as set forth in Annex I hereto and such additional changes to be agreed among the Company, the Investor and SpinCo. In addition, to the extent SpinCo has not done so on the date that the Standalone Spin-Off is consummated, SpinCo shall, as promptly as possible after the date thereof, apply to cause the aggregate number of shares of common stock issuable upon the conversion of the SpinCo Preferred Stock issued to the Investor pursuant to this Agreement and pursuant to the SpinCo certificate of designations to be approved for listing on the NASDAQ or other national securities exchange, subject to official notice of issuance; provided, that SpinCo shall promptly amend such application to account for any event that results in an adjustment to the conversion price of the SpinCo Preferred Stock.

Notwithstanding anything in this Section 5.10 to the contrary, if the Company announces a Standalone Spin-Off and then, prior to the consummation of such Standalone Spin-Off, the Company subsequently announces a Subsequent Transaction, the Company shall have no obligations under this Section 5.10(b) unless and until the Subsequent Transaction is terminated and the Company determines to undertake a Standalone Spin-Off.

Section 5.11 Use of Proceeds. The Company shall use the proceeds from the issuance and sale of the Acquired Shares (a) to pay for any costs, fees and expenses incurred in connection with the Transactions or (b) for general corporate purposes, including any potential Spin-Off.

Section 5.12 DTC Eligibility. Promptly following the Closing, the Company shall use commercially reasonable efforts to cause the shares of Preferred Stock to be eligible for resale through The Depository Trust Company.

Section 5.13 Financing Cooperation. From and after the Closing, if requested by an Investor Party, the Company will provide cooperation (with, in each case, all reasonable, documented out-of-pocket expenses, including legal expenses, incurred by the Company in connection with the foregoing, being borne by such Investor Party) in connection with such Investor Party obtaining any Permitted Loan, including with respect to the following: (i) entering into an issuer agreement (in customary form and substance reasonably satisfactory to the Company and the sources of the Permitted Loan) with each lender in connection with such transactions (which agreement may include agreements and obligations of the Company relating to procedures and specified time periods for effecting transfers and/or conversions upon Foreclosure, agreements to not hinder or delay exercises of remedies on Foreclosure, acknowledgments regarding Organizational Documents and corporate policy, if applicable, and certain acknowledgments regarding the pledged shares of Preferred Stock and/or shares of Common Stock issued upon conversion of shares of Preferred Stock and securities law status of the pledge arrangements and a specified list of Competitors (which, for the avoidance of doubt, shall only apply if such transaction is not undertaken in a registered offering or an offering

exempt from registration under Rule 144 or Rule 144A of the Securities Act), (ii) using commercially reasonable efforts to (A) remove any restrictive legends on certificates representing pledged shares of Preferred Stock and/or shares of Common Stock issued upon conversion of shares of Preferred Stock and depositing any pledged shares of Preferred Stock and/or shares of Common Stock issued upon conversion of shares of Preferred Stock in book entry form on the books of The Depository Trust Company, in each case when eligible to do so or otherwise as agreed with the transfer agent (and providing any necessary indemnities to the transfer agent in connection therewith) or (B) without limiting the generality of clause (A), if such shares of Preferred Stock or Common Stock are eligible for resale under Rule 144A, depositing such pledged shares of Preferred Stock and/or shares of Common Stock in book entry form on the books of The Depository Trust Company or other depository with customary representations and warranties from the applicable Investor Party or its applicable Affiliates regarding compliance with securities Laws, (iii) if so requested by such lender or counterparty, as applicable, re-registering on the books and records of the transfer agent the pledged shares of Preferred Stock and/or Common Stock in the name of the relevant lender, agent, counterparty, custodian or similar party to a Permitted Loan, with respect to a Permitted Loan as securities intermediary and only to the extent the Investor Parties (or its or their Affiliates) continue to beneficially own such pledged shares of Preferred Stock and/or Common Stock, (iv) entering into customary triparty agreements (in form and substance reasonably satisfactory to the Company and the sources of the Permitted Loan) with each lender and the applicable Investor Parties relating to the delivery of the applicable shares of Preferred Stock and/or Common Stock to the relevant lender for crediting to the relevant collateral accounts upon funding of the loan and payment of the purchase price including a right for such lender as a third party beneficiary of the Company's obligations hereunder and (v) such other cooperation and assistance as the Investor Parties may reasonably request (which cooperation and assistance, for the avoidance of doubt, shall not include any requirements that the Company deliver information, compliance certificates or any other materials typically provided by borrowers to lenders) that will not unreasonably disrupt the operation of the Company's business. Notwithstanding anything to the contrary in the preceding sentence, the Company's obligation to deliver an issuer agreement is conditioned on the Investor certifying to the Company in writing that (A) the loan agreement with respect to which the issuer agreement is being delivered constitutes a Permitted Loan being entered into in accordance with this Agreement, the Investor has pledged the Preferred Stock and/or the underlying shares of Common Stock as collateral to the lenders under such Permitted Loan and that the execution of such Permitted Loan and the terms thereof do not violate the terms of this Agreement, (B) to the extent applicable, whether the registration rights under the Registration Rights Agreement are being assigned to the lenders under that Permitted Loan and (C) the Investor Parties acknowledge and agree that the Company will be relying on such certificate when entering into the issuer agreement and any material inaccuracy in such certificate will be deemed a breach of this Agreement. The Investor Parties acknowledge and agree that the statements and agreements of the Company in an issuer agreement are solely for the benefit of the applicable lenders party thereto and that in any dispute between the Company and the Investor Parties under this Agreement the Investor Parties shall not be entitled to use the statements and agreements of the Company in an issuer agreement against the Company.

Section 5.14 State Securities Laws. Promptly following the date hereof, the Company shall use its reasonable best efforts to (a) make all filings with the SEC under the Securities Act and Exchange Act related to the execution of the Transaction Documents and the consummation of the transactions contemplated thereby in the time periods required by (including any extensions permitted by) the Securities Act and Exchange Act, as applicable, (b) obtain all necessary permits and qualifications, if any, or secure an exemption therefrom, required by any state or country prior to the offer and sale of Common Stock and/or Preferred Stock and (c) cause such authorization, approval, permit or qualification to be effective as of the Closing and as of any conversion of Preferred Stock; provided, that in connection therewith the Company shall not be required to qualify as a foreign corporation or to file a general consent to

service of process in any jurisdiction or subject itself to taxation in any jurisdiction in which it is not otherwise subject to taxation on the date of this Agreement.

Section 5.15 Participation Rights.

(a) For the purposes of this Section 5.15, "Excluded Stock" shall mean (i) shares of equity securities issued by the Company as a stock dividend payable in shares of equity securities, or upon any subdivision or split-up of the outstanding shares of capital stock, (ii) the issuance of shares of equity securities (including upon exercise of options) to directors, employees or consultants of the Company pursuant to a Company Stock Plan or other stock option plan, restricted stock plan or other similar plan approved by the Board, (iii) securities issued pursuant to the conversion, exercise or exchange of the Preferred Stock issued to the Investor, (iv) shares of equity securities issued as consideration in connection with a "business combination" (as defined by the rules and regulations promulgated by the SEC) or as consideration in connection with bona fide acquisitions of securities or substantially all of the assets of another Person, business unit, division or business, (v) securities issued pursuant to acquisitions or strategic transactions (including, for the avoidance of doubt, whether structured as a merger, consolidation, asset or stock purchase, or other similar transaction); (vi) securities issued pursuant to the conversion, exercise or exchange of Preferred Stock, (vii) shares of a Subsidiary of the Company issued to the Company or a Subsidiary of the Company, (viii) securities of a joint venture (provided that no Affiliate (other than any Subsidiary of the Company) of the Company acquires any interest in such securities in connection with such issuance) or (ix) shares of equity securities to a third-party lender in connection with a bona fide borrowing by the Company that is primarily a debt financing transaction.

(b) From and after the twelve (12) month anniversary of the Closing until the occurrence of the Fall-Away of Board Rights, if the Company or a Subsidiary of the Company proposes to issue equity securities of any kind (the term "equity securities" shall include for these purposes Common Stock and any warrants, options or other rights to acquire, or any securities that are exercisable for, exchangeable for or convertible into, Common Stock or any other class of capital stock of the Company), other than Excluded Stock, then, the Company shall:

(i) give written notice to the Investor Parties, no less than five (5) Business Days prior to the closing of such issuance, setting forth in reasonable detail (A) the designation and all of the terms and provisions of the securities proposed to be issued (the "Proposed Securities"), including, where applicable, the voting powers, preferences and relative participating, optional or other special rights, and the qualification, limitations or restrictions thereof and interest rate and maturity; (B) the price and other terms of the proposed sale of such securities; (C) the amount of such securities proposed to be issued; and (D) such other information as the Investor Parties may reasonably request in order to evaluate the proposed issuance (except that the Company shall not be required to deliver any information that has not been or will not be provided or otherwise made available to the proposed purchasers of the Proposed Securities); and

(ii) offer to issue and sell to the Investor Parties, on such terms as the Proposed Securities are issued and upon full payment by the Investor Parties, a portion of the Proposed Securities equal to a percentage determined by dividing (A) the number of shares of Common Stock the Investor Parties beneficially own (on an "as-converted basis") by (B) the total number of shares of Common Stock then outstanding (on an "as-converted basis") (such percentage, the "Participation Portion"); provided, however, that, subject to compliance with the terms and conditions set forth in Section 5.15(h), the Company shall not be required to offer to issue or sell to the Investor Parties (or to any of them) the portion of the Proposed Securities that would require the Company to obtain stockholder approval in respect of the issuance of any

Proposed Securities under the listing rules of NASDAQ or any other securities exchange or any other applicable Law (provided, further, however, that the Company shall still be obligated to provide written notice of such proposed issuance to the Investor Parties pursuant to Section 5.15(b)(i), which notice shall include a description of the Proposed Securities (including the number thereof) that would require stockholder approval in respect of the issuance thereof (the "Restricted Issuance Information")).

(c) The Investor will have the option, on behalf of the applicable Investor Parties, exercisable by written notice to the Company, to accept the Company's offer and commit to purchase any or all of the securities offered to be sold by the Company to the Investor Parties, which notice must be given within three (3) Business Days after receipt of such notice from the Company. The closing of the exercise of such subscription right shall take place simultaneously with the closing of the sale of the Proposed Securities giving rise to such subscription right; provided, however, that the closing of any purchase by any such Investor Party may be extended beyond the closing of the sale of the Proposed Securities giving rise to such preemptive right (but shall not delay such closing for any other purchaser) to the extent necessary to (i) obtain required approvals from any Governmental Authority or (ii) permit the Investor Parties to receive proceeds from calling capital pursuant to commitments made by its (or its affiliated investment funds') limited partners. If the Investor elects to purchase any securities pursuant to this Section 5.15(c), the Investor, at its sole expense, shall make any filings required in connection with such participation under antitrust or other applicable Law promptly following the delivery to the Company of the corresponding notice of acceptance and shall use reasonable best efforts to obtain applicable antitrust clearance and/or approval under antitrust or other applicable Laws. Notwithstanding anything to the contrary contained herein, if the Company desires to modify or amend the terms and conditions of the offer prior to the expiration of the offering period described above, the Company shall deliver to the Investor a new notice and the Investor will have the option, on behalf of the applicable Investor Parties, exercisable by written notice to the Company, to accept the Company's offer and commit to purchase any or all of the securities offered to be sold by the Company to the Investor Parties, which notice must be given within three (3) Business Days after receipt of such new notice from the Company.

(d) Upon the expiration of the offering period described above, the Company will be free to sell such Proposed Securities that the Investor Parties have not elected to purchase during the ninety (90) days following such expiration on terms and conditions no more favorable to the purchasers thereof than those offered to the Investor Parties in the notice delivered in accordance with Section 5.15(b). Any Proposed Securities offered or sold by the Company after such ninety (90)-day period must be reoffered to the Investor Parties pursuant to this Section 5.15.

(e) The election by any Investor Party not to exercise its subscription rights under this Section 5.15 in any one instance shall not affect their right as to any subsequent proposed issuance.

(f) Notwithstanding anything in this Section 5.15 to the contrary, the Company will not be deemed to have breached this Section 5.15 if not later than thirty (30) Business Days following the issuance of any Proposed Securities in contravention of this Section 5.15, the Company or the transferee of such Proposed Securities offers to sell a portion of such equity securities or additional equity securities of the type(s) in question to each Investor Party so that, taking into account such previously-issued Proposed Securities and any such additional Proposed Securities, each Investor Party will have had the right to purchase or subscribe for Proposed Securities in a manner consistent with the allocation and other terms and upon the same economic and other terms provided for in Section 5.15(b) and Section 5.15(c).

(g) In the case of an issuance subject to this Section 5.15 for consideration in whole or in part other than cash, including securities acquired in exchange therefor (other than securities by their terms so exchangeable), the consideration other than cash shall be deemed to be the Fair Market Value thereof (except for one or more exchanges of the Convertible Notes). Notwithstanding anything in this Section 5.15 to the contrary, the Investor's participation rights shall not include an offering of securities acquired in exchange for the Convertible Notes.

(h) In the event that the Company is not required to offer or reoffer to the Investor Parties any Proposed Securities because such issuance would require the Company to obtain stockholder approval in respect of the issuance of any Proposed Securities under the listing rules of NASDAQ or any other securities exchange or any other applicable Law, the Company shall, upon the Investor Parties' reasonable request delivered to the Company in writing within no later than three (3) Business Days following its receipt of the written notice of such issuance to the Investor Parties pursuant to Section 5.15(b)(i) (together with the Restricted Issuance Information), at the Investor Parties' election:

(i) waive the restrictions set forth in Section 5.05(a) solely to the extent necessary to permit any Investor Party to acquire such number of securities of the Company (including Common Stock) equivalent to its Participation Portion of the Proposed Securities such Investor Party would have been entitled to purchase had it been entitled to acquire such Proposed Securities pursuant to Section 5.15(c) (provided, that such request by Investor Parties shall not be deemed to be a violation of Section 5.05(h));

(ii) consider and discuss in good faith modifications proposed by the Investor Parties to the terms and conditions of such portion of the Proposed Securities which would otherwise be issued to the Investor Parties such that the Company would not be required to obtain stockholder approval in respect of the issuance of such Proposed Securities as so modified; and/or

(iii) solely to the extent that stockholder approval is required in connection with the issuance of equity securities to Persons other than the Investor Parties, take such actions as may be reasonably necessary to seek stockholder approval in respect of the issuance of any Proposed Securities to the Investor Parties.

Section 5.16 Section 16 Matters. If the Company becomes a party to a consolidation, merger or other similar transaction that may result in the Investor, its Affiliates, or the Investor Director being deemed to have made a disposition of equity securities of the Company or derivatives thereof for purposes of Section 16 of the Exchange Act, and if an Investor Director is serving on the Board at such time or has served on the Board during the preceding six (6) months, then (i) the Board will pre-approve such disposition of equity securities or derivatives thereof for the express purpose of exempting the Investor's, its Affiliates' and the Investor Director's interests (to the extent the Investor or its Affiliates may be deemed to be "directors by deputization") in such transaction from Section 16(b) of the Exchange Act pursuant to Rule 16b-3 thereunder and (ii) if the transaction involves (A) a merger or consolidation to which the Company is a party and Company capital stock is, in whole or in part, converted into or exchanged for equity securities of a different issuer, (B) a potential acquisition by the Investor, the Investor's Affiliates and/or the Investor Director of equity securities of such other issuer or derivatives thereof and (C) an Affiliate or other designee of the Investor or its Affiliates that will serve on the board of directors (or its equivalent) of such other issuer, then if the Investor requires that the other issuer pre-approve any acquisition of equity securities or derivatives thereof for the express purpose of exempting the interests of any director or officer of the Company or any of its Subsidiaries in such transactions from Section 16(b) of the Exchange Act pursuant to Rule 16b-3 thereunder, the Company shall use reasonable best efforts to request that

such other issuer pre-approve any such acquisitions of equity securities or derivatives thereof for the express purpose of exempting the interests of the Investor's, its Affiliates' and the Investor Director's (for the Investor and/or its Affiliates, to the extent such persons may be deemed to be "directors by deputization" of such other issuer) in such transactions from Section 16(b) of the Exchange Act pursuant to Rule 16b-3 thereunder.

Section 5.17 Information Rights.

(a) For so long as the 25% Beneficial Holding Requirement is satisfied by the Investor Parties, to the extent requested in writing by the Investor, the Company agrees promptly to provide the Investor with the same information and access to members of the Company's management team as provided to lenders under the Credit Agreement or the Indenture (or, in each case, any replacement or refinancing thereof) or any other senior indebtedness of the Company.

(b) Individuals associated with the Investor Parties may from time to time serve on the Board or the equivalent governing body of the Company's Subsidiaries. The Company, on its behalf and on behalf of its Subsidiaries, recognizes that such individuals (i) will from time to time receive non-public information concerning the Company and its Subsidiaries, and (ii) may (subject to the obligation to maintain the confidentiality of such information in accordance with Section 5.04) share such information with other individuals associated with the Investor Parties who have a need to know such information for the purpose of facilitating support to such individuals in their capacity as members of the Board or such equivalent governing body or enabling the Investor Parties, as equityholders, to better evaluate the Company's performance and prospects; provided, that such other individuals are informed about the confidential nature of such information and agree in writing to maintain the confidentiality of such information consistent with the confidentiality obligations under Section 5.04.

Section 5.18 Consent Rights. Prior to the Fall-Away of Board Rights, the Company shall not, and shall cause each of its Subsidiaries not to, take any of the following actions without the prior written consent of the holders of a majority of the then-outstanding shares of Preferred Stock:

(a) any actions that would result in any control share acquisition, interested stockholder, business combination or similar anti-takeover provision in the DGCL and/or the certificate of incorporation or bylaws of the Company becoming applicable to the holders of shares of Preferred Stock as a result of the issuance of the Preferred Stock, the Specified Spin-Off Transaction or any transaction related thereto, including the Company's issuance of Common Stock upon conversion of the Preferred Stock;

(b) [reserved];

(c) adopt, approve or agree to adopt a stockholder rights agreement, "poison pill" or similar anti-takeover agreement or plan that is applicable to the holders of shares of Preferred Stock unless the Company has excluded the holders of shares of Preferred Stock from the definition of "acquiring person" (or such similar term) as such term is defined in such anti-takeover agreement to the extent of the holders' beneficial ownership of shares of Preferred Stock or Common Stock;

(d) solely in the event that the corporate family rating for the Company shall be less than the following from at least two of the following three ratings agencies (immediately prior to such issuance, and with respect to the expected corporate family rating as determined by the Company in good faith after giving Pro Forma Effect to such issuance): (x) Ba2 (or the equivalent) from Moody's (or any successor to the rating agency

business thereof), (y) BB (or the equivalent) from S&P (or any successor to the rating agency business thereof) and (z) BB (or the equivalent) from Fitch (or any successor to the rating agency business thereof), incur any Indebtedness for borrowed money to the extent that the Company's Consolidated Net Total Leverage Ratio, on a Pro Forma Basis for such incurrence of such Indebtedness for borrowed money and the use of proceeds thereof, would exceed 4.75x; provided, that this right shall not apply to (I) Indebtedness, loans and advances among the Company and any of its Subsidiaries, (II) any commitments or borrowings under working capital, overdraft or liquidity facilities as in effect from time to time, (III) Indebtedness with respect to Capital Leases, (IV) to the extent constituting Indebtedness, arrangements entered into in connection with the purchase and sale of commodities and related assets, or hedging related thereto, (V) any bilateral letter of credit facilities, (VI) any borrowings under the Company's Revolving Credit Facility or Delayed Draw Facility, (VII) other Indebtedness for borrowed money in an aggregate principal amount not to exceed $300,000,000 and (VIII) the refinancing of any existing Indebtedness of the Company; provided, that the principal amount of any such refinancing Indebtedness shall not be increased from the principal amount of such Indebtedness so refinanced (other than any premium, original issue discount, accrued interest and fees and expenses incurred in connection with such refinancing);

(e) authorize or issue any Parity Securities or Senior Securities, or amend or alter the certificate of incorporation of the Company to authorize or create, or increase the number of authorized or issued shares of, or any securities convertible into shares of, or reclassify any security into, any Parity Securities (including any increase in the number of authorized or issued shares of Preferred Stock) or Senior Securities;

(f) cause any Subsidiary to issue any Equity Securities (other than to the Company or one of its Subsidiaries and other than director qualifying shares or as otherwise required by applicable Law); provided, that the Subsidiaries may issue Equity Securities on arms' length terms to Persons (other than an Affiliate of the Company) with which such Subsidiaries form a bona fide joint venture arrangement or strategic partnership; or

(g) any action to effect any voluntary deregistration of the Common Stock under the Exchange Act or any voluntary delisting with NASDAQ of the Common Stock other than in connection with a concurrent relist with another national securities exchange or a Fundamental Change pursuant to which the Company agrees to satisfy, or will otherwise cause the satisfaction, in full of its obligations under Section 7 of the Certificate of Designations or is otherwise consistent with the terms set forth in Section 7 of the Certificate of Designations.

Any action by the Company without the consent of holders of shares of Preferred Stock required by this Section 5.18 is expressly *ultra vires* and shall be *void ab initio* and any action or attempted action, any contracts, amendments or other documentation thereof or related thereto are expressly null and void.

Article VI

Survival

Section 6.01 Survival. All of the covenants or other agreements of the parties contained in this Agreement shall survive until fully performed or fulfilled, unless and to the extent that non-compliance with such covenants or agreements is waived in writing by the party entitled to such performance. All representations and warranties contained in this Agreement (including the schedules and the certificates delivered pursuant hereto) will survive the Closing Date, with respect to the representations and warranties made at the Closing Date until the twelve (12) month anniversary of the Closing; provided, that the Fundamental Representations shall survive the Closing for forty-eight (48) months following the Closing; provided, further that

nothing herein shall relieve any party of liability for any inaccuracy or breach of such representation or warranty to the extent that any good faith allegation of such inaccuracy or breach is made in writing prior to such expiration by a Person entitled to make such claim pursuant to the terms and conditions of this Agreement. For the avoidance of doubt, claims may be made with respect to the breach of any representation, warranty or covenant until the applicable survival period therefor as described above expires. Notwithstanding anything in this Agreement to the contrary, subject to Section 7.13, (a) in no event will the Investor Related Parties, collectively, have any liability (including damages for fraud or breach, whether willful, intentional, unintentional or otherwise (including willful breach) or monetary damages in lieu of specific performance) in the aggregate in excess of the amount of the Purchase Price, and (b) in no event will the Company Related Parties, collectively, have any liability in the aggregate in excess of the amount of the Purchase Price, except in the case of fraud.

Article VII

Miscellaneous

Section 7.01 Amendments; Waivers. Subject to compliance with applicable Law, this Agreement may be amended or supplemented in any and all respects only by written agreement of the parties hereto.

Section 7.02 Extension of Time, Waiver, Etc. The Company and the Investor may, subject to applicable Law, (a) waive any inaccuracies in the representations and warranties of the other party contained herein or in any document delivered pursuant hereto, (b) extend the time for the performance of any of the obligations or acts of the other party or (c) waive compliance by the other party with any of the agreements contained herein applicable to such party or, except as otherwise provided herein, waive any of such party's conditions. Notwithstanding the foregoing, no failure or delay by the Company or the Investor in exercising any right hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right hereunder. Any agreement on the part of a party hereto to any such extension or waiver shall be valid only if set forth in an instrument in writing signed on behalf of such party.

Section 7.03 Assignment.

(a) Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned, in whole or in part, by operation of Law or otherwise, by any of the parties hereto without the prior written consent of the other party hereto; provided, however, that (A) without the prior written consent of the Company, the Investor or any Investor Party may assign its rights, interests and obligations set forth in (i) this Agreement, in whole or in part, to one or more of their Affiliates or (ii) Section 5.02 and, to the extent the assignment is made in connection with a Transfer of at least 15% of the then outstanding Preferred Stock (or any Common Stock issued upon conversion of such Preferred Stock), the rights, interests and obligations set forth in the Registration Rights Agreement, to a Third Party, so long as in each case of the foregoing clauses (i) and (ii), the assignee shall agree in writing to be bound by the provisions of this Agreement and, if applicable, the Registration Rights Agreement, including the rights, interests and obligations so assigned, (B) without the prior written consent of the Company, the Investor may grant a security interest in its respective rights (but not its obligations) under this Agreement in connection any Permitted Loan and (C) if the Company consolidates or merges with or into any Person and the Common Stock is, in whole or in part, converted into or exchanged for securities of a different issuer in a transaction that does not constitute a Fundamental Change, then as a condition to such transaction the Company will cause such issuer to assume all of the Company's rights and obligations under this Agreement in a written instrument delivered to the Investor; provided, further that no such assignment under

clause (A) above will relieve the Investor of its obligations hereunder prior to the Closing. Subject to the immediately preceding sentence, this Agreement shall be binding upon, inure to the benefit of, and be enforceable by, the parties hereto and their respective successors and permitted assigns.

(b) The Investor understands and agrees that the rights set forth under Section 5.01, Section 5.03, Section 5.08, Section 5.10(a), Section 5.13, Section 5.15, Section 5.16, Section 5.17 and Section 5.18 (collectively, the "Initial Investor Rights") shall inure solely to the benefit of the Investor Parties and, notwithstanding anything in this Agreement to the contrary, the Investor shall not Transfer or assign, in whole or in part, by operation of Law or otherwise, any or all of the Initial Investor Rights to any Person (other than an Affiliate as otherwise permitted by this Agreement).

Section 7.04 Counterparts. This Agreement may be executed in one or more counterparts (including by facsimile or electronic mail (including pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000, e.g., www.docusign.com)), each of which shall be deemed to be an original but all of which taken together shall constitute one and the same agreement, and shall become effective when one or more counterparts have been signed by each of the parties hereto and delivered to the other parties hereto.

Section 7.05 Entire Agreement; No Third-Party Beneficiaries. This Agreement, including the Company Disclosure Letter, together with the Confidentiality Agreement, the other Transaction Documents and the Certificate of Designations, constitutes the entire agreement, and supersedes all other prior agreements and understandings, both written and oral, among the parties and their Affiliates, or any of them, with respect to the subject matter hereof and thereof. No provision of this Agreement shall confer upon any Person other than the parties hereto and their permitted assigns any rights or remedies hereunder; provided, that (i) Section 5.08(j) shall be for the benefit of and fully enforceable by each Apollo Entity and the Investor Director, (ii) each of Section 5.02, Section 5.08 and Section 5.17 shall be for the benefit of and fully enforceable by each of the Apollo Funds and (ii) Section 7.13 shall be for the benefit of and fully enforceable by each of the Investor Related Parties.

Section 7.06 Governing Law; Jurisdiction.

(a) This Agreement shall be governed by, and construed in accordance with, the laws of the State of Delaware applicable to contracts executed in and to be performed entirely within that State, regardless of the laws that might otherwise govern under any applicable conflict of Laws principles.

(b) All Actions arising out of or relating to this Agreement shall be heard and determined in the Chancery Court of the State of Delaware (or, if the Chancery Court of the State of Delaware declines to accept jurisdiction over any Action, any state or federal court within the State of Delaware) and the parties hereto hereby irrevocably submit to the exclusive jurisdiction and venue of such courts in any such Action and irrevocably waive the defense of an inconvenient forum or lack of jurisdiction to the maintenance of any such Action. The consents to jurisdiction and venue set forth in this Section 7.06 shall not constitute general consents to service of process in the State of Delaware and shall have no effect for any purpose except as provided in this paragraph and shall not be deemed to confer rights on any Person other than the parties hereto. Each party hereto agrees that service of process upon such party in any Action arising out of or relating to this Agreement shall be effective if notice is given by overnight courier at the address set forth in Section 7.09 of this Agreement. The parties hereto agree that a final judgment in any such Action shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by applicable Law; provided, however,

that nothing in the foregoing shall restrict any party's rights to seek any post-judgment relief regarding, or any appeal from, a final trial court judgment

Section 7.07 Specific Enforcement. The parties hereto agree that irreparable damage for which monetary relief, even if available, would not be an adequate remedy, would occur in the event that any provision of this Agreement is not performed in accordance with its specific terms or is otherwise breached. The parties acknowledge and agree that (a) the parties shall be entitled to seek an injunction or injunctions, specific performance or other equitable relief to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereof in the courts described in Section 7.06 without proof of damages or otherwise (in each case, subject to the terms and conditions of this Section 7.07), this being in addition to any other remedy to which they are entitled under this Agreement and (b) the right of specific enforcement is an integral part of the Transactions and without that right, neither the Company nor the Investor would have entered into this Agreement. The parties hereto agree not to assert that a remedy of specific enforcement is unenforceable, invalid, contrary to Law or inequitable for any reason, and agree not to assert that a remedy of monetary damages would provide an adequate remedy or that the parties otherwise have an adequate remedy at law. The parties hereto acknowledge and agree that any party seeking an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement in accordance with this Section 7.07 shall not be required to provide any bond or other security in connection with any such order or injunction.

Section 7.08 WAIVER OF JURY TRIAL. EACH PARTY HERETO ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE IT HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT AND ANY OF THE AGREEMENTS DELIVERED IN CONNECTION HEREWITH OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, (B) IT UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF SUCH WAIVER, (C) IT MAKES SUCH WAIVER VOLUNTARILY AND (D) IT HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVER AND CERTIFICATIONS IN THIS SECTION 7.08.

Section 7.09 Notices. All notices, requests and other communications to any party hereunder shall be in writing and shall be deemed given if delivered personally, emailed (which is confirmed) or sent by overnight courier (providing proof of delivery) to the parties at the following addresses:

(a) If to the Company, to it at:

Western Digital Corporation
5601 Great Oaks Parkway
San Jose, California
Attention: Chief Legal Officer
Email: Michael.Ray@wdc.com

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

Skadden, Arps, Slate, Meagher & Flom LLP
525 University Avenue
Palo Alto, CA 94301
Attention: Thomas J. Ivey
Email: thomas.ivey@skadden.com

(b) If to the Investor or any Investor Party, to the Investor at:

AP WD Holdings, L.P.
c/o Apollo Management X, L.P.
9 West 57th Street, 43rd Floor
New York, New York 10019
Attention: Reed Rayman, Partner
John Suydam, Chief Legal Officer
E-mail: rrayman@apollo.com
jsuydam@apollo.com

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

Paul, Weiss, Rifkind, Wharton & Garrison LLP
1285 Avenue of the Americas
New York, NY 10019
Attention: Taurie M. Zeitzer; Tracey A. Zaccone; Justin S. Rosenberg
Email: tzeitzer@paulweiss.com; tzaccone@paulweiss.com; jrosenberg@paulweiss.com

or such other address or email address as such party may hereafter specify by like notice to the other parties hereto. All such notices, requests and other communications shall be deemed received on the date of actual receipt by the recipient thereof if received prior to 5:00 p.m. local time in the place of receipt and such day is a Business Day in the place of receipt. Otherwise, any such notice, request or communication shall be deemed not to have been received until the next succeeding Business Day in the place of receipt.

Section 7.10 Severability. If any term, condition or other provision of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal or incapable of being enforced by any rule of Law or public policy, all other terms, provisions and conditions of this Agreement shall nevertheless remain in full force and effect. Upon such determination that any term, condition or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible to the fullest extent permitted by applicable Law.

Section 7.11 Expenses. Except as otherwise expressly provided herein or in any other Transaction Document, all costs and expenses, including fees and disbursements of counsel, financial advisors and accountants, incurred in connection with this Agreement and the Transactions shall be paid by the party incurring such costs and expenses; provided, that at the Closing, the Company shall (x) pay to an Affiliate of the Investor designated by the Investor prior to the Closing a one-time structuring fee (payable in cash) relating to the Transactions equal to $ 9,975,000.00 and (y) reimburse the Investor for expenses relating to the Transactions (payable in cash) in an amount equal to $3,325,000.00.

Section 7.12 Interpretation.

(a) When a reference is made in this Agreement to an Article, a Section, Exhibit or Schedule, such reference shall be to an Article of, a Section of, or an Exhibit or Schedule to, this Agreement unless otherwise indicated. The table of contents and headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. Whenever the words "include", "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation". Whenever the words "ordinary course of business" are used in this Agreement, they shall be deemed to be followed by the words "consistent with past practice". The words "hereof", "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement unless the context requires otherwise. The words "date hereof" when used in this Agreement shall refer to the date of this Agreement. The terms "or", "any" and "either" are not exclusive. The word "extent" in the phrase "to the extent" shall mean the degree to which a subject or other thing extends, and such phrase shall not mean simply "if". The word "will" shall be constructed to have the same meaning and affect as the word "shall". The words "made available to the Investor" and words of similar import refer to documents (A) posted to the Intralinks Datasite for Project Wales by or on behalf of the Company or (B) delivered in Person or electronically to the Investor or its respective Representatives, in each case no later than one (1) Business Day prior to the date hereof. All accounting terms used and not defined herein shall have the respective meanings given to them under GAAP. All terms defined in this Agreement shall have the defined meanings when used in any document made or delivered pursuant hereto unless otherwise defined therein. The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such term. In the event that the Common Stock is listed on a national securities exchange other than the NASDAQ, all references herein to NASDAQ shall be deemed to be references to such other national securities exchange. Any agreement, instrument or statute defined or referred to herein or in any agreement or instrument that is referred to herein means such agreement, instrument or statute as from time to time amended, modified or supplemented, including (in the case of agreements or instruments) by waiver or consent and (in the case of statutes) by succession of comparable successor statutes and references to all attachments thereto and instruments incorporated therein. Unless otherwise specifically indicated, all references to "dollars" or "$" shall refer to the lawful money of the United States. References to a Person are also to its permitted assigns and successors. When calculating the period of time between which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period shall be excluded (unless, otherwise required by Law, if the last day of such period is not a Business Day, the period in question shall end on the next succeeding Business Day).

(b) The parties hereto have participated jointly in the negotiation and drafting of this Agreement and, in the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as jointly drafted by the parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any party hereto by virtue of the authorship of any provision of this Agreement.

Section 7.13 Non-Recourse. Each party hereto agrees, on behalf of itself and its Affiliates and its and their present or former directors, officers, stockholders, partners, members or employees, that all Actions, claims, obligations, liabilities or causes of action (whether in Contract or in tort, in Law or in equity or otherwise, or granted by statute or otherwise, whether by or through attempted piercing of the corporate, limited partnership or limited liability company veil or any other theory or doctrine, including alter ego or otherwise) that may be based upon, in respect of, arise under, out or by reason of, be connected with, or relate in any manner to: (A) this Agreement or any other Transaction Document, or any of the transactions contemplated hereunder or thereunder, (B) the negotiation, execution or performance of this Agreement or any of the other Transaction Documents (including any representation or warranty

made in, in connection with, or as an inducement to, this Agreement or any of the other Transaction Documents), (C) any breach or violation of this Agreement or any other of the other Transaction Documents and (D) any failure of any of the transactions contemplated hereunder or under any of the other Transaction Documents or any other agreement referenced herein or therein to be consummated, in each case, may be made only against (and are those solely of) the Persons that are, in the case of this Agreement, expressly identified as parties to this Agreement or, in the case of any of the other Transaction Documents, Persons that are expressly identified as parties to such other Transaction Documents and in accordance with, and subject to the terms and conditions of this Agreement or such other Transaction Documents, as applicable. In furtherance and not in limitation of the foregoing and notwithstanding anything contained in this Agreement or any of the other Transaction Documents to the contrary and without limiting the foregoing or any other agreement referenced herein or therein or otherwise to the contrary, each party hereto covenants, agrees and acknowledges on behalf of itself and its respective Affiliates and its and their present or former directors, officers, stockholders, partners, members or employees, that no recourse under this Agreement or any of the other Transaction Documents or in connection with any of the transactions contemplated hereunder or thereunder shall be sought or had against any other Person, including any Investor Related Party, and no other Person, including any Investor Related Party, shall have any liabilities or obligations (whether in Contract or in tort, in Law or in equity or otherwise, or granted by statute or otherwise, whether by or through attempted piercing of the corporate, limited partnership or limited liability company veil or any other theory or doctrine, including alter ego or otherwise) for any claims, causes of action, obligations or liabilities arising under, out of, in connection with or related in any manner to the items in the immediately preceding clauses (A) through (D), it being expressly agreed and acknowledged that no personal liability or losses whatsoever shall attach to, be imposed on or otherwise be incurred by any of the aforementioned, as such, arising under, out of, in connection with or related in any manner to the items in the immediately preceding clauses (A) through (D), in each case, except for claims that the Company or the Investor Parties, as applicable, may assert: (i) against any Person that is party to and solely pursuant to the terms and conditions of, the Confidentiality Agreement or (ii) against the Investor Parties solely in accordance with, and pursuant to the terms and conditions of, this Agreement. Notwithstanding anything to the contrary in this Agreement or any of the other Transaction Documents or otherwise, no party hereto or any Investor Related Party shall be responsible or liable for any multiple, consequential, indirect, special, statutory, exemplary or punitive damages or lost profits, opportunity costs, loss of business reputation, diminution in value or damages based upon a multiple of earnings or similar financial measure which may be alleged as a result of this Agreement or any of the other Transaction Documents or any of the transactions contemplated hereunder or thereunder, or the termination or abandonment of any of the foregoing.

[*Remainder of page intentionally left blank*]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered as of the date first above written.

WESTERN DIGITAL CORPORATION

By: /s/ Wissam Jabre
Name: Wissam Jabre
Title: Executive Vice President and Chief Financial Officer

AP WD HOLDINGS, L.P.

By: AP WD Holdings GP, LLC, its general partner

By: /s/ James Elworth
Name: James Elworth
Title: Vice President

Annex I

The definition of "**Spin-Co FMV**" to be set forth in the Certificate of Designations with respect to the SpinCo Preferred Stock shall be amended as follows:

"Spin-Co FMV" means the average of the Daily VWAP of a Spin-Off Transaction Share over the twenty (20) consecutive Trading Days immediately following but including the Spin-Off Ex-Dividend Date; *provided*, that if the ratio of Spin-Off Transaction Shares to Common Stock (the "**Spin-Off Ratio**") is not 1:1 in connection with a Specified Spin-Off Transaction or a Standalone Specified Spin-Off Transaction, then the Spin-Co FMV used to calculate the Spin-Off Transaction Adjustment Ratio or the Spin-Co Spin-Off Transaction Adjustment Ratio, as applicable, will be multiplied by the Spin-Off Ratio.

Exhibit 10.2

INVESTMENT AGREEMENT
by and among

WESTERN DIGITAL CORPORATION,

ELLIOTT ASSOCIATES, L.P.

and

ELLIOTT INTERNATIONAL, L.P.

Dated as of January 31, 2023

THIS DOCUMENT IS INTENDED SOLELY TO FACILITATE DISCUSSIONS BETWEEN THE PARTIES. IT IS NOT INTENDED TO CREATE, AND WILL NOT BE DEEMED TO CREATE, A LEGALLY BINDING OR ENFORCEABLE OFFER OR AGREEMENT OF ANY TYPE OR NATURE PRIOR TO THE DULY AUTHORIZED AND APPROVED EXECUTION OF THIS DOCUMENT BY EACH OF THE PARTIES AND THE DELIVERY OF AN EXECUTED COPY BY EACH OF THE PARTIES.

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INVESTMENT AGREEMENT, dated as of January 31, 2023 (this "Agreement"), by and among Western Digital Corporation, a Delaware corporation (the "Company"), Elliott Associates, L.P., a Delaware limited partnership ("EALP"), and Elliott International, L.P., a Cayman Islands limited partnership ("EILP" and, together with EALP and their respective successors and any Affiliate that becomes a party hereto pursuant to Section 7.03, the "Investors").

WHEREAS, subject to the terms and conditions set forth herein, the Company desires to issue, sell and deliver to the Investors, and the Investors desire to purchase and acquire from the Company, an aggregate of 235,000 shares of the Company's Series A Convertible Perpetual Preferred Stock, par value $0.01 per share (the "Preferred Stock"), having the designation, preferences, rights, privileges, powers, and terms and conditions, as specified in the form of the Certificate of Designations, Preferences and Rights of Series A Convertible Perpetual Preferred Stock attached hereto as Exhibit A (the "Certificate of Designations"); and

WHEREAS, contemporaneously with the execution and delivery of this Agreement, the Company is entering into the Apollo Investment Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, representations, warranties and agreements contained in this Agreement, the receipt and sufficiency of which are hereby acknowledged, the parties to this Agreement hereby agree as follows:

Article I

Definitions

Section 1.01 Definitions. (a) As used in this Agreement (including the recitals hereto), the following terms shall have the following meanings:

"25% Beneficial Holding Requirement" means that the Investor Parties continue to beneficially own shares of Preferred Stock and/or shares of Common Stock issued upon conversion of shares of Preferred Stock that represent, in the aggregate and on an as-converted basis (without regard to the provisions of Section 5.08), at least 25% of the number of shares of Common Stock beneficially owned by the Investor Parties in the aggregate on an as-converted basis as at the Closing (without regard to the provisions of Section 5.08), in each case as appropriately adjusted to account for any event that results in an adjustment to the Conversion Price in accordance with the applicable section of the Certificate of Designations; provided, that, to the extent the Company undertakes a Standalone Spin-Off, from and after such Spin-Off, for purposes of calculating this 25% Beneficial Holding Requirement, the number of shares of Preferred Stock and/or Common Stock beneficially owned by the Investor Parties as of the Closing shall equal (a) the Acquired Shares (as defined below) *less* (b) the SpinCo Preferred Stock (as defined below).

"50% Beneficial Holding Requirement" means that the Investor Parties continue to beneficially own shares of Preferred Stock and/or shares of Common Stock issued upon conversion of shares of Preferred Stock that represent, in the aggregate and on an as-converted basis (without regard to the provisions of Section 5.08), at least 50% of the number of shares of Common Stock beneficially owned by the Investor Parties in the aggregate on an as-converted basis as at the Closing (without regard to the provisions of Section 5.08), in each case as appropriately adjusted to account for any event that results in an adjustment to the Conversion Price in accordance with the applicable section of the Certificate of Designations; provided, that, to the extent the Company undertakes a Standalone Spin-Off, from and after such Spin-Off, for purposes of calculating this 50% Beneficial Holding Requirement, the number of shares of Preferred Stock and/or Common Stock beneficially owned by the Investor Parties as of the

Closing shall equal (a) the Acquired Shares (as defined below) *less* (b) the SpinCo Preferred Stock (as defined below).

"Affiliate" means, as to any Person, any other Person that, directly or indirectly, controls, or is controlled by, or is under common control with, such Person, including any investment fund, vehicle or account sponsored or managed by such Person or any other Person that controls, is controlled by, or is under common control with such Person (for clarity, an investment fund, vehicle or account shall be deemed to be an "Affiliate" of all other investment funds, vehicles and accounts under common management, directly or indirectly, with such Person); provided, however, (i) that the Company and its Subsidiaries shall not be deemed to be Affiliates of any Investor Party or any of its Affiliates, and (ii) other than in the case of the definitions of "Third Party", "Investor Party" and "Investor Related Party", Section 4.08, Article VI, Section 7.03 or Section 7.13, in no event shall any of the Investor Parties or any of their respective Subsidiaries be considered an Affiliate of any portfolio company affiliated with or managed by affiliates of Elliott, nor shall any other portfolio company affiliated with or managed by affiliates of Elliott be considered to be an Affiliate of an Investor Party or any of their respective Affiliates. For this purpose, "control" (including, with its correlative meanings, "controlled by" and "under common control with") shall mean the possession, directly or indirectly, of the power to direct or cause the direction of management or policies of a Person, whether through the ownership of securities or partnership or other ownership interests, by contract or otherwise.

"Apollo" means Apollo Global Management, Inc. and its Affiliates.

"Apollo Investor" means AP WD Holdings, L.P. and each Affiliate of AP WD Holdings, L.P. to whom shares of Preferred Stock or Common Stock are transferred in accordance with the terms of the Apollo Investment Agreement.

"Apollo Transaction Documents" means, collectively, the Investment Agreement, dated as of the date hereof, by and between the Company and AP WD Holdings, L.P. (the "Apollo Investment Agreement") together with the Certificate of Designations and the Registration Rights Agreement.

"Applicable Threshold" means, as of any particular date, the number of shares of Common Stock issuable to the Investor Parties upon conversion of shares of Preferred Stock as of such date without regard to any restrictions on the Investor Parties' right to convert shares of the Preferred Stock (including Section 5.08).

"as-converted basis" means (i) with respect to the outstanding shares of Common Stock as of any date, all outstanding shares of Common Stock calculated on a basis in which all shares of Common Stock issuable upon conversion of the outstanding shares of Preferred Stock (at the Conversion Price in effect on such date as set forth in the Certificate of Designations) are assumed to be outstanding as of such date and (ii) with respect to any outstanding shares of Preferred Stock as of any date, the number of shares of Common Stock issuable upon conversion of such shares of Preferred Stock on such date (at the Conversion Price in effect on such date as set forth in the Certificate of Designations).

"beneficially own", "beneficial ownership of", or "beneficially owning" any securities shall have the meaning set forth in Rule 13d-3 of the rules and regulations under the Exchange Act as in effect on the date hereof; provided, that any Person shall be deemed to beneficially own any securities that such Person has the right to acquire, whether or not such right is exercisable immediately (including assuming conversion of all Preferred Stock, if any, owned by such Person to Common Stock), except as otherwise expressly provided in Section 5.08.

"Board" means the Board of Directors of the Company.

"Business Day" means any day except a Saturday, a Sunday or other day on which the SEC or banks in the City of New York are authorized or required by Law to be closed.

"Code" means the United States Internal Revenue Code of 1986, as amended.

"Common Stock" means the common stock, par value $0.01 per share, of the Company.

"Company Charter Documents" means the Company's certificate of incorporation and bylaws, each as amended to the date of this Agreement.

"Company ESPP" means the Amended and Restated 2005 Employee Stock Purchase Plan.

"Company Plan" means each "employee benefit plan" (as defined in Section 3(3) of ERISA, whether or not subject to ERISA) and each other plan, program, arrangement, policy or contract relating to severance, termination, garden leave, pay in lieu, gross-up, pension, profit-sharing, savings, retirement, death benefit, group insurance, hospitalization, medical, dental, life, employee loan, restrictive covenant, relocation, clawback, fringe benefit, cafeteria, disability, consulting, change in control, employment, compensation, incentive, bonus, retention, stock option, restricted stock, restricted or deferred stock unit, stock purchase, phantom stock or other equity or equity-based compensation (including the Company Stock Plans and all outstanding awards granted thereunder, and the Company ESPP), deferred compensation or other benefit or compensation, in each case, that is sponsored, maintained or contributed to by the Company or any of its Subsidiaries or to which the Company or any of its Subsidiaries contributes or is obligated to contribute to, or has or may have any current or contingent liability or obligation, including on account of an ERISA Affiliate, other than any plan, program, policy, agreement or arrangement sponsored and administered by a Governmental Authority.

"Company Related Party" means the Company and its former, current or future Affiliates and any of the foregoing's respective former, current or future, direct or indirect, officers, other fiduciary, directors, employees, affiliates, stockholders, equityholders, managers, members, partners, agents, attorneys, advisors, lenders or other representatives or any of the foregoing's respective successors or assigns.

"Company Stock Plans" means the Amended and Restated Western Digital Corporation 2021 Long-Term Incentive Plan, the Western Digital Corporation Amended and Restated 2017 Performance Incentive Plan, the 2021 Long-Term Incentive Plan Non-Employee Director Restricted Stock Unit Grant Program, the SanDisk Corporation 2013 Incentive Plan, the Virident Systems, Inc. 2006 Stock Plan and the Amended and Restated Western Digital Corporation Non-Employee Directors Stock For Fees Plan, each as may be amended from time to time.

"Confidential Information" means any information required to be furnished by or on behalf of the Company or any of its Representatives to the Investors pursuant to the terms of this Agreement, whether disclosed orally or in writing, that (i) is proprietary to the Company and pertains to the business of the Company, (ii) may be reasonably recognized as confidential and proprietary in nature by the Investors, and (iii) (A) if tangible material, is conspicuously marked "confidential" at the time of its delivery to the Investors, or (B) if oral information, is identified as "confidential" at the time of its disclosure to the Investors, or if such information is inadvertently not marked or identified as "confidential" at the time of disclosure or delivery, is sufficiently identified and designated as "confidential" by the Company in a written document

and delivered or e-mailed to the Investors within five days after the disclosure or delivery; provided that, notwithstanding anything to the contrary in this Agreement, "Confidential Information" does not and will not include (1) any information that is or becomes generally available to the public other than as a result of a disclosure by the Investors in breach of Section 5.04, (2) any information that is obtained by, or that is or becomes available to, the Investors or their Affiliates in the normal course of any business dealings between the Parties without obligation of confidentiality, (3) any information that becomes legally available to the Investors or their Affiliates from a source other than the Company who is not, to the knowledge of the Investors, bound by a confidentiality obligation to the Company with respect to such information, or (4) any information that was or is independently developed by the Investors or their Affiliates or on their behalf; and provided, further, that, notwithstanding anything to the contrary in this Agreement, the Investors may, upon written notice to the Company, request not to receive any information that is otherwise contemplated to be furnished by the Company to the Investors pursuant to the terms of this Agreement.

"Conversion Price" has the meaning set forth in the Certificate of Designations.

"Convertible Notes" means $1,100,000,000 of the Company's 1.50% Convertible Senior Notes due 2024 and any successor debt securities issued to refinance the Convertible Notes.

"Covered Financing" means any financing transaction not otherwise subject to Section 5.15 in which Apollo, the Apollo Investor or their respective Affiliates are a party and (x) a consent is required pursuant to Section 5.18 of the Apollo Investment Agreement as in effect on the date hereof to effect such transaction or (y) any amendment to the terms of the Preferred Stock is effected in connection with such transaction.

"Credit Agreement" means the Amended and Restated Loan Agreement, dated as of January 7, 2022 (as amended by Amendment No. 1, dated as of December 23, 2022 and as further amended, modified or restated from time to time), among the Company, the various institutions party thereto from time to time and J.P. Morgan Chase Bank, N.A., as administrative agent.

"Delayed Draw Facility" means that certain Loan Agreement, dated as of January 25, 2023 (as amended, modified or restated from time to time), among the Company, the various institutions party thereto from time to time and J.P. Morgan Chase Bank, N.A., as administrative agent.

"Elliott" means Elliott Investment Management L.P., a Delaware limited partnership.

"Elliott Director" means any Elliott Director appointed to the Board pursuant to paragraph 3 of the Elliott Letter Agreement.

"Elliott Letter Agreement" means that certain letter agreement, dated as of June 7, 2022, between Elliott and the Company in respect of prior investments by the Investors in Common Stock of the Company, as amended as of the date hereof.

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

"ERISA Affiliate" means, with respect to the Company or any of its Subsidiaries, any member of any group of organizations described in Section 414(b), (c), (m), (n) or (o) of the Code of which the Company or such Subsidiary is a member. "Exchange Act" means the

Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

"Fair Market Value" means, with respect to any security or other property, the fair market value of such security or other property as reasonably determined in good faith by a majority of the Board, or an authorized committee thereof.

"Flash Business" means the "Flash" operating segment of the Company described in the Company's Form 10-K for the fiscal year ended July 1, 2022.

"Fundamental Change" has the meaning set forth in the Certificate of Designations.

"Fundamental Representations" means the representations and warranties of the Company set forth in Sections 3.01, 3.02, 3.03(a), 3.12, 3.13 and 3.18.

"GAAP" means generally accepted accounting principles in the United States, consistently applied.

"Governmental Authority" means any government, court, regulatory or administrative agency, commission, arbitrator (public or private) or authority or other legislative, executive or judicial governmental entity (in each case including any self-regulatory organization), whether federal, state or local, domestic, foreign or multinational.

"HSR Act" means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the rules and regulations promulgated thereunder.

"Indenture" means, collectively, (i) the indenture dated February 13, 2018 (as amended or supplemented from time to time) among the Company, as issuer, the subsidiary guarantors party thereto, and U.S. Bank National Association, as trustee (the "Base Indenture") in connection with the Company's issuance of the Convertible Notes and the $2,300,000,000 aggregate principal amount 4.750% Senior Unsecured Notes due 2026 (the "2026 Notes"), and (ii) the First Supplement Indenture to Base Indenture dated December 10, 2021 among the Company, as issuer, and U.S. Bank National Association as trustee in connection with the Company's issuance of the $500,000,000 aggregate principal amount 2.85% Senior Unsecured Notes due 2029 (the "2029 Notes"), and the $500,000,000 aggregate principal amount 3.10% Senior Unsecured Notes due 2032 (the "2032 Notes"), and any successor indenture or other loan agreement entered into to refinance the Convertible Notes, the 2026 Notes, the 2029 Notes or the 2032 Notes.

"Investor Material Adverse Effect" means any effect, change, event or occurrence that would reasonably be expected to, individually or in the aggregate, prevent or materially delay or impair (i) the consummation by the Investors of any of the Transactions on a timely basis or (i) the compliance by the Investors with their respective obligations under this Agreement.

"Investor Parties" means the Investors and each Affiliate of the Investors to whom shares of Preferred Stock or Common Stock are transferred in accordance with the terms of this Agreement.

"Investor Related Party" means the Investors and any other financing sources of the Investors and any of the foregoing's respective former, current or future Affiliates and any of the foregoing's respective former, current or future, direct or indirect, officers, other fiduciary, directors, employees, affiliates, stockholders, equityholders, managers, members, partners,

agents, attorneys, advisors, lenders or other representatives or any of the foregoing's respective successors or assigns.

"IRS" means the United States Internal Revenue Service.

"Knowledge" means, with respect to the Company, the actual knowledge of the individuals listed on Exhibit C, in each case after reasonable inquiry with his or her direct reports.

"Labor Laws" means all Laws relating to labor and employment, including but not limited to, all Law relating to employment and independent contractor practices, wages, equal employment opportunity, affirmative action and other hiring practices, immigration (including the completion of I-9s for all employees and the proper confirmation of employee visas), workers' compensation, unemployment, the payment of social security and other employment-related taxes, employment standards, employment of minors, occupational health and safety, labor relations, unions, withholdings, payment of wages and overtime, meal and rest periods, workplace safety, employee benefits, pay equity, employee and worker classification (including the classification of independent contractors and exempt and non-exempt employees), leaves of absence, family and medical leave, civil rights, retaliation, discrimination, sexual or other workplace harassment, the Worker Adjustment and Retraining Notification Act of 1988, and the regulations promulgated thereunder and any similar state, local or foreign Law, the National Labor Relations Act, the Labor Management Relations Act, the Occupational Safety and Health Act, Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the Family Medical Leave Act, the Fair Labor Standards Act, the Equal Pay Act, the Rehabilitation Act, the Employee Retirement Income Security Act, the Uniform Services Employment and Reemployment Rights Act, the Genetic Information Nondiscrimination Act, 42 U.S.C. §§ 1981, 1983, 1985 and 1986, the Sarbanes-Oxley Act and the Immigration Reform and Control Act, or any similar state, local or foreign Law.

"Leased Real Property" means all right, title and interest of the Company and its Subsidiaries to any leasehold interests in any real property, together with all buildings, structures, improvements and fixtures thereon.

"Lien" means, with respect to any real, tangible, intangible or mixed property or asset of any Person, any deed of trust, mortgage, lien, security interest, pledge, charge or encumbrance in the nature of security in respect of such real, tangible, intangible or mixed property or asset, including the interests of a vendor or lessor under any conditional sale, capital lease or other title retention arrangement; provided that in no event shall an operating lease be deemed to constitute a Lien.

"Material Adverse Effect" means any effect, change, event or occurrence that has or would reasonably be expected to have, individually or in the aggregate, a material adverse effect on (x) the business, results of operations, assets, liabilities or condition (financial or otherwise) of the Company and its Subsidiaries, taken as a whole or (y) the ability of the Company to (i) consummate the Transactions on a timely basis or (ii) comply with its obligations under this Agreement; provided, however, that, for purposes of clause (x) above, none of the following, and no effect, change, event or occurrence arising out of, or resulting from, the following, shall constitute or be taken into account in determining whether a Material Adverse Effect has occurred or would reasonably be expected to occur: any effect, change, event or occurrence (A) generally affecting (1) the industry in which the Company and its Subsidiaries operate or (2) the economy, credit or financial or capital markets, in the United States or elsewhere in the world, including changes in interest or exchange rates, or (B) to the extent arising out of, resulting from or attributable to (1) changes or prospective changes in Law or in

GAAP or in accounting standards, or any changes or prospective changes in the interpretation or enforcement of any of the foregoing, or any changes or prospective changes in general legal, regulatory or political conditions, in each case occurring after the date hereof, (2) the public announcement of a Spin-Off, this Agreement, the Apollo Transaction Documents, the Transaction Documents or the consummation of the Transactions, (3) acts of war (whether or not declared), sabotage or terrorism, or any escalation or worsening of any such acts of war (whether or not declared), sabotage or terrorism, (4) volcanoes, tsunamis, pandemics, earthquakes, hurricanes, tornados or other natural disasters, (5) any action taken by the Company or its Subsidiaries (w) that is expressly required by this Agreement or the Transaction Documents, (x) to negotiate and consummate a Spin-Off and any Subsequent Transaction (except as otherwise expressly prohibited by this Agreement or the Transaction Documents), (y) with the Investors' express written consent, or (z) at the Investors' express prior written request, (6) any decline in the market price, or change in trading volume, of the capital stock of the Company (it being understood that this clause (6) shall not prevent a determination that the underlying cause of any such change or decline is a Material Adverse Effect), (7) any failure to meet any internal or public projections, forecasts, guidance, estimates, milestones, budgets or internal or published financial or operating predictions of revenue, earnings, cash flow or cash position (it being understood that this clause (7) shall not prevent or otherwise affect a determination that the underlying cause of any such failure is a Material Adverse Effect), (8) any change or prospective change in the Company's credit ratings (it being understood that this clause (8) shall not prevent or otherwise affect a determination that the underlying cause of any such change or prospective change is a Material Adverse Effect), (9) any change resulting or arising from the identity of the Investors or any of their respective Affiliates or (10) any actions taken at the written request of the Investors; provided, further, however, that any effect, change, event or occurrence referred to in clause (A) or clauses (B)(1), (B)(3) or (B)(4) may be taken into account in determining whether there has been, or would reasonably be expected to be, individually or in the aggregate, a Material Adverse Effect to the extent such effect, change, event or occurrence has a disproportionate adverse effect on the business, results of operations, assets or financial condition of the Company and its Subsidiaries, taken as a whole, as compared to other participants in the industry in which the Company and its Subsidiaries operate (in which case the incremental disproportionate impact or impacts may be taken into account in determining whether there has been, or would reasonably be expected to be, a Material Adverse Effect).

"NASDAQ" means the NASDAQ Global Select Market.

"Owned Intellectual Property" means any and all Intellectual Property Rights owned or purported to be owned by the Company or any of its Subsidiaries.

"Person" means an individual, corporation, limited liability company, partnership, joint venture, association, trust, unincorporated organization or any other entity, including a Governmental Authority.

"Registration Rights Agreement" means that certain Registration Rights Agreement to be entered into by the Company and the Investors, the form of which is set forth as Exhibit B hereto.

"Regulatory Laws" means, collectively, any Laws that are designed or intended to prohibit, restrict or regulate actions having the purpose or effect of monopolization or lessening of competition through merger or acquisition or restraint of trade or that affect foreign investment, outbound investment, foreign exchange, national security or national interest of any jurisdiction.

"Representatives" means, with respect to any Person, its officers, directors, principals, partners, managers, members, employees, consultants, agents, financial advisors, investment bankers, attorneys, accountants, other advisors and other representatives.

"Restricted Persons" means (i) any transferee listed on Exhibit D hereto and its controlled Affiliates, which list may be updated in writing from time to time by the Board with respect to additional bona fide competitors of the Company (each, a "Competitor"), or (ii) any of the Persons who, as of the time of the applicable proposed Transfer, has been listed on the "SharkWatch 50" list (or, if publication of such list has been discontinued, such other list of significant activist investors selected by the Board to replace such list unless and until such time as the publication of such replacement list is discontinued) during the immediately preceding three (3) year period; provided, that for the purposes hereof, none of Apollo, the Apollo Investor, their respective Affiliates, or any Affiliate of any Investor Party will be deemed a Restricted Person.

"Revolving Credit Facility" means the credit facility pursuant to the Credit Agreement.

"SEC" means the Securities and Exchange Commission.

"Securities Act" means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

"Specified Assumed Amount" means, in a Standalone Spin-Off, one-third of the then-outstanding shares of Preferred Stock owned by the Investor Parties.

"SpinCo" means the entity that will directly or indirectly own the applicable assets and liabilities of the Flash Business in connection with the anticipated contribution or transfer of all or substantially all of such business in a Spin-Off.

"Spin-Off" means the consummation of a separation of all or substantially all of the Flash Business through a contribution, directly or indirectly, of the applicable assets and liabilities of such business and/or through a contribution, directly or indirectly, of the applicable legal entities comprising such business to a wholly-owned Subsidiary of the Company and the distribution of all of the outstanding equity securities of such Subsidiary to the holders of Common Stock as of a record date to be determined by the Board, in each case of the foregoing, in a transaction qualifying under Section 355 or Section 361 of the Code, together with any transactions related thereto or contemplated thereby (it being understood that such a distribution shall be a Spin-Off only to the extent that the Company has obtained a Tax Opinion or Ruling with respect to such distribution).

"Spin-Off Transaction Documents" means all transaction documents prepared in connection with, arising out of, or relating to, a Spin-Off or any transactions related thereto or undertaken in connection therewith.

"Standalone Spin-Off" means a Spin-Off where the Company does not enter into a definitive agreement with respect to a Subsequent Transaction prior to the closing of such Spin-Off.

"Subsequent Transaction" means the sale, merger, combination or other transfer of all or substantially all of the Flash Business, in one or more related transactions, to or with a Third Party, which sale, merger, combination or other transfer occurs subsequent to a Spin-Off, but pursuant to a plan agreed to prior to the closing of such Spin-Off.

"Subsidiary", when used with respect to any Person, means any corporation, limited liability company, partnership, association, trust or other entity of which (x) securities or other ownership interests representing more than 50% of the ordinary voting power (or, in the case of a partnership, more than 50% of the general partnership interests) or (y) sufficient voting rights to elect at least a majority of the board of directors or other governing body are, as of such date, owned by such Person or one or more Subsidiaries of such Person or by such Person and one or more Subsidiaries of such Person.

"Tax" or "Taxes" means any and all United States federal, state, local or non-United States taxes, fees, levies, duties, tariffs, imposts, and other similar charges imposed by any Governmental Authority, including taxes or other charges on or with respect to income, franchises, windfall or other profits, gross receipts, property, sales, use, capital stock, payroll, employment, social security, workers' compensation, unemployment compensation or net worth; taxes or other charges in the nature of excise, withholding, ad valorem, stamp, transfer, value added or gains taxes; license, registration and documentation fees, together with any interest, penalties, and additions to tax imposed by any Governmental Authority.

"Tax Opinion or Ruling" means a "will" level opinion from national recognized tax counsel or a U.S. Internal Revenue Service private letter ruling to the effect that a distribution meets the requirements of Section 355 or Section 361, as the case may be, and is not a distribution to which Section 355(d) or (e) applies.

"Tax Return" means returns, reports, claims for refund, declarations of estimated Taxes and information statements, including any schedule or attachment thereto or any amendment thereof, with respect to Taxes filed or required to be filed with any Taxing Authority, including consolidated, combined and unitary tax returns.

"Taxing Authority" means any Governmental Authority or any subdivision, agency, commission or entity thereof or any quasi-governmental or private body having jurisdiction over the assessment, determination, collection or imposition of any Tax (including the IRS).

"Third Party" means a Person other than the Investors and each of their respective Affiliates.

"Transaction Documents" means this Agreement, the Certificate of Designations, the Registration Rights Agreement and all other documents, certificates or agreements executed in connection with the transactions contemplated by this Agreement, the Certificate of Designations and the Registration Rights Agreement.

"Transactions" means the transactions expressly contemplated by this Agreement and the other Transaction Documents; provided, that, for the avoidance of doubt, "Transactions" shall not include a Spin-Off or any Subsequent Transaction.

"Transfer" by any Person means, directly or indirectly, to sell, transfer, assign, pledge, encumber, hypothecate or otherwise dispose of or transfer, either voluntarily or involuntarily (by the operation of law or otherwise), or to enter into any contract, option or other arrangement, agreement or understanding with respect to the sale, transfer, assignment, pledge, encumbrance, hypothecation or other disposition or transfer (by the operation of law or otherwise), of any voting interest in any equity securities beneficially owned by such Person; provided, however, that, notwithstanding anything to the contrary in this Agreement, a Transfer shall not include (i) the conversion of one or more shares of Preferred Stock into shares of Common Stock pursuant to the Certificate of Designations, (ii) the redemption or other acquisition of Common Stock or Preferred Stock by the Company or (iii) the transfer (other than

by an Investor Party) of any limited partnership interests or other equity interests in the Investor Party (or any direct or indirect parent entity of such Investor Party) (provided that if any transferor or transferee referred to in this clause (iii) ceases to be controlled (directly or indirectly) by the Person (directly or indirectly) controlling such Person immediately prior to such transfer, such event shall be deemed to constitute a "Transfer").

(a) In addition to the terms defined in Section 1.01(a), the following terms have the meanings assigned thereto in the Sections set forth below:

Term	**Section**
Acquired Shares	2.01
Action	3.07
Agreement	Preamble
Announcement	5.03
Balance Sheet Date	3.05(c)
Bankruptcy and Equity Exception	3.03(a)
Beneficial Ownership Limitation	5.08(c)
Board Observer	5.08(h)
Capitalization Date	3.02(a)
Certificate of Designations	Recitals
Class	5.08(a)
Closing	2.02(a)
Closing Date	2.02(a)
Company	Preamble
Company Disclosure Letter	Article III
Company Preferred Stock	3.02(a)
Company SEC Documents	3.05(a)
Company Securities	3.02(b)
Contract	3.03(b)
Conversion Shares	5.08(b)
DOJ	5.01(c)
Excluded Stock	5.15(a)
Ex-Im Laws	3.08(e)
Filed SEC Documents	Article III
Foreclosure	5.06(e)
FTC	5.01(c)
Hedging Arrangements	5.06(b)
Identified Person	5.08(k)
Identified Persons	5.08(k)
Initial Investor Rights	7.03(b)
Intellectual Property Rights	3.22
Investors	Preamble

IT Systems and Data	3.23
J.P. Morgan	3.13
Judgments	3.07
Laws	3.08(a)
Material Contract	3.09
Multiemployer Plan	3.14(a)
Open Windows	5.17(c)
Organizational Documents	5.08(j)
Participation Portion	5.15(b)(ii)
Permits	3.08(a)
Permitted Loan	5.06(e)
Preferred Stock	Recitals
Proposed Other Financing	5.15(b)(i)
Proposed Securities	5.15(b)(i)
Purchase Price	2.01
Related Companies	5.08(k)
Related Company	5.08(k)
Required Regulatory Approvals	5.01(a)
Restricted Issuance Information	5.15(b)(ii)
Sanctioned Country	3.08(b)
Sanctioned Person	3.08(b)
Sanctions	3.08(b)
Significant Subsidiary	3.01(b)
Specified Exception	5.05(h)
SpinCo Preferred Stock	5.10(b)(i)
Subsequent Transaction Announcement	5.06(b)
Transfer	1.01
USRPHC	3.11

Article II

Purchase and Sale

Section 2.01 Purchase and Sale. On the terms of this Agreement and subject to the conditions set forth herein, at the Closing, the Investors shall purchase and acquire from the Company an aggregate of 235,000 shares of Preferred Stock, and the Company shall issue, sell and deliver to the Investors, such shares of Preferred Stock (the "Acquired Shares") for a purchase price per Share equal to $1,000 and an aggregate purchase price of $235,000,000 (such aggregate purchase price, the "Purchase Price"), in each case in the amounts set forth opposite each Investor's name on Schedule A attached hereto.

Section 2.02 Closing.

(a) On the terms of this Agreement, and subject to the conditions set forth herein, the closing of the sale and purchase of the Acquired Shares (the "Closing") shall occur simultaneously with the execution and delivery of this Agreement at the offices of Gibson, Dunn & Crutcher LLP at 200 Park Avenue, New York, NY 10166 (the date on which the Closing occurs, the "Closing Date").

(b) At the Closing:

(i) the Company shall:

(1) file with the Secretary of State of the State of Delaware the Certificate of Designations, and shall deliver to the Investors a certified copy thereof;

(2) deliver to the Investors (A) evidence of book-entry shares representing the Acquired Shares credited to book-entry accounts maintained by the transfer agent of the Company, free and clear of all Liens, except restrictions imposed by applicable securities Laws, the Company Charter Documents and the Transaction Documents, and (B) the Registration Rights Agreement, duly executed by the Company; and

(3) pay the expense reimbursement amount set forth in Section 7.11 to the Investors (or their respective designees), by offset against the Purchase Price; and

(ii) the Investors shall (1) pay the Purchase Price (net of the expense reimbursement amount set forth in Section 7.11) to the Company, by wire transfer in immediately available U.S. federal funds, to the account designated by the Company in writing at least one (1) Business Day prior to the Closing Date, (2) deliver to the Company the Registration Rights Agreement, duly executed by the Investors and/or their applicable Affiliates and (3) deliver to the Company or its paying agent a duly executed, valid, accurate and properly completed IRS Form W-9 or an appropriate IRS Form W-8, as applicable.

Article III

Representations and Warranties of the Company

The Company represents and warrants to the Investors that, except as (A) set forth in the confidential disclosure letter delivered by the Company to the Investors prior to the execution of this Agreement (the "Company Disclosure Letter") (it being understood that any information, item or matter set forth on one section or subsection of the Company Disclosure Letter shall only be deemed disclosure with respect to, and shall only be deemed to apply to and qualify, the section or subsection of this Agreement to which it corresponds in number and each other section or subsection of this Agreement to the extent that it is reasonably apparent on the face of such disclosure that such information, item or matter is relevant to such other section or subsection) or (B) disclosed in any report, schedule, form, statement or other document (including exhibits) filed with, or furnished to, the SEC and publicly available on or after July 2, 2022 and prior to the date hereof (the "Filed SEC Documents"), other than any disclosures in any such Filed SEC Document contained in the "Risk Factors" section thereof or any forward-looking statements within the meaning of the Securities Act or the Exchange Act thereof (it being acknowledged that nothing disclosed in the Filed SEC Documents shall be deemed to qualify or modify the representations and warranties set forth in Sections 3.01, 3.02, 3.03(a), 3.06, 3.12, 3.13 and 3.18):

Section 3.01 Organization; Standing.

(a) The Company is a corporation duly incorporated and validly existing and in good standing under the Laws of the State of Delaware and has all requisite corporate power and corporate authority necessary to carry on its business as it is now being conducted, except (other than with respect to the Company's due organization, valid existence and good standing) as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. The Company is duly licensed or qualified as a foreign corporation for the transaction of business and is in good standing (if applicable) under the Laws of each other jurisdiction in which it owns or leases properties or conducts any business so as to require such qualification. True and complete copies of the Company Charter Documents are included in the Filed SEC Documents.

(b) Each of the Company's Subsidiaries that is a "significant subsidiary" (as defined in Rule 405 under the Securities Act) (each, a "Significant Subsidiary") is duly organized, validly existing and in good standing (where such concept is recognized under applicable Law) under the Laws of the jurisdiction of its organization, except where the failure to be so organized, existing and in good standing would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 3.02 Capitalization.

(a) The authorized capital stock of the Company consists of 450,000,000 shares of Common Stock and 5,000,000 shares of preferred stock, par value $0.01 per share ("Company Preferred Stock"). At the close of business on January 27, 2023 (the "Capitalization Date"), (i) 319,327,848 shares of Common Stock were issued and outstanding, (ii) 25,319,401 shares of Common Stock were reserved and available for issuance pursuant to the Company Stock Plans, (iii) 8,289,015 shares of Common Stock were reserved and available for issuance under the Company ESPP, (iv) 12,632,063 shares of Common Stock could be issued upon conversion of the Convertible Notes and (v) no shares of Company Preferred Stock were issued or outstanding.

(b) Except as described in this Section 3.02, as of the Capitalization Date, there were (i) no outstanding shares of capital stock of, or other equity or voting interests in, the Company, (ii) no outstanding securities convertible into or exchangeable for shares of capital stock of, or other equity or voting interests in, the Company other than obligations under the Company Stock Plans, (iii) no outstanding options, warrants, rights or other commitments or agreements to acquire from the Company or any Subsidiary, or that obligate the Company or any Subsidiary to issue, any capital stock of, or other equity or voting interests (or voting debt) in, or any securities convertible into or exchangeable for shares of capital stock of, or other equity or voting interests in, the Company other than obligations under the Company Stock Plans, (iv) no obligations of the Company or any Subsidiary to grant, extend or enter into any subscription, warrant, right, debt, convertible or exchangeable security or other similar agreement or commitment relating to any capital stock of, or other equity or voting interests in, the Company (the items in clauses (i), (ii), (iii) and (iv) being referred to collectively as "Company Securities") and (v) no other obligations by the Company or any of its Subsidiaries to make any payments based on the price or value of any Company Securities.

(c) As of the date of this Agreement, there are no outstanding agreements of any kind which obligate the Company or any of its Subsidiaries to repurchase, redeem or otherwise acquire any Company Securities, or obligate the Company to grant, extend or enter into any such agreements relating to any Company Securities, including any agreements granting any preemptive rights, subscription rights, anti-dilutive rights, rights of first refusal or similar rights with respect to any Company Securities. None of the Company or any Subsidiary of the Company is a party to any stockholders' agreement, voting trust agreement, registration rights agreement or other similar agreement or understanding relating to any Company Securities

or any other agreement relating to the disposition, voting or dividends with respect to any Company Securities. All outstanding shares of Common Stock have been duly authorized and validly issued and are fully paid, nonassessable and free of preemptive rights.

(d) The Acquired Shares and the shares of Common Stock issuable upon conversion of the Acquired Shares will be, when issued, duly authorized and validly issued, fully paid and nonassessable and issued in compliance with all applicable federal and state securities laws, and such shares will not be issued in violation of any purchase option, call option, preemptive right, resale right, subscription right, right of first refusal or similar right, and will be free and clear of all Liens, except restrictions imposed by the Securities Act and any applicable foreign and state securities Laws, Liens contemplated by the Transaction Documents and Section 5.06. The Acquired Shares, when issued, and the shares of Common Stock issuable upon conversion of the Acquired Shares, if and when issued, will have the terms and conditions and entitle the holders thereof to the rights set forth in the Company Charter Documents, as amended by the Certificate of Designations. The shares of Common Stock issuable upon conversion of the Acquired Shares have been duly reserved for such issuance.

(e) Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, all of the outstanding shares of capital stock of, or other equity or voting interests in, each Subsidiary of the Company (except for directors' qualifying shares or the like) are owned directly or indirectly, beneficially and of record, by the Company free and clear of all Liens.

Section 3.03 Authority; Non-contravention.

(a) The Company has all necessary corporate power and corporate authority to execute and deliver this Agreement and the other Transaction Documents and to perform its obligations hereunder and thereunder and to consummate the Transactions. The execution, delivery and performance by the Company of this Agreement and the other Transaction Documents, and the consummation by it of the Transactions, have been duly authorized by the Board and the Board has duly reserved (x) the shares of Preferred Stock to be issued in accordance with the terms and conditions of the Certificate of Designations and (y) the shares of Common Stock to be issued upon any conversion of shares of Preferred Stock into Common Stock. No other action on the part of the Company or its stockholders is necessary to authorize the execution, delivery and performance by the Company of this Agreement and the other Transaction Documents and the consummation by it of the Transactions. This Agreement has been duly executed and delivered by the Company and, assuming due authorization, execution and delivery hereof by the Investors, constitutes a legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, except that such enforceability (i) may be limited by bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other similar Laws of general application affecting or relating to the enforcement of creditors' rights generally and (ii) is subject to general principles of equity, whether considered in a proceeding at law or in equity (the "Bankruptcy and Equity Exception").

(b) Neither the execution and delivery of this Agreement or the other Transaction Documents by the Company, nor the consummation by the Company of the Transactions, nor performance or compliance by the Company with any of the terms or provisions hereof or thereof, will (i) conflict with or violate any provision of the Company Charter Documents, or (ii) assuming that the authorizations, consents and approvals referred to in Section 3.04 are obtained at or prior to the Closing Date (other than the authorizations, consents and approvals referred to in Section 3.04(b), which are to be obtained following the Closing in accordance with Section 5.01) and the filings referred to in Section 3.04 are made and any waiting periods thereunder have terminated or expired at or prior to the Closing Date (other than the filings referred to in Section 3.04(b), which are to be made and any waiting periods

thereunder are to terminate or expire following the Closing in accordance with Section 5.01), (x) violate any Law or Judgment applicable to the Company or any of its Subsidiaries or (y) violate or constitute a default (or constitute an event which, with notice or lapse of time or both, would violate or constitute a default) or accelerate the performance required by the Company under any of the terms or provisions of any loan or credit agreement, indenture, debenture, note, bond, mortgage, deed of trust, lease, sublease, license, contract or other agreement (a "Contract") to which the Company or any of its Subsidiaries is a party or accelerate the Company's or, if applicable, any of its Subsidiaries' obligations under any such Contract, except, in the case of clause (ii), as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 3.04 Governmental Approvals. Except for (a) the filing of the Certificate of Designations with the Secretary of State of the State for Delaware, (b) filings required under, and compliance with other applicable requirements of the HSR Act and any other applicable Regulatory Laws, (c) filings with the SEC under the Securities Act and Exchange Act and (d) compliance with any applicable state securities or blue sky laws, no consent or approval of or filing, license, permit or authorization, declaration or registration with, or notice to any Governmental Authority or any stock market or stock exchange is necessary for the execution and delivery of this Agreement and the other Transaction Documents by the Company, the performance by the Company of its obligations hereunder and thereunder and the consummation by the Company of the Transactions, other than such other consents, approvals, filings, licenses, permits or authorizations, declarations or registrations that, if not obtained, made or given, would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 3.05 Company SEC Documents; Undisclosed Liabilities.

(a) The Company has filed with the SEC, on a timely basis, all required reports, schedules, forms, statements and other documents required to be filed by the Company with the SEC pursuant to the Exchange Act since July 3, 2021 (collectively, the "Company SEC Documents"). As of their respective SEC filing dates, the Company SEC Documents complied in all material respects with the requirements of the Securities Act, the Exchange Act or the Sarbanes-Oxley Act of 2002 (and the regulations promulgated thereunder), as the case may be, applicable to such Company SEC Documents, and none of the Company SEC Documents as of such respective dates (or, if amended prior to the date hereof, the date of the filing of such amendment, with respect to the disclosures that are amended) contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. As of the date hereof, (i) the Company is eligible to file a registration statement on Form S-3, (ii) none of the Company's Subsidiaries is required to file any documents with the SEC, (iii) there are no outstanding or unresolved comments in comment letters from the SEC staff with respect to any of the Company SEC Documents and (iv) to the Knowledge of the Company, none of the Company SEC Documents is the subject of ongoing SEC review, outstanding SEC comment or outstanding SEC investigation. Each of the certifications and statements relating to the Company SEC Documents required by: (A) Rule 13a-14 or Rule 15d-14 under the Exchange Act; (B) 18 U.S.C. §1350 (Section 906 of the Sarbanes-Oxley Act); or (C) any other rule or regulation promulgated by the SEC or applicable to the Company SEC Documents is accurate and complete, and complies as to form and content in all material respects with all applicable Laws.

(b) The consolidated financial statements of the Company (including all related notes or schedules) included or incorporated by reference in the Company SEC Documents (i) complied as to form, as of their respective dates of filing with the SEC in all material respects with the published rules and regulations of the SEC with respect thereto, (ii) have been prepared in accordance with GAAP (except, in the case of unaudited quarterly

statements, as permitted by Form 10-Q of the SEC or other rules and regulations of the SEC) applied on a consistent basis during the periods involved (except (i) as may be indicated in the notes thereto or (ii) as permitted by Regulation S-X), and (iii) fairly present in all material respects the consolidated financial position of the Company and its Subsidiaries as of the dates thereof and the consolidated results of their operations and cash flows for the periods shown (subject, in the case of unaudited quarterly financial statements, to normal year-end adjustments).

(c) Neither the Company nor any of its Subsidiaries has any liabilities of any nature (whether accrued, absolute, contingent or otherwise) that would be required under GAAP, as in effect on the date hereof, to be reflected on a consolidated balance sheet of the Company (including the notes thereto) except liabilities (i) reflected or reserved against in the balance sheet (or the notes thereto) of the Company and its Subsidiaries as of July 1, 2022 (the "Balance Sheet Date") included in the Filed SEC Documents, (ii) incurred after the Balance Sheet Date in the ordinary course of business (other than any such liabilities related to any breach of Contract, violation of Law or tort) or (iii) as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(d) The Company has established and maintains, and at all times since July 3, 2021 has maintained, disclosure controls and procedures and a system of internal controls over financial reporting (as such terms are defined in paragraphs (e) and (f), respectively, of Rule 13a-15 under the Exchange Act) as required by Rule 13a-15 under the Exchange Act. Neither the Company nor, to the Knowledge of the Company, the Company's independent registered public accounting firm, has identified or been made aware of "significant deficiencies" or "material weaknesses" (as defined by the Public Company Accounting Oversight Board) in the design or operation of the Company's internal controls over and procedures relating to financial reporting which would reasonably be expected to adversely affect in any material respect the Company's ability to record, process, summarize and report financial data, in each case which has not been subsequently remediated. The Company is, and has been at all times since July 3, 2021, in compliance in all material respects with the applicable listing requirements and corporate governance rules and regulations of the NASDAQ.

Section 3.06 Absence of Certain Changes. Since July 2, 2022, except for the execution and performance of this Agreement and any other agreements contemplated hereby and the discussions, negotiations and transactions related thereto, there has not been any Material Adverse Effect.

Section 3.07 Legal Proceedings. Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, there is no (a) pending legal or administrative proceeding, suit, audit, charge, claim, investigation, arbitration or action (an "Action") against the Company or any of its Subsidiaries and, to the Knowledge of the Company, no such Actions have been threatened by any Governmental Authority or any other Person or (b) outstanding order, judgment, injunction, ruling, writ or decree of any Governmental Authority ("Judgments") imposed upon the Company or any of its Subsidiaries, in each case, by or before any Governmental Authority.

Section 3.08 Compliance with Laws; Permits.

(a) Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, the Company and each of its Subsidiaries are and since July 3, 2021 (or such later date as the applicable Laws may have come into effect) have been, in compliance with all state or federal laws, common law, statutes, ordinances, codes, rules or regulations, orders, executive orders, judgments, injunctions, governmental guidelines or interpretations having the force of law, Permits, decrees, or other similar requirement enacted, adopted, promulgated, or applied by any Governmental Authority ("Laws") or Judgments, in

each case, that are applicable to the Company or any of its Subsidiaries, including the General Data Protection Regulation (EU) 2016/679, the Privacy and Electronic Communications Directive (2002/58/EC), and any national legislation implementing or supplementing the foregoing in the European Union, to the extent applicable. The Company and each of its Subsidiaries hold all licenses, franchises, permits, certificates, approvals and authorizations from Governmental Authorities ("Permits") necessary for the lawful conduct of their respective businesses, except where the failure to hold the same would not individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(b) None of the Company nor any of its Subsidiaries nor, to the Knowledge of the Company, any directors, officers, agents, employees or affiliates of the Company or any of its Subsidiaries is currently a person with whom dealings are prohibited under, or who is a subject of, any economic or other trade sanctions administered or enforced by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the U.S. Department of Commerce or the U.S. Department of State, the United Nations Security Council, the European Union or His Majesty's Treasury of the United Kingdom, or other relevant sanctions authority (collectively, "Sanctions" and any such person, a "Sanctioned Person"), nor is the Company or any of its Subsidiaries located or organized in a country or territory that is the subject or target of country-wide or territory-wide Sanctions (currently, Cuba, Iran, North Korea, Syria and the Crimea, Donetsk and Luhansk regions of Ukraine) (each, a "Sanctioned Country"). The Company and its Subsidiaries have not for the past two years engaged in any dealings or transactions in violation of Sanctions.

(c) None of the Company nor any of its Subsidiaries, nor, to the Knowledge of the Company, any director, officer, agent, employee, affiliate or other person associated with or acting on behalf of the Company or any of its Subsidiaries has (i) used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expense relating to political activity; (ii) made any direct or indirect unlawful payment or benefit to any foreign or domestic government official or employee from corporate funds; or (iii) violated or is in violation of the United States Foreign Corrupt Practices Act of 1977, as amended. The Company and its Subsidiaries have instituted, maintained and enforced and will continue to maintain and enforce policies and procedures designed to promote compliance with all applicable anti-bribery and anti-corruption laws.

(d) The operations of the Company and its Subsidiaries are and have been conducted at all times in material compliance with applicable anti-money laundering laws, and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company or any of its Subsidiaries with respect to any applicable anti-money laundering law is pending or, to the Knowledge of the Company, threatened.

(e) The operations of the Company and its Subsidiaries are and have been conducted at all times in material compliance with all Laws applicable to the Company and its Subsidiaries relating to export, reexport, transfer, and import controls, including the Export Administration Regulations, the International Traffic in Arms Regulations, and the customs and import Laws administered by U.S. Customs and Border Protection (collectively, "Ex-Im Laws"), and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company or any of its Subsidiaries with respect to any applicable anti-money laundering law is pending or, to the Knowledge of the Company, threatened.

Section 3.09 Contracts. Each Contract that is material to the business of the Company and its Subsidiaries, taken as a whole (each, a "Material Contract"), and to which the Company or any of its Subsidiaries is a party or by which the Company, any of its Subsidiaries

or any of their respective properties or assets is bound is valid, binding and enforceable on the Company and any of its Subsidiaries to the extent such Person is a party thereto, as applicable, and to the Knowledge of the Company, each other party thereto, and is in full force and effect, except where the failure to be valid, binding or in full force and effect, individually or in the aggregate, has not had and would not reasonably be expected to have a Material Adverse Effect. The Company and each of its Subsidiaries, and, to the Knowledge of the Company, any other party thereto, is in compliance in all material respects with all Material Contracts and has performed all obligations required to be performed by it, except where such noncompliance, individually or in the aggregate, has not had and would not reasonably be expected to have a Material Adverse Effect.

Section 3.10 Tax Matters. Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect: (a) the Company and each of its Subsidiaries has prepared (or caused to be prepared) and timely filed (taking into account valid extensions of time within which to file) all Tax Returns required to be filed by any of them, and all such filed Tax Returns (taking into account all amendments thereto) are true, complete and accurate, (b) all Taxes owed by the Company and each of its Subsidiaries that are due (whether or not shown on any Tax Return) have been timely paid except for Taxes which are being contested in good faith by appropriate proceedings which have been adequately reserved against in accordance with GAAP, (c) no examination or audit of any Tax Return relating to any Taxes of the Company or any of its Subsidiaries or with respect to any Taxes due from or with respect to the Company or any of its Subsidiaries by any Taxing Authority is currently in progress or threatened in writing, (d) none of the Company or any of its Subsidiaries has engaged in, or has any liability or obligation with respect to, any "listed transaction" within the meaning of Treasury Regulations Section 1.6011-4(b)(2) and (e) neither the Company nor any of its Subsidiaries has distributed stock of another Person, or has had its stock distributed by another Person, in a transaction that was or was purported or intended to be governed in whole or in part by Section 355 or 361 of the Code.

Section 3.11 Real Property Holding Corporation. The Company is not currently and has not been during the prior five (5) years a United States real property holding corporation (a "USRPHC") within the meaning of Section 897 of the Code. If the Flash Business were, as of the date hereof, owned by a single domestic corporation which held no other businesses or assets, such corporation would not be a USRPHC within the meaning of Section 897 of the Code.

Section 3.12 No Rights Agreement; Anti-Takeover Provisions. The Company is not party to a stockholder rights agreement, "poison pill" or similar anti-takeover agreement or plan.

Section 3.13 Brokers and Other Advisors. Except for Qatalyst Partners LP ("Qatalyst"), Lazard Ltd ("Lazard") and J.P. Morgan Securities LLC ("J.P. Morgan"), no broker, investment banker, financial advisor or other Person is entitled to any broker's, finder's, financial advisor's or other similar fee or commission, or the reimbursement of expenses in connection therewith, in connection with the Transactions based upon arrangements made by or on behalf of the Company or any of its Subsidiaries.

Section 3.14 Employee Benefit Plans.

(a) Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, (i) each material Company Plan has been established, operated, maintained and administered in accordance with its terms and in compliance with the applicable provisions of ERISA, the Code and other applicable Laws; (ii) no material Company Plan subject to the Laws outside of the United States which covers individual service providers located outside of the United States has any unfunded or underfunded liabilities

or obligations; and (iii) to the Knowledge of the Company, each "multiemployer plan" (as defined in Section 4001 of ERISA) to which the Company, its Subsidiaries or their respective ERISA Affiliates contributes (a "Multiemployer Plan") is in compliance with ERISA. Except as would not, individually or in the aggregate, have a Material Adverse Effect, (i) no "reportable event" (within the meaning of Section 4043(c) of ERISA) has occurred or, to the Knowledge of the Company, is reasonably expected to occur with respect to any "employee pension benefit plan" (as defined under Section 3(2) of ERISA) established or maintained by the Company, its Subsidiaries or any of their respective ERISA Affiliates; (ii) no "single-employer plan" (as defined in Section 4001 of ERISA) established or maintained by the Company, its Subsidiaries or any of their respective ERISA Affiliates, if such "single-employer plan" were terminated, would have any "amount of unfunded benefit liabilities" (as defined under Section 4001 of ERISA); (iii) neither the Company, its Subsidiaries nor any of their respective ERISA Affiliates has incurred or, to the Knowledge of the Company, reasonably expects to incur (A) any liability under Title IV of ERISA with respect to termination of, or withdrawal from, any "employee benefit plan" or (B) any liability under Section 412 of the Code or tax imposed by Section 4971, 4975 or 4980B of the Code; and (iv) each "employee pension benefit plan" established or maintained by the Company, its Subsidiaries or any of their respective ERISA Affiliates that is intended to be qualified under Section 401 of the Code is so qualified and, to the Knowledge of the Company, nothing has occurred, whether by action or failure to act, which would reasonably be expected to cause the loss of such qualification.

(b) Neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby will (either alone or together with the occurrence of a subsequent event (*e.g.*, a termination of employment or service)) (i) result in any material payment becoming due, or materially increase the amount of any compensation or benefits due, to any current or former employee of the Company and its Subsidiaries or with respect to any Company Plan; or (ii) result in the acceleration of the time of payment or vesting of any compensation or benefits.

Section 3.15 Labor Matters. The Company and its Subsidiaries, taken as a whole, have not sustained since the date of the latest audited financial statements any material loss or interference with its business from (i) fire, explosion, flood or other calamity, whether or not covered by insurance, (ii) any labor dispute or court or governmental action, order or decree or (iii) any Actions against the Company or any of its Subsidiaries alleging violation of any Labor Laws or breach of any collective bargaining agreement. Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, each of the Company and its Subsidiaries is in compliance with all Labor Laws. Except as disclosed on Schedule I hereto, neither the Company nor any of its Subsidiaries is party to or bound by any collective bargaining agreement or Contract with any labor organization, labor union, or works council, nor to the Knowledge of the Company, are there any union organizational activities or proceedings to organize any employees of the Company or any of its Subsidiaries. There are no active, nor, to the Knowledge of the Company, threatened, labor strikes, slowdowns, work stoppages, pickets, walkouts, lockouts or other collective labor actions by or with respect to the employees of the Company or any of its Subsidiaries.

Section 3.16 Sale of Securities. Based in part on the representations and warranties set forth in Section 4.05, the sale and offer of the Acquired Shares pursuant to this Agreement is exempt from the registration and prospectus delivery requirements of the Securities Act. Without limiting the foregoing, neither the Company nor, to the Knowledge of the Company, any other Person authorized by the Company to act on its behalf, has engaged in a general solicitation or general advertising (within the meaning of Regulation D of the Securities Act) of investors with respect to offers or sales of Preferred Stock, and neither the Company nor, to the Knowledge of the Company, any Person acting on its behalf has made any offers or sales of any security or solicited any offers to buy any security, under circumstances that would cause

the offering or issuance of Preferred Stock under this Agreement to be integrated with prior offerings by the Company for purposes of the Securities Act that would result in none of Regulation D or any other applicable exemption from registration under the Securities Act to be available, nor will the Company take any action or steps that would cause the offering or issuance of Preferred Stock under this Agreement to be integrated with other offerings by the Company.

Section 3.17 Listing and Maintenance Requirements. The Common Stock is registered pursuant to Section 12(b) of the Exchange Act and listed on the NASDAQ, and the Company has taken no action designed to, or which to the Knowledge of the Company is reasonably likely to have the effect of, terminating the registration of the Common Stock under the Exchange Act or delisting the Common Stock from the NASDAQ, nor has the Company received as of the date of this Agreement any notification that the SEC or the NASDAQ is contemplating terminating such registration or listing or otherwise.

Section 3.18 Status of Securities. As a result of the approval by the Board referred to in Section 3.03(a), the Acquired Shares to be issued pursuant to this Agreement, and the shares of Common Stock to be issued upon conversion of the Acquired Shares, have been duly authorized and reserved for issuance by all necessary corporate action of the Company. The respective rights, preferences, privileges, and restrictions of the Preferred Stock and the Common Stock are as stated in the Company Charter Documents (including the Certificate of Designations).

Section 3.19 NASDAQ Notification. The Company has provided the applicable listing of additional shares notification to NASDAQ, and received oral confirmation from NASDAQ that the listing of additional shares review process has been completed, and NASDAQ has not made any objection (not subsequently withdrawn) that the consummation of the transactions contemplated by this Agreement would violate NASDAQ listing rules applicable to the Company and that if not withdrawn would result in the delisting of the shares of Common Stock issuable upon the conversion of the Preferred Stock issued to the Investors pursuant to this Agreement and pursuant to the Certificate of Designations.

Section 3.20 Indebtedness.

(a) Except for (i) the Credit Agreement, (ii) the Indenture or (iii) the Delayed Draw Facility, the Company is not party to any Contract, and is not subject to any provision in the Company Charter Documents or other governing documents or resolutions of the Board that, in each case, by its terms restricts, limits, prohibits or prevents the Company from paying dividends in form and the amounts contemplated by the Certificate of Designations.

(b) The Company and its Subsidiaries and, to the Knowledge of the Company, each of the other parties thereto, are not in material breach of, default or violation under, the Revolving Credit Facility or the Indenture and no event has occurred that with notice or lapse of time, or both, would constitute such a material breach, default or violation.

Section 3.21 Real Property. The Company and its Subsidiaries collectively have good and marketable title in fee simple to all real property and good and marketable title to all items of personal property owned by them which are material to the business of the Company and its Subsidiaries, taken as a whole, in each case free and clear of all liens, encumbrances and defects, except such as do not materially interfere with the use of such property by the Company and its Subsidiaries; and any material real property and buildings held under lease by the Company and its Subsidiaries are held by them under valid, subsisting and enforceable leases with such exceptions as are not material and do not materially interfere with the use of such property by the Company and its Subsidiaries. Except as, individually or in the aggregate, has

not had and would not reasonably be expected to have a Material Adverse Effect, there have been no releases of hazardous substances at, on, or under any facility currently owned by the Company or any of its Subsidiaries or any Leased Real Property that would reasonably be expected to give rise to liability under applicable Laws regarding pollution or protection of the environment.

Section 3.22 Intellectual Property. Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect (i) the Company and each of its Subsidiaries possess valid and enforceable rights to use all trademarks, logos, trade names, Internet domain names, patent rights, copyrights, trade secrets, know-how, rights in computer software and other similar intellectual property rights (together with all goodwill associated with, any registrations of, or applications for registration of any of the foregoing, collectively, "Intellectual Property Rights") that are used in the operation of the Company and its Subsidiaries as currently conducted; (ii) all Owned Intellectual Property are valid and enforceable; (iii) to the Knowledge of the Company, no Person has infringed upon, misappropriated or otherwise violated any of the Owned Intellectual Property; (iv) the conduct of the business of the Company and its Subsidiaries has not infringed, misappropriated, or violated at any time since July 3, 2021, and does not infringe, misappropriate or violate, the Intellectual Property Rights of any other Person; (v) the Company and its Subsidiaries have taken commercially reasonable steps to maintain the confidentiality of the material trade secrets owned (or purported to be owned) by the Company or any of its Subsidiaries; (vi) no material source code owned (or purported to be owned) by the Company or any of its Subsidiaries has been disclosed or otherwise made available to any Person (excluding an escrow agent), and, to the Knowledge of the Company, no circumstance or condition exists that (with or without notice or lapse of time, or both) would result in a requirement that any such source code be disclosed, licensed or made available to any third party (other than an escrow agent); and (vii) neither the Company nor any of its Subsidiaries has received any notice of any third-party allegations or claims that (A) the Company or any of its Subsidiaries or the conduct of their respective businesses infringe or conflict with asserted Intellectual Property Rights of others or (B) challenge the ownership or validity of any Owned Intellectual Property.

Section 3.23 Data Security; Privacy. Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, (i) to the Knowledge of the Company and its Subsidiaries, since July 3, 2021, there has been no security breach or incident, unauthorized access or disclosure, or other compromise of the Company's and its Subsidiaries' information technology and computer systems, networks, equipment, hardware, software, data and databases, including all personally identifiable information and sensitive and confidential data maintained, processed or stored by the Company and its Subsidiaries (collectively, "IT Systems and Data"), and any such personally identifiable information and sensitive and confidential data of the Company and its Subsidiaries that is processed or stored by third parties on behalf of the Company and its Subsidiaries, except for those that have been remedied; (ii) the Company and its Subsidiaries have implemented and maintain controls, policies, procedures, and technological safeguards designed to maintain and protect the integrity, continuous operation, redundancy and security of their IT Systems and Data reasonably consistent with industry standards, or as required by applicable laws or statutes; and (iii) the Company and its Subsidiaries are presently in compliance with, and since July 3, 2021 have complied with, all applicable laws or statutes relating to privacy and security of IT Systems and Data.

Section 3.24 Affiliate Transactions. None of the officers or directors of the Company is presently a party to any transaction with the Company or any of its Subsidiaries (other than as holders of options, and/or other grants or awards under the Company Stock Plans, and for services as employees, officers and directors) that is material to the Company and its Subsidiaries, taken as a whole. Since July 3, 2021, neither the Company nor any Subsidiary has entered into any transaction between the Company or any of its Subsidiaries, on the one hand,

and any Affiliate of the Company (other than (i) between the Company itself and any of its Subsidiaries or (ii) between any of the Subsidiaries themselves), on the other hand, except in compliance with the Company's related party transaction policy.

Section 3.25 Apollo Transaction Documents. As of the date hereof, the Apollo Transaction Documents have not been amended, waived or modified by or with the consent of the Company or any of its Subsidiaries, and no such amendment, waiver, modification, withdrawal or rescission is contemplated. Except for the Apollo Transaction Documents, neither the Company nor any of its Subsidiaries has entered into any side letters or other contracts, instruments or other commitments, obligations or arrangements (whether written or oral) related to the transactions contemplated by the Apollo Transaction Documents.

Section 3.26 No Other Representations or Warranties. Except for the representations and warranties made by the Company in this Article III, in any Transaction Documents or in any certificate or other document delivered in connection with this Agreement or the Transaction Documents, neither the Company nor any other Person acting on its behalf makes any other express or implied representation or warranty with respect to the Preferred Stock, the Common Stock, the Company or any of its Subsidiaries or their respective businesses, operations, properties, assets, liabilities, condition (financial or otherwise) or prospects, notwithstanding the delivery or disclosure to the Investors or their Representatives of any documentation, forecasts or other information with respect to any one or more of the foregoing, and the Investors acknowledge the foregoing. In particular, and without limiting the generality of the foregoing, except for the representations and warranties made by the Company in this Article III, the Transaction Documents, or in any certificate or other document delivered in connection with this Agreement or the Transaction Documents, neither the Company nor any other Person makes or has made any express or implied representation or warranty to the Investors or their Representatives with respect to (a) any financial projection, forecast, estimate, budget or prospect information relating to the Company, any of its Subsidiaries or their respective businesses or (b) any oral or written information presented to the Investors or their Representatives in the course of its due diligence investigation of the Company, the negotiation of this Agreement or the course of the Transactions or any other transactions or potential transactions involving the Company and the Investors.

Article IV

Representations and Warranties of the Investors

The Investors represent and warrant to the Company:

Section 4.01 Organization; Standing. Each Investor is duly organized, validly existing and in good standing under the Laws of its jurisdiction of organization and has all requisite limited partnership power and authority to carry on its business as presently conducted.

Section 4.02 Authority; Non-contravention.

(a) The Investors have all necessary power and authority to execute and deliver this Agreement and the other Transaction Documents to which they are a party and to perform their respective obligations hereunder and thereunder and to consummate the Transactions. The execution, delivery and performance by the Investors of this Agreement and the other Transaction Documents and the consummation by the Investors of the Transactions have been duly authorized and approved by all necessary action on the part of the Investors, and no further action, approval or authorization by any of their respective partners, is necessary to authorize the execution, delivery and performance by the Investors of this Agreement and the other Transaction Documents and the consummation by the Investors of the Transactions. This

Agreement has been duly executed and delivered by the Investors and, assuming due authorization, execution and delivery hereof by the Company, constitutes a legal, valid and binding obligation of the Investors, enforceable against the Investors in accordance with its terms, except that such enforceability may be limited by the Bankruptcy and Equity Exception.

(b) Neither the execution and delivery of this Agreement or the other Transaction Documents by the Investors, nor the consummation of the Transactions by the Investors, nor performance or compliance by the Investors with any of the terms or provisions hereof or thereof, will (i) conflict with or violate any provision of the limited partnership agreement or other comparable organizational documents of the Investors, or (ii) assuming that the authorizations, consents and approvals referred to in Section 4.03 are obtained at or prior to the Closing Date (other than the authorizations, consents and approvals referred to in Section 4.03(b), which are to be obtained following the Closing in accordance with Section 5.01) and the filings referred to in Section 4.03 are made and any waiting periods with respect to such filings have terminated or expired at or prior to the Closing Date (other than the filings referred to in Section 4.03(b), which are to be made and any waiting periods thereunder are to terminate or expire following the Closing in accordance with Section 5.01), (x) violate any Law or Judgment applicable to the Investors or (y) violate or constitute a default (or constitute an event which, with notice or lapse of time or both, would violate or constitute a default) under any of the terms, conditions or provisions of any Contract to which the Investors are a party or accelerate the Investors' obligations under any such Contract, except, in the case of clause (ii), as would not, individually or in the aggregate, reasonably be expected to have an Investor Material Adverse Effect.

Section 4.03 Governmental Approvals. Except for the filing by the Company of the Certificate of Designations with the Delaware Secretary of State, based on the information provided to the Investors' Representatives by the Company and its Representatives, no consent or approval of, or filing, license, permit or authorization, declaration or registration with, any Governmental Authority is necessary for the execution and delivery of this Agreement and the other Transaction Documents by the Investors, the performance by the Investors of their respective obligations hereunder and thereunder and the consummation by the Investors of the Transactions, other than such other consents, approvals, filings, licenses, permits, authorizations, declarations or registrations that, if not obtained, made or given, would not, individually or in the aggregate, reasonably be expected to have an Investor Material Adverse Effect.

Section 4.04 Brokers and Other Advisors. No broker, investment banker, financial advisor or other Person is entitled to any broker's, finder's, financial advisor's or other similar fee or commission, or the reimbursement of expenses in connection therewith, in connection with the Transactions based upon arrangements made by or on behalf of the Investors, except for Persons, if any, whose fees and expenses will be paid by the Investors.

Section 4.05 Purchase for Investment. The Investors acknowledge that the offer and sale of the Acquired Shares and the Common Stock issuable upon the conversion of the Acquired Shares have not been registered under the Securities Act or under any state or other applicable securities Laws. The Investors (a) acknowledge that they are acquiring the Acquired Shares and the Common Stock issuable upon the conversion of the Acquired Shares pursuant to an exemption from registration under the Securities Act solely for investment with no intention to distribute any of the foregoing to any Person, (b) will not sell, transfer, or otherwise dispose of any of the Acquired Shares or the Common Stock issuable upon the conversion of the Acquired Shares, except in compliance with this Agreement and the registration requirements or exemption provisions of the Securities Act and any other applicable securities Laws, (c) have such knowledge and experience in financial and business matters and in investments of this type that it is capable of evaluating the merits and risks of its investment in the Acquired Shares and the Common Stock issuable upon the conversion of the Acquired Shares and of making an

informed investment decision, (d) are "accredited investors" (as that term is defined by Rule 501 of the Securities Act) and "Institutional Accounts" (as that term is defined by FINRA Rule 4512(c)), and (e) (1) have reviewed the information that they consider necessary or appropriate to make an informed investment decision with respect to the Acquired Shares and the Common Stock issuable upon conversion of the Acquired Shares, (2) have had an opportunity to discuss with the Company and its Representatives the intended business and financial affairs of the Company and to obtain information necessary to verify the information furnished to them or to which they had access and (3) can bear the economic risk of (i) an investment in the Acquired Shares and the Common Stock issuable upon the conversion of the Acquired Shares indefinitely and (ii) a total loss in respect of such investment. The Investors have such knowledge and experience in business and financial matters so as to enable them to understand and evaluate the risks of, and form an investment decision with respect to its investment in, the Acquired Shares and the Common Stock issuable upon the conversion of the Acquired Shares.

Section 4.06 Non-Reliance on Company Estimates, Projections, Forecasts, Forward-Looking Statements and Business Plans. In connection with the due diligence investigation of the Company by the Investors and their respective Representatives, the Investors and their respective Representatives have received and may continue to receive from the Company and its Representatives certain estimates, projections, forecasts and other forward-looking information, as well as certain business plan information, in each case containing forward-looking information, regarding the Company and its Subsidiaries and their respective businesses and operations. The Investors hereby acknowledge that there are uncertainties inherent in attempting to make such estimates, projections, forecasts and other forward-looking statements, as well as in such business plans to the extent each of them contain forward-looking information with which the Investors are familiar, that the Investors are making their own evaluation of the adequacy and accuracy of such forward-looking information so furnished to the Investors (including the reasonableness of the assumptions underlying such forward-looking information), and that except for the representations and warranties made by the Company in Article III, the Transaction Documents and in any certificate or other document delivered in connection with this Agreement or the Transaction Documents, and other than for fraud, the Investors will have no claim against the Company or any of its Subsidiaries, or any of their respective Representatives, with respect thereto.

Section 4.07 Financial Advisor. Each of (a) J.P. Morgan, Qatalyst and Lazard is acting as a financial advisor to the Company and is not acting as an underwriter or in any other capacity and is not and shall not be construed as a fiduciary for the Investors, the Company or any other person or entity in connection with the Transactions, (b) J.P. Morgan, Qatalyst and Lazard has not made and will not make any representation or warranty, whether express or implied, of any kind or character and has not provided any advice or recommendation in connection with the Transactions, (c) J.P. Morgan, Qatalyst and Lazard will have no responsibility with respect to (i) any representations, warranties or agreements made by any person or entity under or in connection with the Transactions or any of the documents furnished pursuant thereto or in connection therewith, or the execution, legality, validity or enforceability (with respect to any person) or any thereof, or (ii) the business, affairs, financial condition, operations, properties or prospects of, or any other matter concerning the Company or the Transactions, and (d) J.P. Morgan, Qatalyst and Lazard shall have no liability or obligation (including without limitation, for or with respect to any losses, claims, damages, obligations, penalties, judgments, awards, liabilities, costs, expenses or disbursements incurred by the Investors, the Company or any other person or entity), whether in contract, tort or otherwise, to the Investors, or to any person claiming through the Investors, in respect of the Transactions.

Section 4.08 Big Boy Representation. Each Investor understands and acknowledges that the Company is in possession of information about the Company and its subsidiaries and their respective securities (including information relating to a Spin-Off and

potential Subsequent Transaction that, at the Investors' request, has not been provided to the Investors). Any such information may include material non-public information that may or may not be material or superior to information available to the Investors. Each Investor hereby waives any claim, or potential claim, it has or may have against the Company and any its Affiliates relating to the Company's possession of material non-public information.

Section 4.09 No Other Representations or Warranties. Except for the representations and warranties made by the Investors in this Article IV, the Transaction Documents and in any certificate or other document delivered in connection with this Agreement or the Transaction Documents, neither the Investors nor any other Person acting on their behalf makes any other express or implied representation or warranty with respect to the Investors or any of their respective Affiliates or their respective businesses, operations, properties, assets, liabilities, condition (financial or otherwise) or prospects, notwithstanding the delivery or disclosure to the Company or its Representatives of any documentation, forecasts or other information with respect to any one or more of the foregoing, and the Company acknowledges the foregoing. In particular, and without limiting the generality of the foregoing, except for the representations and warranties made by the Investors in this Article IV, the Transaction Documents and in any certificate or other document delivered in connection with this Agreement or the Transaction Documents, neither the Investors nor any other Person makes or has made any express or implied representation or warranty to the Investors or their Representatives with respect to any oral or written information presented to the Company or its Representatives in the course of its due diligence investigation of the Company, the negotiation of this Agreement or the course of the Transactions or any other transactions or potential transactions involving the Company and the Investors.

Article V

Additional Agreements

Section 5.01 Reasonable Best Efforts; Filings.

(a) Subject to the terms and conditions of this Agreement, including the terms of this Section 5.01, to the extent required under the HSR Act and any other applicable Regulatory Laws (collectively, the "Required Regulatory Approvals") with respect to the Investors' receipt of Compounded Dividends (as defined in the Certificate of Designations), each of the Company and the Investors shall cooperate with each other and use (and shall cause its Subsidiaries to use) its reasonable best efforts (unless, with respect to any action, another standard of performance is expressly provided for herein) to obtain or submit, as the case may be, as promptly as practicable after notice by the Investors to the Company that any such Required Regulatory Approvals may be required, all Required Regulatory Approvals. In furtherance of the foregoing, each of the parties hereto shall cooperate with each other to evaluate and identify any filings, consents, clearances or approvals required with respect to the receipt of Compounded Dividends by the Investors under or in connection with any Regulatory Law. Upon notice by the Investors to the Company that any such restrictions may be necessary to avoid violation of Regulatory Law, the Company and the Investors agree to cooperate to issue Compounded Dividends identified in such notice in a form without voting rights or conversion rights into Common Stock, which restrictions would be removed upon obtaining any such Required Regulatory Approvals.

(b) The Company and the Investors agree to make any required filings pursuant to the HSR Act and any other Required Regulatory Approvals with respect to the receipt of Compounded Dividends by the Investors as promptly as reasonably practicable following notice by the Investors that such Required Regulatory Approvals may be required, and to supply as promptly as reasonably practicable any additional information and documentary

material that may be requested pursuant to the HSR Act or any other Required Regulatory Approvals, as applicable, and to promptly take any and all steps necessary to avoid or eliminate each and every impediment and obtain all consents that may be required pursuant to the HSR Act or any other Required Regulatory Approvals, as applicable, so as to enable the Investors to receive Compounded Dividends in a form free of restrictions on voting or conversion.

(c) Each of the Company and the Investors shall use its reasonable best efforts to (i) cooperate in all respects with the other party in connection with any filing or submission with a Governmental Authority in connection with any Required Regulatory Approvals and in connection with any investigation or other inquiry by or before a Governmental Authority relating to any Required Regulatory Approvals, including any proceeding initiated by a private person, (ii) keep the other party informed in all material respects and on a reasonably timely basis of any material communication received by the Company or the Investors, as the case may be, from or given by the Company or the Investors, as the case may be, to the Federal Trade Commission ("FTC"), the Department of Justice ("DOJ") or any other Governmental Authority and of any material communication received or given in connection with any proceeding by a private Person, in each case regarding any Required Regulatory Approvals, (iii) subject to applicable Laws relating to the exchange of information, and to the extent reasonably practicable, consult with the other party with respect to information relating to such party and its respective Subsidiaries, as the case may be, that appears in any filing made with, or written materials submitted to, any third Person or any Governmental Authority in connection with any Required Regulatory Approvals, and (iv) to the extent permitted by the FTC, the DOJ or such other applicable Governmental Authority or other Person, give the other party the opportunity to attend and participate in such meetings and conferences. Any documents or other materials provided pursuant to this Section 5.01(c) may be redacted or withheld as necessary to address reasonable privilege or confidentiality concerns, and to remove references concerning the valuation of the Company or other competitively sensitive material, and the parties may, as each deems advisable, reasonably designate any material provided under this Section 5.01(c) as "outside counsel only material".

(d) Notwithstanding anything to the contrary in this Agreement, nothing in this Section 5.01 or elsewhere in this Agreement shall require the Investors to take any action with respect to any of their controlled Affiliates or their direct or indirect portfolio companies, including selling, divesting, conveying, holding separate, or otherwise limiting its freedom of action with respect to any assets, rights, products, licenses, businesses, operations, or interest therein, of any such Affiliates or any direct or indirect portfolio companies of investment funds advised or managed by one or more Affiliates of the Investors. The parties agree that all obligations of other parties related to regulatory approvals shall be governed exclusively by this Section 5.01.

Section 5.02 Corporate Actions. At any time that any Preferred Stock is outstanding, the Company shall (i) from time to time take all lawful action within its control to cause the authorized capital stock of the Company to include a sufficient number of authorized but unissued shares of Common Stock to satisfy the conversion requirements of all shares of the Preferred Stock then outstanding; and (ii) not effect any voluntary deregistration under the Exchange Act or any voluntary delisting with the NASDAQ (or any other national securities exchange upon which the Common Stock may subsequently be listed) in respect of the Common Stock other than in connection with a Fundamental Change (other than a delisting pursuant to the definition thereof) pursuant to which the Company satisfies in full its obligations under the Certificate of Designations. The Company agrees that is shall not register the Preferred Stock under Section 12 of the Exchange Act unless required to do so by applicable Law.

Section 5.03 Public Disclosure. The Investors and the Company shall consult with each other before issuing, and give each other the opportunity to review and comment upon,

any press release or other public statements with respect to the Transaction Documents or the Transactions, and shall not issue any such press release or make any such public statement prior to such consultation, except as may be required by applicable Law, Judgment, court process or the rules and regulations of any national securities exchange or national securities quotation system. The Investors and the Company agree that the initial press release to be issued with respect to the Transactions following execution of this Agreement shall be in a form agreed to by the parties hereto (the "Announcement"). Notwithstanding the foregoing, this Section 5.03 shall not apply to any press release or other public statement made by the Company or the Investors (a) which is consistent with the Announcement and does not contain any information relating to the Transactions that has not been previously announced or made public in accordance with the terms of this Agreement or (b) is made in the ordinary course of business and does not relate specifically to the signing of the Transaction Documents or the Transactions. Notwithstanding the foregoing, (i) this Section 5.03 shall not prohibit any disclosure of information concerning this Agreement in connection with any dispute between the parties hereto regarding this Agreement and (ii) the Investor Parties may, without consulting the Company, provide ordinary course communications regarding this Agreement and the transactions contemplated hereby in connection with financial reporting and fundraising activities to existing or prospective general and limited partners, equity holders, members, managers and investors of any Affiliates of such Person, which in each case are subject to customary confidentiality obligations.

Section 5.04 Confidentiality. The Investors will take reasonable precautions to safeguard the confidentiality of all Confidential Information; provided, however, that the Investors will be permitted to furnish and otherwise disclose Confidential Information: (i) to its Affiliates and its and its Affiliates' respective Representatives who have a reasonable need to know or receive any such Confidential Information and who are advised or made aware that such Confidential Information is confidential and instructed to comply with an obligation of confidentiality not less restrictive than as set forth in this Section 5.04; and (ii) to the extent that disclosure thereof is requested or required by any Law (including without limitation, any rule, regulation or policy statement of any national securities exchange or market on which the Investors' or their Affiliates' securities are listed), or any audit or inquiries by a regulator, bank examiner or self-regulatory organization. In the event an Investor or any of its Affiliates or Representative is requested or required to disclose Confidential Information pursuant to applicable Law, such Investor, Affiliate or Representative, as applicable will, except to the extent prohibited by applicable Law, as promptly as practicable give the Company notice of such request and the nature thereof so that the Company may seek an appropriate protective order. Notwithstanding the foregoing, the Investors and their respective Affiliates and Representatives may disclose such information, and need not provide such notice, in connection with a routine legal or regulatory process in the course of their or any of their respective Affiliates' or Representatives' businesses (including in response to oral questions, interrogatories or requests for information or documents) involving the Investors or their respective Affiliates or Representatives, as applicable, and a regulatory authority with jurisdiction over such Investor, Affiliate or Representative, as the case may be; provided that the such Investor, Affiliate or Representative shall inform the governmental or regulatory body of the confidential nature of such information and request such authority keep such information confidential, in accordance with such authority's policies and procedures. Each Investor agrees to be responsible for any breach of the terms of this Section 5.04 applicable to its Affiliates and Representatives by its Affiliates and Representatives, provided that any proceeding in respect of any such breach by any of such Affiliates' directors, officers, partners, members, employees or controlling persons will be brought against such Investor only.

Section 5.05 [Reserved].

Section 5.06 Transfer Restrictions.

(a) Until the thirty six (36)-month anniversary of the Closing Date, the Investor Parties will not Transfer:

(i) any Preferred Stock (or any Common Stock issued upon conversion of any Preferred Stock) to a Person who is known to be a Restricted Person (after reasonable inquiry); provided, that the foregoing shall not restrict the Investor Parties from Transferring their Preferred Stock (or any Common Stock issued upon conversion of any Preferred Stock) to a Restricted Person in connection with a merger, tender offer or exchange offer or other business combination, acquisition of assets or similar transaction or any Fundamental Change involving the Company or any of its Subsidiaries that, in each case, is approved by the Board;

(ii) any Common Stock issued upon conversion of any Preferred Stock to a Person or "group" (as defined in Section 13(d)(3) of the Exchange Act) that the Investor Parties know that, after giving effect to a proposed Transfer, would beneficially own greater than five percent (5%) of the then outstanding Common Stock; provided, that the foregoing shall not restrict the Investor Parties from Transferring any Common Stock issued upon conversion of any Preferred Stock to a Person or group in connection with a merger, tender offer or exchange offer or other business combination, acquisition of assets or similar transaction or any Fundamental Change involving the Company or any of its Subsidiaries that, in each case, is approved by the Board; or

(iii) any Preferred Stock to a Person or "group" (as defined in Section 13(d)(3) of the Exchange Act) that the Investor Parties know, at the time of the proposed Transfer, beneficially own at least three percent (3%) of the then outstanding Common Stock; provided, that the foregoing shall not restrict the Investor Parties from Transferring any Preferred Stock to a Person or group in connection with a merger, tender offer or exchange offer or other business combination, acquisition of assets or similar transaction or any Fundamental Change involving the Company or any of its Subsidiaries that, in each case, is approved by the Board;

provided, that, the forgoing restrictions will not apply to any Transfer undertaken (x) in any underwritten offering (including an underwritten block trade), (y) in broker transactions effected pursuant to Rule 144 or Rule 144A of the Securities Act or (z) to any Affiliate of an Investor Party.

(b) At any time at which the Investor Parties continue to meet the 25% Beneficial Holding Requirement and the Investor Parties' net beneficial ownership of shares Common Stock is not greater than or equal to the Applicable Threshold, the Investor Parties may not make any "short sale" (as defined in Rule 200 of Regulation SHO under the Exchange Act) of, grant any option for the purchase of, or enter into any hedging or similar transaction with the same economic effect as a "short sale" (as defined in Rule 200 of Regulation SHO under the Exchange Act) of or the purpose of which is to offset the loss which results from a decline in the market price of, any shares of Preferred Stock or Common Stock, or otherwise establishing or increasing, directly or indirectly, a put equivalent position, as defined in Rule 16a-1(h) under the Exchange Act, with respect to the Preferred Stock or Common Stock (collectively, "Hedging Arrangements"). The Investor Parties' net beneficial ownership referred to herein shall include any shares of Common Stock issuable upon conversion of the Preferred Stock beneficially owned by the Investor Parties as of such date without regard to any conversion restrictions (including Section 5.08).

(c) The Investors agree that, from the date that any Elliott Director is appointed to the Board until the date on which any such Elliott Director ceases to be a member of the Board, except as otherwise set forth in this Agreement, the Investors shall comply with the Company's trading policies and guidelines applicable to all directors of the Company.

(d) The restrictions set forth in this Section 5.06 shall terminate automatically upon the commencement by the Company or one of its significant Subsidiaries (as such term is defined in Rule 12b-2 under the Exchange Act) of bankruptcy, insolvency or other similar proceedings.

(e) Notwithstanding anything to the contrary (including any of the Company's policies), at any time from and after the Closing Date, (i) the Investor Parties shall be permitted to Transfer any or all of its Preferred Stock (or any Common Stock issued upon conversion of any Preferred Stock) in connection with a total return swap or a bona fide loan or other financing arrangement, including pledging, hypothecating or otherwise granting a security interest in shares of Preferred Stock and/or shares of Common Stock issued upon conversion of shares of Preferred Stock to one or more lending institutions as collateral or security for any bona fide loan, advance or extension of credit and any Transfer upon foreclosure (or in lieu of foreclosure) upon such shares of Preferred Stock or Common Stock (a "Permitted Loan"), and (ii) nothing shall prohibit or otherwise restrict the ability of any lender or other creditor or collateral agent under a Permitted Loan (including any agent or trustee on their behalf) or any Affiliate of the foregoing to foreclose upon, or accept a Transfer in lieu of foreclosure, and sell, dispose of or otherwise Transfer the applicable Preferred Stock or Common Stock mortgaged, hypothecated and/or pledged to secure the obligations of the borrower following an event of default (any of the foregoing, collectively, a "Foreclosure") under a Permitted Loan; provided, that, except if undertaken in a registered offering or an offering exempt from registration under Rule 144 or Rule 144A of the Securities Act, such lender or other creditor or collateral agent under a Permitted Loan or any Affiliate of the foregoing shall not sell, dispose of or otherwise Transfer such Preferred Stock or Common Stock to a Restricted Person without the Company's prior written consent (except as provided any the proviso to Section 5.06(a)); provided further, that in the event that any lender or other creditor or collateral agent under a Permitted Loan transaction (including any agent or trustee on their behalf) or any Affiliate of the foregoing exercises any rights or remedies in respect of the applicable Preferred Stock or Common Stock or any other collateral for any Permitted Loan, no lender, creditor, agent or trustee on their behalf or Affiliate of any of the foregoing (other than, for the avoidance of doubt, the Investor Parties) shall be entitled to any rights or have any obligations or be subject to any restrictions or limitations set forth in this Agreement

(f) Any attempted Transfer in violation of this Section 5.06 shall be null and void *ab initio.*

(g) So long as such Transfer is not violation of this Section 5.06, the Company shall cooperate with the Investor Parties in connection with the Transfer of any Preferred Stock (or any Common Stock issued upon conversion of any Preferred Stock), including providing reasonable and customary information (i) in connection with the relevant Investor Party's marketing efforts or any such potential transferee's due diligence or (ii) in order to comply with applicable securities Laws.

(h) For the avoidance of doubt, this Section 5.06 shall not limit any transfer, disposition or hedging of any securities of the Company held by any Investor Party other than the Preferred Stock and the Common Stock issuable upon conversion thereof.

Section 5.07 Legend. (a) All certificates or other instruments representing the Preferred Stock or Common Stock issued upon conversion of the Preferred Stock will bear a legend substantially to the following effect:

THE SECURITIES REPRESENTED BY THIS INSTRUMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR THE SECURITIES LAWS OF ANY STATE AND MAY NOT BE TRANSFERRED, SOLD OR

OTHERWISE DISPOSED OF EXCEPT PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER SUCH ACT OR SUCH LAWS, OR EXCEPT, WITH RESPECT TO ANY COMMON STOCK, WHILE A REGISTRATION STATEMENT RELATING THERETO IS IN EFFECT UNDER SUCH ACT AND APPLICABLE STATE SECURITIES LAWS.

THE SECURITIES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO TRANSFER AND OTHER RESTRICTIONS SET FORTH IN AN INVESTMENT AGREEMENT, DATED AS OF JANUARY 31, 2023, COPIES OF WHICH ARE ON FILE WITH THE SECRETARY OF THE ISSUER.

(i) Upon request of the applicable Investor Party, upon receipt by the Company of an opinion of counsel reasonably satisfactory to the Company to the effect that such legend is no longer required under the Securities Act and applicable state securities laws, the Company shall promptly cause the first paragraph of the legend to be removed from any certificate for any Preferred Stock or Common Stock to be Transferred in accordance with the terms of this Agreement and the second paragraph of the legend shall be removed upon the expiration of such transfer and other restrictions set forth in this Agreement (and, for the avoidance of doubt, immediately prior to any termination of this Agreement).

Section 5.08 Blocker Provisions.

(a) Notwithstanding any provision of the Preferred Stock to the contrary, and subject to Section 5.08(e), any Notice of Conversion (as defined in the Certificate of Designations) with respect to the Preferred Stock submitted by an Investor Party shall be deemed automatically not to have been so delivered, and the Company shall have no obligation to deliver any shares of Common Stock or make any other delivery with respect to such Notice of Conversion, to the extent that the delivery of any shares of Common Stock or any other security otherwise deliverable upon such conversion would result in the Investor Parties, together with their Affiliates or other persons whose beneficial ownership would be aggregated with the Investor Parties, in the aggregate, having beneficial ownership of shares of Common Stock or any other class of any equity security of the Company that is registered pursuant to Section 12 or Section 15 of the Exchange Act (a "Class") in excess of the Beneficial Ownership Limitation.

(b) For purposes of calculating beneficial ownership for purposes of this Section 5.08, the aggregate number of shares of Common Stock beneficially owned by the Investor Parties shall include (a) the aggregate number of shares of Common Stock issuable upon conversion of the Preferred Stock held by the Investor Parties; (b) the aggregate number of shares of Common Stock beneficially owned by the Investor Parties; and (c) the aggregate number of shares of Common Stock issuable upon exercise, conversion or exchange of any other securities of the Company beneficially owned by the Investor Parties; provided that such calculation shall exclude the number of shares of Common Stock which are issuable upon exercise, conversion or exchange of the unexercised, unconverted or unexchanged portion of the Preferred Stock and any other securities of the Company beneficially owned by the Investor Parties (including, without limitation, any convertible or exchangeable notes, convertible stock or warrants) that are subject to the limitation on beneficial ownership described in this Section 5.08 or a limitation on conversion, exchange or exercise analogous to the limitation contained in this Section 5.08. Any purported delivery to the Investor Parties of a number of shares or any other security upon conversion of the Preferred Stock, in either case, shall be void and have no effect to the extent, and only to the extent, that after such delivery, the Investor Parties would have beneficial ownership of shares of Common Stock or any Class in excess of the Beneficial Ownership Limitation. In the event that the issuance of shares of Common Stock to an Investor upon conversion of Preferred Stock results in the Investors being deemed to beneficially own, in the aggregate, more than the Beneficial Ownership Limitation (as determined under Section

13(d) of the Exchange Act), the shares issued in connection with such conversion of Preferred Stock (the "Conversion Shares") shall be deemed null and void and shall be cancelled ab initio, and the Investor shall not have the power to vote or to transfer the Conversion Shares.

(c) For purposes of this Section 5.08, "Beneficial Ownership Limitation" shall mean 4.99% of the number of outstanding shares of Common Stock or other Class, as applicable, in each case outstanding immediately after giving effect to such conversion. Subject to Section 5.08(e), the Investor Parties may, from time to time by written notice to the Company, increase or decrease the Beneficial Ownership Limitation to any other percentage specified in such notice; provided that any such increase will not be effective until the sixty-first (61st) day after such notice is delivered to the Company and provided further that the Beneficial Ownership Limitation may not be increased to an amount in excess of the Common Stock Cap Limitation (as defined in the Certificate of Designations).

(d) For purposes of this Section 5.08, in determining the number of outstanding shares of Common Stock, the Investor Parties may rely on the number of outstanding shares of Common Stock as reflected in (i) the Company's most recent Quarterly Report on Form 10-Q, Annual Report on Form 10-K, Current Report on Form 8-K or other public filing with the SEC, (ii) a more recent public announcement by the Company or (iii) any other more recent written notice by the Company, in each case setting forth the number of shares of Common Stock outstanding. Upon the written request of the Investor Parties, the Company shall within two (2) Business Days confirm in writing to the Investor Parties the number of shares of Common Stock then outstanding.

(e) The provisions of this Section 5.08 shall be construed, corrected and implemented in a manner so as to comply with the rules and regulations of NASDAQ and so as to effectuate the intended beneficial ownership limitation herein contained. The shares of Common Stock underlying the Preferred Stock in excess of the Beneficial Ownership Limitation shall not be deemed to be beneficially owned by the Investor Parties for any purpose, including for purposes of Section 13(d) or Rule 16a-1(a)(1) of the Exchange Act.

(f) For purposes of this Section 5.08, the Investor Parties shall be solely responsible for determining the number of shares that they beneficially own. The Company shall not at any time be under any duty or responsibility to the Investor Parties to determine the Investor Parties' beneficial ownership of shares of Common Stock or any Class, nor shall the Company have any responsibility to determine or monitor compliance with the terms of this Section 5.08, and the Company shall have no liability to the Investor Parties in connection with the provisions of this Section 5.08.

Section 5.09 Tax Matters.

(a) The Company and its paying agent shall be entitled to withhold Taxes on all payments on the Preferred Stock or Common Stock or other securities issued upon conversion of the Preferred Stock in each case to the extent required by applicable Law; provided, that to the extent that the Investors have previously delivered an appropriate IRS Form W-8 or W-9 to the Company establishing an exemption for U.S. federal withholding (including backup withholding), the Company shall not be permitted to withhold unless the Company has provided the Investors advance written notice of its intent to withhold at least five (5) days prior to the payment of the amount subject to withholding, and has given the Investors a reasonable opportunity to provide any form or certificate available to reduce or eliminate such withholding. Within a reasonable amount of time after making such withholding payment, the Company shall furnish the Investors with copies of any tax certificate, receipt or other documentation reasonably acceptable to the Investors evidencing such payment.

(b) The Company shall pay any and all documentary, stamp and similar issue or transfer Tax due on (x) the issuance of the Preferred Stock and (y) the issuance of shares of Common Stock upon conversion of the Preferred Stock. However, in the case of conversion of Preferred Stock, the Company shall not be required to pay any Tax or duty that may be payable in respect of any transfer involved in the issuance and delivery of shares of Common Stock or Preferred Stock to a beneficial owner other than the beneficial owner of the Preferred Stock immediately prior to such conversion, and no such issue or delivery shall be made unless and until the person requesting such issue has paid to the Company the amount of any such Tax or duty, or has established to the satisfaction of the Company that such Tax or duty has been paid.

(c) The parties hereby agree that Section 13 of the Certificate of Designations is incorporated by reference.

Section 5.10 Spin-Off Matters.

(a) The Company shall, and shall cause each of its Affiliates to, (i) consult in good faith with the Investors with respect to the structuring of a Spin-Off, and give reasonable and good faith consideration to any proposals or comments made by the Investors and their counsel, (ii) provide the Investors with a reasonable opportunity to review and comment upon (A) all Spin-Off Transaction Documents prior to execution thereof, (B) any registration statement (including any amendments or supplements thereto), to be filed by SpinCo with the SEC in connection such Spin-Off prior to such filing, and, in each case, give reasonable and good faith consideration to any comments made by the Investors and their counsel and (C) any information, other than publicly available information filed with the SEC in connection with the transactions contemplated hereby, contained in any filings with a Governmental Authority (including the SEC and the IRS or any other Taxing Authority) that relates to the Investors or this Agreement (which approval will not be unreasonably withheld, delayed or conditioned), (iii) keep the Investors apprised on a reasonably current basis of (A) the anticipated date and time of the consummation of such Spin-Off, (B) progress of any antitrust, regulatory or other notification or filing required in connection with the transactions contemplated by the Spin-Off Transaction Documents, (C) any material disputes that arise under or relate to the Spin-Off Transaction Documents and (D) material communications or submissions with the IRS or other Taxing Authority concerning the matters set forth herein, and (iv) without the consent of the Investors, not to be unreasonably withheld, delayed or conditioned, not consummate a Spin-Off without obtaining a Tax Opinion or Ruling.

(b) In the event a Standalone Spin-Off is consummated, in connection with the consummation of such Spin-Off:

(i) (A) the Company shall cause SpinCo to issue to the Company a number of shares of convertible preferred stock of SpinCo having an aggregate liquidation preference equal to the Specified Assumed Amount (the "SpinCo Preferred Stock") and having the designation, preferences, rights, privileges, powers, and terms and conditions, that are identical to those specified in the Certificate of Designations and (B) the Company shall, immediately following such issuance, issue such SpinCo Preferred Stock to the applicable Investor Parties in exchange for a number of shares of Preferred Stock having an aggregate liquidation preference equal to the Specified Assumed Amount provided, that, in each case of the foregoing clauses (A) and (B), such transactions shall be structured for U.S. federal income tax purposes as a distribution of preferred shares in SpinCo to the Investor Parties in respect of the Investor Parties' Preferred Stock in a transaction qualifying as tax-deferred to the Investors under Section 355 or Section 361 of the Code and the Investors, the Company and SpinCo shall otherwise use good faith efforts to structure such transactions in a tax efficient manner; and

(ii) the Company shall cause SpinCo to enter into an investor rights agreement and a registration rights agreement, in each case, with the Investors and/or their applicable Affiliates, and duly adopt and file a certificate of designation with the Secretary of State of the State of Delaware (or such other applicable jurisdiction), that provides the Investor Parties with rights and obligations that are identical to those set forth in Section 5.02, Section 5.04, Section 5.06, Section 5.07, Section 5.09, Section 5.13, Section 5.15, Section 5.16 and, if requested in writing by the Investors, Section 5.17, the Registration Rights Agreement and the Certificate of Designations, as applicable, in each case, with such changes as set forth in Annex I hereto and such additional changes to be agreed among the Company, the Investor and SpinCo. In addition, to the extent SpinCo has not done so on the date that the Standalone Spin-Off is consummated, SpinCo shall, as promptly as possible after the date thereof, apply to cause the aggregate number of shares of common stock issuable upon the conversion of the SpinCo Preferred Stock issued to the Investors pursuant to this Agreement and pursuant to the SpinCo certificate of designations to be approved for listing on the NASDAQ or other national securities exchange, subject to official notice of issuance; provided, that SpinCo shall promptly amend such application to account for any event that results in an adjustment to the conversion price of the SpinCo Preferred Stock.

Notwithstanding anything in this Section 5.10 to the contrary, if the Company announces a Standalone Spin-Off and then, prior to the consummation of such Standalone Spin-Off, the Company subsequently announces a Subsequent Transaction, the Company shall have no obligations under this Section 5.10(b) unless and until the Subsequent Transaction is terminated and the Company determines to undertake a Standalone Spin-Off.

Section 5.11 Use of Proceeds. The Company shall use the proceeds from the issuance and sale of the Acquired Shares (a) to pay for any costs, fees and expenses incurred in connection with the Transactions or (b) for general corporate purposes, including any potential Spin-Off.

Section 5.12 DTC Eligibility. Promptly following the Closing, the Company shall use commercially reasonable efforts to cause the shares of Preferred Stock to be eligible for resale through The Depository Trust Company.

Section 5.13 Financing Cooperation. From and after the Closing, if requested by an Investor Party, the Company will provide cooperation (with, in each case, all reasonable, documented out-of-pocket expenses, including legal expenses, incurred by the Company in connection with the foregoing, being borne by such Investor Party) in connection with such Investor Party obtaining any Permitted Loan, including with respect to the following: (i) entering into an issuer agreement (in customary form and substance reasonably satisfactory to the Company and the sources of the Permitted Loan) with each lender in connection with such transactions (which agreement may include agreements and obligations of the Company relating to procedures and specified time periods for effecting transfers and/or conversions upon Foreclosure, agreements to not hinder or delay exercises of remedies on Foreclosure, acknowledgments regarding organizational documents and corporate policy, if applicable, and certain acknowledgments regarding the pledged shares of Preferred Stock and/or shares of Common Stock issued upon conversion of shares of Preferred Stock and securities law status of the pledge arrangements and a specified list of Competitors (which, for the avoidance of doubt, shall only apply if such transaction is not undertaken in a registered offering or an offering exempt from registration under Rule 144 or Rule 144A of the Securities Act), (ii) using commercially reasonable efforts to (A) remove any restrictive legends on certificates representing pledged shares of Preferred Stock and/or shares of Common Stock issued upon conversion of shares of Preferred Stock and depositing any pledged shares of Preferred Stock and/or shares of Common Stock issued upon conversion of shares of Preferred Stock in book entry form on the books of The Depository Trust Company, in each case when eligible to do so

or otherwise as agreed with the transfer agent (and providing any necessary indemnities to the transfer agent in connection therewith) or (B) without limiting the generality of clause (A), if such shares of Preferred Stock or Common Stock are eligible for resale under Rule 144A, depositing such pledged shares of Preferred Stock and/or shares of Common Stock in book entry form on the books of The Depository Trust Company or other depository with customary representations and warranties from the applicable Investor Party or its applicable Affiliates regarding compliance with securities Laws, (iii) if so requested by such lender or counterparty, as applicable, re-registering on the books and records of the transfer agent the pledged shares of Preferred Stock and/or Common Stock in the name of the relevant lender, agent, counterparty, custodian or similar party to a Permitted Loan, with respect to a Permitted Loan as securities intermediary and only to the extent the Investor Parties (or its or their Affiliates) continue to beneficially own such pledged shares of Preferred Stock and/or Common Stock, (iv) entering into customary triparty agreements (in form and substance reasonably satisfactory to the Company and the sources of the Permitted Loan) with each lender and the applicable Investor Parties relating to the delivery of the applicable shares of Preferred Stock and/or Common Stock to the relevant lender for crediting to the relevant collateral accounts upon funding of the loan and payment of the purchase price including a right for such lender as a third party beneficiary of the Company's obligations hereunder and (v) such other cooperation and assistance as the Investor Parties may reasonably request (which cooperation and assistance, for the avoidance of doubt, shall not include any requirements that the Company deliver information, compliance certificates or any other materials typically provided by borrowers to lenders) that will not unreasonably disrupt the operation of the Company's business. Notwithstanding anything to the contrary in the preceding sentence, the Company's obligation to deliver an issuer agreement is conditioned on the Investors certifying to the Company in writing that (A) the loan agreement with respect to which the issuer agreement is being delivered constitutes a Permitted Loan being entered into in accordance with this Agreement, the Investors have pledged the Preferred Stock and/or the underlying shares of Common Stock as collateral to the lenders under such Permitted Loan and that the execution of such Permitted Loan and the terms thereof do not violate the terms of this Agreement, (B) to the extent applicable, whether the registration rights under the Registration Rights Agreement are being assigned to the lenders under that Permitted Loan and (C) the Investor Parties acknowledge and agree that the Company will be relying on such certificate when entering into the issuer agreement and any material inaccuracy in such certificate will be deemed a breach of this Agreement. The Investor Parties acknowledge and agree that the statements and agreements of the Company in an issuer agreement are solely for the benefit of the applicable lenders party thereto and that in any dispute between the Company and the Investor Parties under this Agreement the Investor Parties shall not be entitled to use the statements and agreements of the Company in an issuer agreement against the Company.

Section 5.14 State Securities Laws. Promptly following the date hereof, the Company shall use its reasonable best efforts to (a) make all filings with the SEC under the Securities Act and Exchange Act related to the execution of the Transaction Documents and the consummation of the transactions contemplated thereby in the time periods required by (including any extensions permitted by) the Securities Act and Exchange Act, as applicable, (b) obtain all necessary permits and qualifications, if any, or secure an exemption therefrom, required by any state or country prior to the offer and sale of Common Stock and/or Preferred Stock and (c) cause such authorization, approval, permit or qualification to be effective as of the Closing and as of any conversion of Preferred Stock; provided, that in connection therewith the Company shall not be required to qualify as a foreign corporation or to file a general consent to service of process in any jurisdiction or subject itself to taxation in any jurisdiction in which it is not otherwise subject to taxation on the date of this Agreement.

Section 5.15 Participation Rights.

(a) For the purposes of this Section 5.15, "Excluded Stock" shall mean (i) shares of equity securities issued by the Company as a stock dividend payable in shares of equity securities, or upon any subdivision or split-up of the outstanding shares of capital stock, (ii) the issuance of shares of equity securities (including upon exercise of options) to directors, employees or consultants of the Company pursuant to a Company Stock Plan or other stock option plan, restricted stock plan or other similar plan approved by the Board, (iii) securities issued pursuant to the conversion, exercise or exchange of the Preferred Stock issued to the Investors, (iv) shares of equity securities issued as consideration in connection with a "business combination" (as defined by the rules and regulations promulgated by the SEC) or as consideration in connection with bona fide acquisitions of securities or substantially all of the assets of another Person, business unit, division or business, (v) securities issued pursuant to acquisitions or strategic transactions (including, for the avoidance of doubt, whether structured as a merger, consolidation, asset or stock purchase, or other similar transaction); (vi) securities issued pursuant to the conversion, exercise or exchange of Preferred Stock, (vii) shares of a Subsidiary of the Company issued to the Company or a Subsidiary of the Company, (viii) securities of a joint venture (provided that no Affiliate (other than any Subsidiary of the Company) of the Company acquires any interest in such securities in connection with such issuance) or (ix) shares of equity securities to a third-party lender in connection with a bona fide borrowing by the Company that is primarily a debt financing transaction.

(b) For so long as the 50% Beneficial Holding Requirement is satisfied by the Investor Parties, if the Company or a Subsidiary of the Company proposes (x) to issue equity securities of any kind (the term "equity securities" shall include for these purposes Common Stock and any warrants, options or other rights to acquire, or any securities that are exercisable for, exchangeable for or convertible into, Common Stock or any other class of capital stock of the Company), other than Excluded Stock, or (y) any Covered Financing then, the Company shall:

(i) give written notice to the Investor Parties, no less than five (5) Business Days prior to the closing of such issuance, setting forth in reasonable detail (A) the designation and all of the terms and provisions of the securities proposed to be issued (the "Proposed Securities") or the Covered Financing, including, where applicable, the voting powers, preferences and relative participating, optional or other special rights, and the qualification, limitations or restrictions thereof and interest rate and maturity; (B) the price and other terms of the proposed sale of such securities or Covered Financing; (C) the amount of such securities proposed to be issued or the amount of the Covered Financing; and (D) such other information as the Investor Parties may reasonably request in order to evaluate the proposed issuance or Covered Financing (except that the Company shall not be required to deliver any information that has not been or will not be provided or otherwise made available to the proposed purchasers of the Proposed Securities or participants in the Covered Financing); and

(ii) offer to issue and sell to the Investor Parties, on such terms as the Proposed Securities are issued or the Covered Financing is consummated and upon full payment by the Investor Parties, a portion of the Proposed Securities or Covered Financing equal to a percentage determined by dividing (A) the number of shares of Common Stock the Investor Parties beneficially own (on an "as-converted basis" and without regard to the provisions set forth in Section 5.08 hereof) by (B) the total number of shares of Common Stock then outstanding (on an "as-converted, as-exercised basis" and without regard to the provisions set forth in Section 5.08 hereof) (such percentage, the "Participation Portion"); provided, however, that, subject to compliance with the terms and conditions set forth in Section 5.15(h), the Company shall not be required to offer to issue or sell to the Investor Parties (or to any of them) the portion of the Proposed Securities or Covered Financing that would require the Company to obtain stockholder approval in respect of the issuance of any Proposed Securities under the listing rules of NASDAQ or any other securities exchange or any other applicable Law (so long

as any Person with rights under Section 5.15 of the Apollo Investment Agreement is similarly limited on a proportional basis) (provided, further, however, that the Company shall still be obligated to provide written notice of such proposed issuance to the Investor Parties pursuant to Section 5.15(b)(i), which notice shall include a description of the Proposed Securities(including the number thereof) or Covered Financing that would require stockholder approval in respect of the issuance thereof (the "Restricted Issuance Information")).

(c) The Investors will have the option, on behalf of the applicable Investor Parties, exercisable by written notice to the Company, to accept the Company's offer and commit to purchase any or all of the securities offered to be sold by the Company or enter into such other Covered Financing as the Company proposes to enter to the Investor Parties, which notice must be given within three (3) Business Days after receipt of such notice from the Company. The closing of the exercise of such subscription or participation right shall take place simultaneously with the closing of the sale of the Proposed Securities or Covered Financing giving rise to such subscription or participation right; provided, however, that the closing of any purchase or other funding by any such Investor Party may be extended beyond the closing of the sale of the Proposed Securities or consummation of the Covered Financing giving rise to such preemptive right (but shall not delay such closing for any other purchaser or financing party) to the extent necessary to (i) obtain required approvals from any Governmental Authority or (ii) permit the Investor Parties to receive proceeds from calling capital pursuant to commitments made by its (or its affiliated investment funds') limited partners. If the Investors elect to purchase any securities or participate in a Covered Financing pursuant to this Section 5.15(c), the Investors, at their sole expense, shall make any filings required in connection with such participation under antitrust or other applicable Law promptly following the delivery to the Company of the corresponding notice of acceptance and shall use reasonable best efforts to obtain applicable antitrust clearance and/or approval under antitrust or other applicable Laws. Notwithstanding anything to the contrary contained herein, if the Company desires to modify or amend the terms and conditions of the offer prior to the expiration of the offering period described above, the Company shall deliver to the Investors a new notice and the Investors will have the option, on behalf of the applicable Investor Parties, exercisable by written notice to the Company, to accept the Company's offer and commit to purchase any or all of the securities offered to be sold by the Company to the Investor Parties, or participate in any or all of a Covered Financing, which notice must be given within three (3) Business Days after receipt of such new notice from the Company.

(d) Upon the expiration of the offering period described above, the Company will be free to sell such Proposed Securities that the Investor Parties have not elected to purchase or enter into a Covered Financing that the Investor Parties have not elected to participate in during the ninety (90) days following such expiration on terms and conditions no more favorable to the purchasers thereof than those offered to the Investor Parties in the notice delivered in accordance with Section 5.15(b). Any Proposed Securities offered or sold by the Company or Covered Financing after such ninety (90)-day period must be reoffered to the Investor Parties pursuant to this Section 5.15.

(e) The election by any Investor Party not to exercise its subscription or participation rights under this Section 5.15 in any one instance shall not affect their right as to any subsequent proposed issuance.

(f) Notwithstanding anything in this Section 5.15 to the contrary, the Company will not be deemed to have breached this Section 5.15 if not later than thirty (30) Business Days following the issuance of any Proposed Securities or entry into a Covered Financing in contravention of this Section 5.15, the Company or the transferee of such Proposed Securities or party to such Covered Financing offers to sell a portion of such equity securities or additional equity securities of the type(s) or enter into a financing arrangement of the type(s) in

question to each Investor Party so that, taking into account such previously-issued Proposed Securities and any such additional Proposed Securities, or such previous Covered Financing and such additional proposed financing, each Investor Party will have had the right to purchase or subscribe for Proposed Securities or participate in the Covered Financing in a manner consistent with the allocation and other terms and upon the same economic and other terms provided for in Section 5.15(b) and Section 5.15(c).

(g) In the case of an issuance subject to this Section 5.15 for consideration in whole or in part other than cash, including securities acquired in exchange therefor (other than securities by their terms so exchangeable), the consideration other than cash shall be deemed to be the Fair Market Value thereof. Notwithstanding anything in this Section 5.15 to the contrary, the Investors' participation rights shall not include an offering of securities acquired in exchange for the Convertible Notes.

(h) In the event that the Company is not required to offer or reoffer to the Investor Parties any Proposed Securities because such issuance would require the Company to obtain stockholder approval in respect of the issuance of any Proposed Securities under the listing rules of NASDAQ or any other securities exchange or any other applicable Law, the Company shall, upon the Investor Parties' reasonable request delivered to the Company in writing within no later than three (3) Business Days following its receipt of the written notice of such issuance to the Investor Parties pursuant to Section 5.15(b)(i) (together with the Restricted Issuance Information), at the Investor Parties' election:

(i) waive the restrictions set forth in paragraph 1 of the Elliott Letter Agreement solely to the extent necessary to permit any Investor Party to acquire such number of securities of the Company (including Common Stock) equivalent to its Participation Portion of the Proposed Securities such Investor Party would have been entitled to purchase had it been entitled to acquire such Proposed Securities pursuant to Section 5.15(c) (provided, that such request by Investor Parties shall not be deemed to be a violation of the Elliott Letter Agreement);

(ii) consider and discuss in good faith modifications proposed by the Investor Parties to the terms and conditions of such portion of the Proposed Securities which would otherwise be issued to the Investor Parties such that the Company would not be required to obtain stockholder approval in respect of the issuance of such Proposed Securities as so modified; and/or

(iii) solely to the extent that stockholder approval is required in connection with the issuance of equity securities to Persons other than the Investor Parties, take such actions as may be reasonably necessary to seek stockholder approval in respect of the issuance of any Proposed Securities to the Investor Parties.

Section 5.16 Section 16 Matters. If the Company becomes a party to a consolidation, merger or other similar transaction that may result in the Investors, their respective Affiliates, or any Elliott Director being deemed to have made a disposition of equity securities of the Company or derivatives thereof for purposes of Section 16 of the Exchange Act, and if an Elliott Director is serving on the Board at such time or has served on the Board during the preceding six (6) months, then (i) the Board will pre-approve such disposition of equity securities or derivatives thereof for the express purpose of exempting the Investors', their respective Affiliates' and the Elliott Director's interests (to the extent the Investors or their respective Affiliates may be deemed to be "directors by deputization") in such transaction from Section 16(b) of the Exchange Act pursuant to Rule 16b-3 thereunder and (ii) if the transaction involves (A) a merger or consolidation to which the Company is a party and Company capital stock is, in whole or in part, converted into or exchanged for equity securities of a different issuer, (B) a

potential acquisition by the Investors, the Investors' Affiliates and/or any Elliott Director of equity securities of such other issuer or derivatives thereof and (C) an Affiliate or other designee of the Investors or their respective Affiliates that will serve on the board of directors (or its equivalent) of such other issuer, then if the Investors require that the other issuer pre-approve any acquisition of equity securities or derivatives thereof for the express purpose of exempting the interests of any director or officer of the Company or any of its Subsidiaries in such transactions from Section 16(b) of the Exchange Act pursuant to Rule 16b-3 thereunder, the Company shall use reasonable best efforts to request that such other issuer pre-approve any such acquisitions of equity securities or derivatives thereof for the express purpose of exempting the interests of the Investors', their respective Affiliates' and any Elliott Director's (for the Investors and/or their respective Affiliates, to the extent such persons may be deemed to be "directors by deputization" of such other issuer) in such transactions from Section 16(b) of the Exchange Act pursuant to Rule 16b-3 thereunder.

Section 5.17 Information Rights.

(a) For so long as the 25% Beneficial Holding Requirement is satisfied by the Investor Parties, to the extent requested in writing by the Investors, the Company agrees promptly to provide the Investors with the same information and access to members of the Company's management team as provided to lenders under the Credit Agreement or the Indenture (or, in each case, any replacement or refinancing thereof) or any other senior indebtedness of the Company.

(b) Individuals associated with the Investor Parties may from time to time serve on the Board or the equivalent governing body of the Company's Subsidiaries. The Company, on its behalf and on behalf of its Subsidiaries, recognizes that such individuals (i) will from time to time receive non-public information concerning the Company and its Subsidiaries, and (ii) may (subject to the obligation to maintain the confidentiality of such information in accordance with Section 5.04) share such information with other individuals associated with the Investor Parties who have a need to know such information for the purpose of facilitating support to such individuals in their capacity as members of the Board or such equivalent governing body or enabling the Investor Parties, as equityholders, to better evaluate the Company's performance and prospects; provided, that such other individuals are informed about the confidential nature of such information and agree in writing to maintain the confidentiality of such information consistent with the confidentiality obligations under Section 5.04.

(c) Without limiting its obligations under Section 5.06(c), the Company acknowledges that neither the Investors nor any of their respective Affiliates owes the Company or any of its Affiliates any duty that would either restrain the Investors or any of their respective Affiliates from purchasing, selling or otherwise trading in any securities of the Company or any derivatives of such securities, in each case, in compliance with applicable securities Laws, and nothing in this Agreement shall be deemed to create any such duty. The Company agrees that, upon the written request of an Investor, it will confirm to the Investors in writing whether the Company is in an Open Window as promptly as practicable (and within no more than one Business Day) after such request. "Open Window" means a period in which (i) the Company does not have in place any restrictions on the ability of members of the Board to trade in the securities of the Company or (ii) the Company is buying, selling or offering to sell securities of the Company in the public markets.

Article VI

Survival

Section 6.01 Survival. All of the covenants or other agreements of the parties contained in this Agreement shall survive until fully performed or fulfilled, unless and to the extent that non-compliance with such covenants or agreements is waived in writing by the party entitled to such performance. All representations and warranties contained in this Agreement (including the schedules and the certificates delivered pursuant hereto) will survive the Closing Date, with respect to the representations and warranties made at the Closing Date until the twelve (12) month anniversary of the Closing; provided, that the Fundamental Representations shall survive the Closing for forty-eight (48) months following the Closing; provided, further that nothing herein shall relieve any party of liability for any inaccuracy or breach of such representation or warranty to the extent that any good faith allegation of such inaccuracy or breach is made in writing prior to such expiration by a Person entitled to make such claim pursuant to the terms and conditions of this Agreement. For the avoidance of doubt, claims may be made with respect to the breach of any representation, warranty or covenant until the applicable survival period therefor as described above expires. Notwithstanding anything in this Agreement to the contrary, subject to Section 7.13, (a) in no event will the Investor Related Parties, collectively, have any liability (including damages for fraud or breach, whether willful, intentional, unintentional or otherwise (including willful breach) or monetary damages in lieu of specific performance) in the aggregate in excess of the amount of the Purchase Price, and (b) in no event will the Company Related Parties, collectively, have any liability in the aggregate in excess of the amount of the Purchase Price, except in the case of fraud.

Article VII

Miscellaneous

Section 7.01 Amendments; Waivers. Subject to compliance with applicable Law, this Agreement may be amended or supplemented in any and all respects only by written agreement of the parties hereto.

Section 7.02 Extension of Time, Waiver, Etc. The Company and the Investors may, subject to applicable Law, (a) waive any inaccuracies in the representations and warranties of the other party contained herein or in any document delivered pursuant hereto, (b) extend the time for the performance of any of the obligations or acts of the other party or (c) waive compliance by the other party with any of the agreements contained herein applicable to such party or, except as otherwise provided herein, waive any of such party's conditions. Notwithstanding the foregoing, no failure or delay by the Company or the Investors in exercising any right hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right hereunder. Any agreement on the part of a party hereto to any such extension or waiver shall be valid only if set forth in an instrument in writing signed on behalf of such party.

Section 7.03 Assignment.

(a) Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned, in whole or in part, by operation of Law or otherwise, by any of the parties hereto without the prior written consent of the other party hereto; provided, however, that (A) without the prior written consent of the Company, the Investors or any Investor Party may assign its rights, interests and obligations set forth in (i) this Agreement, in whole or in part, to one or more of their Affiliates or (ii) Section 5.02 and, to the extent the assignment is made in connection with a Transfer of at least 10% of the then outstanding Preferred Stock (or any Common Stock issued upon conversion of such Preferred Stock), the rights, interests and obligations set forth in the Registration Rights Agreement, to a Third Party, so long as in each case of the foregoing clauses (i) and (ii), the assignee shall agree in writing to be bound by the provisions of this Agreement and, if applicable, the Registration Rights

Agreement, including the rights, interests and obligations so assigned, (B) without the prior written consent of the Company, the Investors may grant a security interest in its respective rights (but not its obligations) under this Agreement in connection any Permitted Loan and (C) if the Company consolidates or merges with or into any Person and the Common Stock is, in whole or in part, converted into or exchanged for securities of a different issuer in a transaction that does not constitute a Fundamental Change, then as a condition to such transaction the Company will cause such issuer to assume all of the Company's rights and obligations under this Agreement in a written instrument delivered to the Investors; provided, further that no such assignment under clause (A) above will relieve the Investors of their respective obligations hereunder prior to the Closing. Subject to the immediately preceding sentence, this Agreement shall be binding upon, inure to the benefit of, and be enforceable by, the parties hereto and their respective successors and permitted assigns.

(b) The Investors understand and agree that the rights and obligations set forth under Section 5.01, Section 5.03, Section 5.08, Section 5.10, Section 5.13, Section 5.15, Section 5.16 and Section 5.17 (collectively, the "Initial Investor Rights") shall inure solely to the benefit of the Investor Parties and, notwithstanding anything in this Agreement to the contrary, the Investors shall not Transfer or assign, in whole or in part, by operation of Law or otherwise, any or all of the Initial Investor Rights to any Person (other than an Affiliate as otherwise permitted by this Agreement).

Section 7.04 Counterparts. This Agreement may be executed in one or more counterparts (including by facsimile or electronic mail (including pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000, e.g., www.docusign.com)), each of which shall be deemed to be an original but all of which taken together shall constitute one and the same agreement, and shall become effective when one or more counterparts have been signed by each of the parties hereto and delivered to the other parties hereto.

Section 7.05 Entire Agreement; No Third-Party Beneficiaries. This Agreement, including the Company Disclosure Letter, together with the other Transaction Documents, the Certificate of Designations, the Elliott Letter Agreement and that certain confidentiality agreement, dated June 7, 2022, between the Company and Elliott (as amended as of the date hereof), constitutes the entire agreement, and supersedes all other prior agreements and understandings, both written and oral, among the parties and their Affiliates, or any of them, with respect to the subject matter hereof and thereof. No provision of this Agreement shall confer upon any Person other than the parties hereto and their permitted assigns any rights or remedies hereunder; provided, that Section 7.13 shall be for the benefit of and fully enforceable by each of the Investor Related Parties.

Section 7.06 Governing Law; Jurisdiction.

(a) This Agreement shall be governed by, and construed in accordance with, the laws of the State of Delaware applicable to contracts executed in and to be performed entirely within that State, regardless of the laws that might otherwise govern under any applicable conflict of Laws principles.

(b) All Actions arising out of or relating to this Agreement shall be heard and determined in the Chancery Court of the State of Delaware (or, if the Chancery Court of the State of Delaware declines to accept jurisdiction over any Action, any state or federal court within the State of Delaware) and the parties hereto hereby irrevocably submit to the exclusive jurisdiction and venue of such courts in any such Action and irrevocably waive the defense of an inconvenient forum or lack of jurisdiction to the maintenance of any such Action. The consents to jurisdiction and venue set forth in this Section 7.06 shall not constitute general consents to service of process in the State of Delaware and shall have no effect for any purpose except as

provided in this paragraph and shall not be deemed to confer rights on any Person other than the parties hereto. Each party hereto agrees that service of process upon such party in any Action arising out of or relating to this Agreement shall be effective if notice is given by overnight courier at the address set forth in Section 7.09 of this Agreement. The parties hereto agree that a final judgment in any such Action shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by applicable Law; provided, however, that nothing in the foregoing shall restrict any party's rights to seek any post-judgment relief regarding, or any appeal from, a final trial court judgment.

Section 7.07 Specific Enforcement. The parties hereto agree that irreparable damage for which monetary relief, even if available, would not be an adequate remedy, would occur in the event that any provision of this Agreement is not performed in accordance with its specific terms or is otherwise breached. The parties acknowledge and agree that (a) the parties shall be entitled to seek an injunction or injunctions, specific performance or other equitable relief to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereof in the courts described in Section 7.06 without proof of damages or otherwise (in each case, subject to the terms and conditions of this Section 7.07), this being in addition to any other remedy to which they are entitled under this Agreement and (b) the right of specific enforcement is an integral part of the Transactions and without that right, neither the Company nor the Investors would have entered into this Agreement. The parties hereto agree not to assert that a remedy of specific enforcement is unenforceable, invalid, contrary to Law or inequitable for any reason, and agree not to assert that a remedy of monetary damages would provide an adequate remedy or that the parties otherwise have an adequate remedy at law. The parties hereto acknowledge and agree that any party seeking an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement in accordance with this Section 7.07 shall not be required to provide any bond or other security in connection with any such order or injunction.

Section 7.08 WAIVER OF JURY TRIAL. EACH PARTY HERETO ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE IT HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT AND ANY OF THE AGREEMENTS DELIVERED IN CONNECTION HEREWITH OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, (B) IT UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF SUCH WAIVER, (C) IT MAKES SUCH WAIVER VOLUNTARILY AND (D) IT HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVER AND CERTIFICATIONS IN THIS SECTION 7.08.

Section 7.09 Notices. All notices, requests and other communications to any party hereunder shall be in writing and shall be deemed given if delivered personally, emailed (which is confirmed) or sent by overnight courier (providing proof of delivery) to the parties at the following addresses:

(a) If to the Company, to it at:

Western Digital Corporation

5601 Great Oaks Parkway
San Jose, California
Attention: Chief Legal Officer
Email: Michael.Ray@wdc.com

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

Skadden, Arps, Slate, Meagher & Flom LLP
525 University Avenue
Palo Alto, CA 94301
Attention: Thomas J. Ivey
Email: thomas.ivey@skadden.com

(b) If to the Investors or any Investor Party, to the Investors at:

c/o Elliott Investment Management, L.P.
360 S. Rosemary Ave., 18th Floor
West Palm Beach, FL 33401
Attention: Jason Genrich
Email: jgenrich@elliottmgmt.com

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

Gibson, Dunn & Crutcher LLP
200 Park Avenue
New York, NY 10166
Attention: Richard J. Birns; Stewart L. McDowell
Email: rbirns@gibsondunn.com; smcdowell@gibsondunn.com

or such other address or email address as such party may hereafter specify by like notice to the other parties hereto. All such notices, requests and other communications shall be deemed received on the date of actual receipt by the recipient thereof if received prior to 5:00 p.m. local time in the place of receipt and such day is a Business Day in the place of receipt. Otherwise, any such notice, request or communication shall be deemed not to have been received until the next succeeding Business Day in the place of receipt.

Section 7.10 Severability. If any term, condition or other provision of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal or incapable of being enforced by any rule of Law or public policy, all other terms, provisions and conditions of this Agreement shall nevertheless remain in full force and effect. Upon such determination that any term, condition or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible to the fullest extent permitted by applicable Law.

Section 7.11 Expenses. Except as otherwise expressly provided herein or in any other Transaction Document, all costs and expenses, including fees and disbursements of counsel, financial advisors and accountants, incurred in connection with this Agreement and the Transactions and other transactions between the Company and the Investors or their Affiliates shall be paid by the party incurring such costs and expenses; provided, that at the Closing, the Company shall reimburse the Investors for expenses relating to the Transactions and other transactions between the Company and the Investors or their Affiliates (payable in cash or by offset against the Purchase Price) in an amount equal to $4,700,000.00.

Section 7.12 Interpretation.

(a) When a reference is made in this Agreement to an Article, a Section, Exhibit or Schedule, such reference shall be to an Article of, a Section of, or an Exhibit or Schedule to, this Agreement unless otherwise indicated. The table of contents and headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. Whenever the words "include", "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation". Whenever the words "ordinary course of business" are used in this Agreement, they shall be deemed to be followed by the words "consistent with past practice". The words "hereof", "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement unless the context requires otherwise. The words "date hereof" when used in this Agreement shall refer to the date of this Agreement. The terms "or", "any" and "either" are not exclusive. The word "extent" in the phrase "to the extent" shall mean the degree to which a subject or other thing extends, and such phrase shall not mean simply "if". The word "will" shall be constructed to have the same meaning and affect as the word "shall". The words "made available to the Investors" and words of similar import refer to documents (A) posted to the Intralinks Datasite for Project Wales by or on behalf of the Company or (B) delivered in Person or electronically to the Investors or their respective Representatives, in each case no later than one (1) Business Day prior to the date hereof. All accounting terms used and not defined herein shall have the respective meanings given to them under GAAP. All terms defined in this Agreement shall have the defined meanings when used in any document made or delivered pursuant hereto unless otherwise defined therein. The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such term. In the event that the Common Stock is listed on a national securities exchange other than the NASDAQ, all references herein to NASDAQ shall be deemed to be references to such other national securities exchange. Any agreement, instrument or statute defined or referred to herein or in any agreement or instrument that is referred to herein means such agreement, instrument or statute as from time to time amended, modified or supplemented, including (in the case of agreements or instruments) by waiver or consent and (in the case of statutes) by succession of comparable successor statutes and references to all attachments thereto and instruments incorporated therein. Unless otherwise specifically indicated, all references to "dollars" or "$" shall refer to the lawful money of the United States. References to a Person are also to its permitted assigns and successors. When calculating the period of time between which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period shall be excluded (unless, otherwise required by Law, if the last day of such period is not a Business Day, the period in question shall end on the next succeeding Business Day).

(b) The parties hereto have participated jointly in the negotiation and drafting of this Agreement and, in the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as jointly drafted by the parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any party hereto by virtue of the authorship of any provision of this Agreement.

Section 7.13 Non-Recourse. Each party hereto agrees, on behalf of itself and its Affiliates and its and their present or former directors, officers, stockholders, partners, members or employees, that all Actions, claims, obligations, liabilities or causes of action (whether in Contract or in tort, in Law or in equity or otherwise, or granted by statute or otherwise, whether by or through attempted piercing of the corporate, limited partnership or limited liability company veil or any other theory or doctrine, including alter ego or otherwise) that may be based upon, in respect of, arise under, out or by reason of, be connected with, or relate in any manner to: (A) this Agreement or any other Transaction Document, or any of the transactions contemplated hereunder or thereunder, (B) the negotiation, execution or performance of this Agreement or any of the other Transaction Documents (including any representation or warranty

made in, in connection with, or as an inducement to, this Agreement or any of the other Transaction Documents), (C) any breach or violation of this Agreement or any other of the other Transaction Documents and (D) any failure of any of the transactions contemplated hereunder or under any of the other Transaction Documents or any other agreement referenced herein or therein to be consummated, in each case, may be made only against (and are those solely of) the Persons that are, in the case of this Agreement, expressly identified as parties to this Agreement or, in the case of any of the other Transaction Documents, Persons that are expressly identified as parties to such other Transaction Documents and in accordance with, and subject to the terms and conditions of this Agreement or such other Transaction Documents, as applicable. In furtherance and not in limitation of the foregoing and notwithstanding anything contained in this Agreement or any of the other Transaction Documents to the contrary and without limiting the foregoing or any other agreement referenced herein or therein or otherwise to the contrary, each party hereto covenants, agrees and acknowledges on behalf of itself and its respective Affiliates and its and their present or former directors, officers, stockholders, partners, members or employees, that no recourse under this Agreement or any of the other Transaction Documents or in connection with any of the transactions contemplated hereunder or thereunder shall be sought or had against any other Person, including any Investor Related Party, and no other Person, including any Investor Related Party, shall have any liabilities or obligations (whether in Contract or in tort, in Law or in equity or otherwise, or granted by statute or otherwise, whether by or through attempted piercing of the corporate, limited partnership or limited liability company veil or any other theory or doctrine, including alter ego or otherwise) for any claims, causes of action, obligations or liabilities arising under, out of, in connection with or related in any manner to the items in the immediately preceding clauses (A) through (D), it being expressly agreed and acknowledged that no personal liability or losses whatsoever shall attach to, be imposed on or otherwise be incurred by any of the aforementioned, as such, arising under, out of, in connection with or related in any manner to the items in the immediately preceding clauses (A) through (D), in each case, except for claims that the Company or the Investor Parties, as applicable, may assert: (i) against any Person that is party to and solely pursuant to the terms and conditions of, Section 5.04 or (ii) against the Investor Parties solely in accordance with, and pursuant to the terms and conditions of, this Agreement. Notwithstanding anything to the contrary in this Agreement or any of the other Transaction Documents or otherwise, no party hereto or any Investor Related Party shall be responsible or liable for any multiple, consequential, indirect, special, statutory, exemplary or punitive damages or lost profits, opportunity costs, loss of business reputation, diminution in value or damages based upon a multiple of earnings or similar financial measure which may be alleged as a result of this Agreement or any of the other Transaction Documents or any of the transactions contemplated hereunder or thereunder, or the termination or abandonment of any of the foregoing.

[*Remainder of page intentionally left blank*]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered as of the date first above written.

WESTERN DIGITAL CORPORATION

By: /s/ Wissam Jabre
Name: Wissam Jabre
Title: Executive Vice President and Chief Financial Officer

ELLIOTT ASSOCIATES, L.P.

By: Elliott Investment Management L.P., as Attorney-in-Fact

By: /s/ Elliot Greenberg
Name: Elliot Greenberg
Title: Vice President

ELLIOTT INTERNATIONAL, L.P.

By: Hambledon, Inc., its General Partner
By: Elliott Investment Management L.P., as Attorney-in-Fact

By: /s/ Elliot Greenberg
Name: Elliot Greenberg
Title: Vice President

Annex I

The definition of "**Spin-Co FMV**" to be set forth in the Certificate of Designations with respect to the SpinCo Preferred Stock shall be amended as follows:

"Spin-Co FMV" means the average of the Daily VWAP of a Spin-Off Transaction Share over the twenty (20) consecutive Trading Days immediately following but including the Spin-Off Ex-Dividend Date; *provided*, that if the ratio of Spin-Off Transaction Shares to Common Stock (the **"Spin-Off Ratio"**) is not 1:1 in connection with a Specified Spin-Off Transaction or a Standalone Specified Spin-Off Transaction, then the Spin-Co FMV used to calculate the Spin-Off Transaction Adjustment Ratio or the Spin-Co Spin-Off Transaction Adjustment Ratio, as applicable, will be multiplied by the Spin-Off Ratio.

Exhibit 31.1

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
David V. Goeckeler
Chief Executive Officer

Dated: May 10, 2023

Exhibit 31.2

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

I, Wissam Jabre, 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/ Wissam Jabre

Wissam Jabre

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

Dated: May 10, 2023

Exhibit 32.1

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 March 31, 2023 (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
David V. Goeckeler
Chief Executive Officer

Dated: May 10, 2023

Exhibit 32.2

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 March 31, 2023 (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/ Wissam Jabre

Wissam Jabre

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

Dated: May 10, 2023