

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 8-K
CURRENT REPORT
PURSUANT TO SECTION 13 or 15(d) OF THE
SECURITIES EXCHANGE ACT OF 1934

Date of report (Date of earliest event reported) December 23, 1993

WESTERN DIGITAL CORPORATION

(Exact Name of Registrant as Specified in Charter)

Delaware	1-8703	95-2647125
-----	-----	-----
(State or Other Jurisdiction of Incorporation)	(Commission File Number)	(IRS Employer Identification No.)

8105 Irvine Center Drive, Irvine, California	92718
-----	-----
(Address of Principal Executive Offices)	(Zip Code)

Registrant's telephone number, including area code (714) 932-5000

N/A

(Former Name or Former Address, if Changed Since Last Report)

- Item 2. ACQUISITION OR DISPOSITION OF ASSETS.
On December 23, 1993, Western Digital Corporation ("Western Digital") sold its Irvine, California silicon wafer fabrication facility and related assets to the Semiconductor Products Sector of Motorola, Inc. ("Motorola") for approximately \$110.6 million (\$103.9 million in cash and a \$6.7 million note payable over the 60-day period after closing), plus certain other considerations, including the assumption by Motorola of equipment leases associated with the facility. Concurrent with the sale, Western Digital entered into a supply contract for at least two years whereby Motorola will supply Western Digital with a significant portion of its silicon wafer requirements. The agreements with Motorola are a result of arms-length negotiations between the parties.
- ITEM 7. FINANCIAL STATEMENTS, PRO FORMA FINANCIAL INFORMATION AND EXHIBITS.
(c) Exhibits.

Exhibit	Description
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1	Asset Purchase Agreement dated December 16, 1993 by and between Motorola, Inc. and Western Digital regarding the sale and purchase of Western Digital's wafer fabrication facilities and certain related assets.
2	Supply Agreement dated December 16, 1993 by and between Motorola, Inc. and Western Digital regarding the supply

of wafers to Western Digital.

2

3

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

WESTERN DIGITAL CORPORATION

Date: January 4, 1994

By: ROBERT L. ERICKSON
Robert L. Erickson
Vice President, Law and
Secretary

3

4

EXHIBIT INDEX

Exhibit Number -----	Description -----	Sequentially Numbered Page -----
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2	Supply Agreement dated December 16, 1993 by and between Motorola, Inc. and Western Digital regarding the supply of wafers to Western Digital (confidential treatment is being sought).	

ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement is dated as of December 16, 1993 (the "Agreement") and is by and between Motorola, Inc., a Delaware corporation whose principal executive offices are at 1303 East Algonquin Road, Schaumburg, IL 60196 ("Motorola"), and Western Digital Corporation, a Delaware corporation whose principal executive offices are at 8105 Irvine Center Drive, Irvine, California 92718 (the "Company").

Subject to the terms and conditions hereinafter set forth, Motorola desires to purchase the Company's wafer fabrication facilities at 1 Banting in Irvine, California (the "Banting Site") and certain related assets in exchange for the consideration described in this Agreement. The Company is willing to sell, or cause to be sold, such facilities and assets for this consideration. In order to induce Motorola to acquire such facilities and assets, the Company is prepared to make certain representations, warranties and covenants and provide certain indemnities and other protections.

For purposes of this Agreement, the following terms shall be defined as follows:

"Affiliate" of any Person means any other Person directly or indirectly controlling (within the meaning of Rule 12b-2 under the Exchange Act as in effect on the Closing Date), or directly or indirectly controlled by or under direct or indirect common control with such Person.

"Person" means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated organization or Governmental Authority.

"Subsidiary" of any Person shall mean a corporation, company or other entity (i) 100% of whose outstanding shares of securities (representing the right to vote for the election of directors or other managing authority) are, or (ii) which does not have outstanding shares of securities (as may be the case in a partnership, joint venture or unincorporated association), but 100% of whose ownership interest representing the right to make decisions for such other entity is, now or hereafter owned or controlled, directly or indirectly, by such Person, but such corporation, company or other entity shall be deemed to be a Subsidiary only so long as such ownership or control exists.

"Applicable Environmental Law" shall mean any statute, regulation, rule, order, or law that regulates or prohibits the use, sale, treatment, disposal, storage, of any Hazardous Material (as defined below), including but not limited to the following federal laws: the Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act, the Federal Water Pollution Control Act,

December 16, 1993
Revision 7

Page 1

the Clean Air Act, the Hazardous Materials Transportation Act, the Clean Water Act and all applicable California laws concerning Hazardous Materials.

"Hazardous Material" shall mean any substance that is prohibited or regulated by Applicable Environmental Law.

"Joint Use Agreement" shall mean the Joint Use Agreement executed concurrently herewith pursuant to which, on and after the Closing Date, the Company will occupy and use certain portions of the facilities at the Banting Site for a limited period of time as set forth therein.

"Wafer Supply Agreement" shall mean the Supply Agreement executed

concurrently herewith (to be effective as of the Closing Date) pursuant to which Motorola will manufacture and sell semiconductor wafers to the Company in accordance with the terms thereof.

Accordingly, the parties agree as follows:

1. Purchase of Assets; Assumption of Liabilities.

1.01 Purchase.

At the Closing Date (as defined in Section 6 below), except as set forth in Section 1.03 below, the Company shall transfer and deliver to Motorola, or cause to be transferred and delivered to Motorola, by appropriate instruments in a form reasonably satisfactory to Motorola, and Motorola shall acquire and accept, for the consideration hereinafter provided, all right, title and interest in and to all of the assets and properties of the Company located at the Banting Site including but not limited to:

- (a) the real property at the Banting Site, as legally described in Schedule 1.01 (a), comprised of parcels 1 to 3, inclusive, of parcel map no. 89-404, in the City of Irvine, County of Orange California, as per map recorded in book 269, pages 19 to 21, inclusive, of parcel maps, in the office of the County Recorder of said County, including such parcels of land and all buildings, improvements, structures, fixtures and all rights, privileges and easements appurtenant to the land, including all development rights, air rights, water, water rights and water stock relating to the land and any other easements, rights-of-way or appurtenances used in connection with the beneficial use and enjoyment of such parcels of land (the "Real Property");
- (b) all tangible personal property owned by the Company located at the Banting Site, including without limitation furniture, equipment, materials,

December 16, 1993
Revision 7

Page 2

3

- raw material and work in process inventories, supplies and consumable items;
- (c) the Company's rights under all licenses, permits, warranties, manuals, operating instructions, software, rights and privileges related to the wafer fabrication operations currently conducted by the Company at the Banting Site (the "Wafer Fab Operations");
- (d) the Company's rights under all service contracts, maintenance contracts, equipment leases, leases of other personal property, purchase orders and other contracts for the acquisition or maintenance of tangible or intangible personal property related to the Wafer Fab Operations; and
- (e) all books and records, including electronic records, which are related to the Real Property or necessary for conducting the Wafer Fab Operations.

The assets, properties and rights to be acquired by Motorola hereunder, exclusive of the Excluded Assets (as defined below), are collectively referred to as the "Acquisition Assets." Should it be determined at any time up to one year after the Closing Date that any tangible or intangible assets which, pursuant to this Agreement, should have been transferred to Motorola are still in the Company's possession, the Company shall deliver them (or cause them to be delivered) promptly to Motorola, upon reasonable notice and without additional charge.

1.02 Assumption of Liabilities.

On and subject to the terms and conditions of this Agreement, Motorola agrees to assume and become responsible for all of the Assumed Liabilities as of the Closing Date, but no other obligation or liability of the Company. "Assumed Liabilities" means only those contracts and obligations in Schedule 1.02 attached hereto as updated by mutual agreement of the parties as of the Closing Date.

1.03 Excluded Assets.

Notwithstanding the foregoing, there shall be excluded from the assets, properties and rights to be conveyed to Motorola by the Company pursuant to this Agreement all of the following assets, properties and rights (the "Excluded Assets"):

- (a) all the assets, properties and rights described in Schedule 1.03 attached hereto as updated by mutual agreement of the parties as of the Closing Date;
- (b) all accounts receivable of the Company; and

December 16, 1993
Revision 7

Page 3

4

- (c) all of the Company's Intellectual Property, except to the extent included as part of the Acquisition Assets under Section 1.01(c) hereof, and except to the extent licensed or covered under Section 7.11(a) hereof and the Wafer Supply Agreement. As used herein, the "Company's Intellectual Property" means every item of intellectual property the Company owns or otherwise has the right to use including every invention, patent application, patent, trade name, mark (whether a trademark, service mark or other mark), registration or application to register a mark, copyright, registration or application to register a copyright, mask work, registration or application to register a mask work, and trade secret.

2. Consideration.

2.01 Payment at Closing.

The full consideration to be paid at the Closing by Motorola to the Company for the sale of the Acquisition Assets shall be as follows:

- (a) a cash payment of U.S. \$100,905,472 by the wire transfer of same day funds the day before the Closing Date to the escrow account described in Section 6.01;
- (b) an executed non-interest bearing promissory note made by Motorola to the order of the Company (the "Buyer Note") in the form of Exhibit A attached hereto which note shall be in an aggregate principal amount equal to the agreed value of the Company's raw material and work-in-process inventories (except those, if any, included in the Excluded Assets) at the Wafer Fab Operations as of 4:00 p.m. on the Closing Date determined in a manner consistent with Schedule 2.01(b) attached hereto and shall provide for 2 equal principal payments 30 days and 60 days after Closing;
- (c) an additional cash payment equal to the sum of (i) the cost of any capital assets included in the Acquisition Assets which were (A) ordered on or before September 25, 1993 and received by the Company prior to the Closing Date, but had not been entered on the Company's capital asset register as of September 25, 1993, and (B) ordered after September 25, 1993 with Motorola's approval (which may be obtained before or after such order was placed) and received by the Company prior to 4:00 p.m. on the Closing Date plus (without duplication) (ii) payments actually made prior to the Closing Date by the Company to third-party vendors of any capital assets which would have met the description of either clause (A) or (B) of clause (i) above in this Section 2.01(C) but for the fact that such

5

items had not been physically received by the Company as of the Closing Date (it being understood and agreed that the additional cash payment called for by this Section 2.01(C) shall be determined as of the Closing Date in a manner consistent with Schedule 2.01(C) attached hereto which Schedule reflects an aggregate payment of \$3,210,378 as of the date of such Schedule, to be updated as mutually agreed by the parties as of the Closing Date); and;

(d) assumption of the Assumed Liabilities.

2.02 Allocation.

The consideration for the purchase of the Acquisition Assets shall be allocated among the assets as set forth in Schedule 2.02, which shall be mutually agreed to by the parties and attached prior to the Closing Date. Motorola and the Company will each file its federal and state income Tax Returns, as well as Form 8594, Asset Acquisition Statement, under Section 1060 of the Internal Revenue Code of 1986, as amended (the "Code"), on the basis of this allocation.

3. Pre-Closing Covenants.

3.01 Conduct of the Business Prior to the Closing Date.

During the period from the date of this Agreement to the Closing Date, the Company shall conduct its Wafer Fab Operations according to its ordinary and usual course of business consistent with its customs and practices ("Ordinary Course of Business") and use its reasonable best efforts to maintain and preserve its business organization, prospects, and advantageous business relationships and retain the services of employees associated with the Wafer Fab Operations who are listed on Schedule 3.01 reasonably expected to transfer to Motorola. Schedule 3.01 contains a list of current Company employees involved in the Wafer Fab Operations to whom Motorola has offered employment to be effective January 1, 1994 (contingent on the Closing). The process of identifying the final list of employees to whom such employment will be offered by Motorola is in progress and the parties agree to update Schedule 3.01 with the final list as mutually agreed prior to Closing. The persons listed on such Schedule 3.01 (as so updated) are referred to herein as the "Listed Employees."

3.02 Forbearance by the Company.

During the period from the date of this Agreement to the Closing Date, the Company shall not, without the prior written consent of Motorola, which Motorola shall not unreasonably withhold or delay:

(a) except in the Ordinary Course of Business, sell or transfer, mortgage,

6

encumber or otherwise dispose of any of its properties or assets related to the Wafer Fab Operations, or cancel, release or assign any claims held by it;

(b) except in the Ordinary Course of Business, make any capital expenditures or investments related to the Wafer Fab Operations;

(c) enter into, amend or terminate any material contract or agreement related to the Wafer Fab Operations, or make any change in any of its material leases, licenses, agreements or contracts related to the Wafer Fab Operations, other than any renewals without adverse changes in terms;

- (d) increase in any manner the compensation or fringe benefits of any of its employees involved in the Wafer Fab Operations, except for regularly scheduled increases in the Ordinary Course of Business, or pay any pension or retirement allowance not required by any existing plan or agreement to any such employees, or become a party to, amend or commit itself to any pension, retirement, profit-sharing or welfare benefit plan or agreement or employment agreement with or for the benefit of, any such employee;
- (e) permit any insurance policy naming it as a beneficiary, a named insured or a loss payee and covering any of the Acquisition Assets to be canceled or terminated or any of the coverage thereunder to lapse unless, simultaneously with such termination or cancellation, or replacement policy or policies providing substantially the same or greater coverage with comparable insurance carriers are in full force and effect;
- (f) agree to, or make any commitment to, take any of the actions prohibited by this Section 3.02;
- (g) solicit, or authorize any person to solicit, from any third party, any inquiries or proposals relating to the disposition of all or any part of the Acquisition Assets (including by operation of law) by any person other than Motorola, or provide any such person with information (other than public information) or assistance or negotiate with any such person in furtherance of such inquiries or to obtain a proposal, and the Company shall promptly notify Motorola orally of all of the relevant details relating to all inquiries and proposals which it may receive relating to any of such matters;
- (h) improperly maintain the Acquisition Assets; or

December 16, 1993
Revision 7

Page 6

7

- (i) incorrectly or inaccurately maintain its books, accounts and records necessary for conducting the Wafer Fab Operations or that are related to the Real Property.

4. Additional Agreements.

4.01 Access and Information.

The Company shall afford (or cause to be afforded) to Motorola, and to Motorola's accountants, counsel and other representatives, full access during normal business hours, during the period prior to the Closing Date, to all of the Company's properties, books, contracts, commitments, permits, business licenses and records to the extent reasonably necessary for purposes of facilitating the transactions contemplated by this Agreement. During such period, the Company shall promptly provide to Motorola a copy of each report, schedule and other document filed or received pursuant to the requirements of law that materially effects the Acquisition Assets.

4.02 Expenses.

Except as otherwise provided in this Agreement, each of the parties shall pay its respective costs and expenses (including legal fees) in connection with this Agreement and the transactions contemplated by this Agreement.

4.03 Miscellaneous Agreements and Consents.

(a) Subject to the terms and conditions herein provided, each of the parties hereto agrees to cooperate with the other and to use all reasonable efforts to take, or cause to be taken, all action, and to do, or cause to be done, all things necessary, proper or advisable to consummate and make

effective the transactions contemplated by this Agreement. The Company will use its reasonable efforts to obtain consents of all third parties and governmental bodies necessary or, in the opinion of Motorola, desirable for the consummation of the transactions contemplated by this Agreement.

(b) With respect to the E-Beam writer covered by the Company's existing Lease #251: (i) the E-Beam writer will be included in the Excluded Assets and the related lease will not be included in the Assumed Liabilities; (ii) the Company will continue to make the lease payments and otherwise perform its obligations under such lease, the term of which ends in April 1995; (iii) within 30 days after the termination of such lease, the Company will either (A) purchase the equipment covered by such lease and transfer ownership of the same to Motorola free and clear of any lien, encumbrance or similar interest (with delivery at the Banting Site) or, at the Company's option, (B) pay \$350,000 in cash to Motorola.

December 16, 1993
Revision 7

Page 7

8

4.04 Filings.

Motorola and the Company have filed Notification and Report Forms under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "Hart-Scott Rodino Act") with the Federal Trade Commission ("FTC") and the Antitrust Division of the Department of Justice (the "Antitrust Division") and shall use reasonable efforts to respond as promptly as practicable to all inquiries received from the FTC or the Antitrust Division for additional information or documentation. Motorola and the Company will each take, or cause to be taken, all such other reasonable actions and will file, and, if appropriate, use its reasonable efforts to have declared effective or approved, all such other documents and notifications with governmental authorities which are necessary or appropriate for the consummation of the transactions contemplated by this Agreement, and each party shall give the other information reasonably requested by such other party pertaining to it reasonably necessary to enable such other party to take such actions.

4.05 Title Insurance.

The Company shall obtain and provide to Motorola for Motorola's benefit an ALTA owner's policy and title insurance for each parcel of real property conveyed to Motorola pursuant to this Agreement, in an amount and in the form specified in the Escrow Agreement (as defined in Section 6.01).

4.06 Surveys.

With respect to each parcel of real property that the Company owns, leases, or subleases, and as to which a title insurance policy is to be procured, the Company will procure a current survey of the real property certified to Motorola and Chicago Title Company, prepared by a licensed surveyor and conforming to current ALTA Minimum Detail Requirements for Land Title Surveys, disclosing the location of all improvements, easements, party walls, sidewalks, roadways, utility lines, and other matters shown customarily on such surveys, and showing access affirmatively to public streets and roads (the "Survey").

4.07 Employees.

(a) Motorola agrees to offer employment to all Listed Employees (as updated pursuant to Section 3.01) to be effective January 1, 1994.

(b) The Company agrees to act as an independent contractor, providing all services reasonably necessary to continue Wafer Fab Operations in the Ordinary Course of Business through its employees, for the period between the Closing Date and 11:59:59 P.M. on December 31, 1993; provided that the Closing Date is on or

December 16, 1993
Revision 7

Page 8

before December 31, 1993 (the "Service Period"). Motorola shall within thirty (30) days after the Closing Date pay a service fee to the Company in an amount to be mutually agreed upon by the parties prior to Closing (which amount shall be reasonably calculated to approximate the Company's cost of providing such services) as full payment therefor. The Company shall continue to maintain and be responsible for the cost of all benefits for its employees at the Wafer Fab Operations during the Service Period.

(c) Motorola shall assume (as an Assumed Liability) the accrued unused vacation for those Listed Employees hired by Motorola corresponding to the amount set forth below (the "Assumed Vacation Accrual"):

0 to 4 years	40 hours
5 to 9 years	60 hours
10 to 14 years	80 hours
Over 15 years	100 hours

Company shall offset against the consideration received from Motorola pursuant to Section 2.01 or shall pay to Motorola as consideration for the assumption of the Assumed Vacation Accrual an amount equal to the value of such Assumed Vacation Accrual based upon the wages of the applicable employees in effect immediately prior to the Closing Date (the "Vacation Accrual Value").

4.08 Sales Tax.

The parties agree that Motorola and Company shall each be responsible for one-half of any sales tax with respect to the sale of the Acquisition Assets hereunder.

5. Conditions.

5.01 Conditions to Each Party's Obligation to Close.

The respective obligations of Motorola and the Company to consummate the purchase and sale of the Acquisition Assets and related transactions as contemplated hereby shall be subject to the fulfillment at or prior to the Closing Date of the following conditions (except as each party may have waived the condition(s) in writing):

- (a) All applicable waiting periods under the Hart-Scott-Rodino Act shall have expired.
- (b) The Wafer Supply Agreement and Joint Use Agreement have been concurrently executed, and will have an effective date as of the Closing Date.

December 16, 1993
Revision 7

Page 9

- (c) The Agreement among the Company, Motorola and AT&T dated as of December 8, 1993 Granting Consent to Use of Licensed Technology remains in full force and effect.

5.02 Conditions to Obligations of the Company to Close.

The obligations of the Company to consummate the sale of the Acquisition Assets and related transactions as contemplated hereby shall be subject to the fulfillment at or prior to the Closing Date of the following additional conditions (except as the Company may have waived the condition(s) in writing):

- (a) Representations and Warranties. The representations and warranties of Motorola set forth in Section 8 hereof shall be true and correct in all material respects as of the Closing Date as though made on and as of the Closing Date, and the Company shall have

received a signed certificate from a Vice President of Motorola to that effect.

- (b) Performance of Obligations. Motorola shall have in all material respects performed all obligations required to be performed by it under this Agreement prior to the Closing Date, and the Company shall have received a signed certificate from a Vice President of Motorola to that effect.
- (c) Permits, Authorizations, Etc. Motorola shall have obtained any and all material permits, authorizations, consents or approvals required to be obtained by Motorola under this Agreement for the lawful consummation of the transactions contemplated by this Agreements.
- (d) Legal Opinions. The Company shall have received a legal opinion, in form and substance satisfactory to the Company from Dirk H. Buikema, Division Counsel of Motorola, on the issues of corporate authority and due authorization.
- (e) Absence of Certain Litigation. On the Closing Date there shall be no injunction, restraining order or order of any nature issued by, or being requested from, any court of competent jurisdiction which directs that any transactions contemplated by this Agreement shall not be consummated as herein provided or compels Motorola to dispose of or keep separate either a portion of the business conducted by Motorola or the Acquisition Assets, nor shall there be instituted, pending or threatened any action, suit or proceeding by any governmental agency or regulatory or administrative agency or commission challenging this Agreement or any of the transactions contemplated by this Agreement or, which seeks to

December 16, 1993
Revision 7

Page 10

11

restrain or prevent such Agreement or transactions, or which would affect Motorola's rights to operate, own or control any part of the Acquisition Assets.

- (f) Additional Instruments and Satisfaction. Motorola shall have (i) delivered the consideration referred to in Section 2.01 and such additional instruments, consents and documents as the Company reasonably deems necessary to carry out the purposes of this Agreement, (ii) performed such acts as the Company reasonably deems appropriate, and all other proceedings, documents and other items contemplated by this Agreement shall be satisfactory in form and substance to the Company.

5.03 Conditions to Obligations of Motorola to Close.

The obligation of Motorola to consummate the purchase of the Acquisition Assets and related transactions as contemplated hereby shall be subject to the fulfillment at or prior to the Closing Date of the following additional conditions (except as Motorola may have waived the condition(s) in writing):

- (a) Representations and Warranties. The representations and warranties of the Company set forth in Section 7 hereof shall be true and correct in all material respects as of the Closing Date as though made on and as of the Closing Date, and Motorola shall have received signed certificates from the President and Chief Financial Officer of the Company to that effect.
- (b) Performance of Obligations. The Company shall have in all material respects performed all obligations required to be performed by it under this Agreement prior to the Closing Date, and Motorola shall have received signed certificates from the President and Chief Financial Officer of the Company to that effect.

- (c) Permits, Authorizations, Etc. The Company shall have obtained any and all consents or waivers from other parties to material agreements, leases, instruments or other contracts, and from governmental agencies or authorities needed for consummation of the transactions contemplated by this Agreement and shall have obtained any and all material permits, authorizations, consents or approvals required for the lawful consummation of the transactions contemplated by this Agreement.
- (d) Legal Opinion. Motorola shall have received a legal opinion, in form and substance satisfactory to Motorola, from Messrs. Gibson, Dunn & Crutcher, counsel to the Company, to the effect set forth in attached Schedule 5.03(d).

December 16, 1993
Revision 7

Page 11

12

- (e) Absence of Certain Litigation. On the Closing Date, there shall be no injunction, restraining order or order of any nature issued by, or being requested from, any court of competent jurisdiction which directs that any transaction contemplated by this Agreement shall not be consummated as herein provided or compels Motorola to dispose of or discontinue or keep separate a portion of the business conducted by Motorola or of the Acquisition Assets, nor shall there be instituted, pending or threatened any action or proceeding by any governmental agency or regulatory or administrative agency or commission challenging this Agreement or any of the transactions contemplated hereby or which seeks to restrain or prevent such Agreement or transactions or which would affect Motorola's rights to operate, own or control any part of the Acquisition Assets.
- (f) Books, Records. The Company shall have transferred and delivered (or caused to be transferred and delivered) to Motorola, by documents satisfactory in form and substance to Motorola, all of the books and records currently in its possession which are necessary for the conduct of the Wafer Fab Operations by Motorola on and after the Closing Date or are related to the Real Property.
- (g) Estoppel. Motorola shall have received an estoppel certificate substantially in the form of Schedule 5.03(g) from The Irvine Company.
- (h) Additional Instruments. The Company shall have delivered to Motorola the instruments described in Section 1.01 and such additional instruments, consents and documents contemplated by this Agreement or reasonably deemed appropriate by Motorola and performed such acts as Motorola reasonably deems necessary to carry out the purposes of this Agreement.
- (i) Reasonable Satisfaction. All other proceedings and documents and other items in connection with the transactions contemplated by this Agreement shall be satisfactory in form and substance to Motorola.
- (j) Deed and Title Policy. The Escrow Holder (as defined in Section 6.01) shall be prepared to record the grant deed delivered by Company and to issue the title policy strictly in accordance with the terms of Escrow Agreement (as defined in Section 6.01).
- (k) FIRPTA. Company shall have delivered to Motorola an affidavit of non-foreign status in accordance with Section 1445 of the Internal Revenue Code in form reasonably satisfactory to Motorola.

December 16, 1993
Revision 7

Page 12

6. Closing and Escrow.

6.01 Escrow. The parties have entered into or will enter into a separate escrow agreement with respect to the delivery and recordation of certain documents and the transfer of certain funds with respect to consummation of the purchase and sale of the Acquisition Assets contemplated hereby (the "Escrow Agreement"), substantially in the form attached as Schedule 6. On or before December 21, 1993 the parties shall open an escrow ("Escrow") pursuant to the terms of the Escrow Agreement with Chicago Title Company, 825 N. Broadway, Santa Ana, California 92701, Attention: Susie Jacobsen ("Escrow Holder") by executing and delivering the Escrow Agreement to Escrow Holder. Except as is set forth in Schedule 6 and this Section, the execution and exchange of documents for the closing of the purchase and sale of the Acquisition Assets and the other transactions contemplated by this Agreement shall take place at the offices of Gibson, Dunn & Crutcher on December 21st and 22nd 1993, or such later date or other location as may be necessary for the performance of the conditions set forth herein but in no event later than March 31, 1994. The recording of documents and disbursement of funds by the escrow holder as provided in the Escrow Agreement shall take place on December 23, 1993, or such later date or other location as may be necessary for the performance of the conditions set forth herein but in no event later than March 31, 1994 (the "Outside Closing Date"). The date the Grant Deed (as defined below) is recorded in the Official Records of Orange County, California by Escrow Holder in accordance with the Escrow Agreement is referred to herein as the "Closing Date" and the "Closing" shall be deemed to take place at the time of such recordation. If, however, any applicable waiting period provided for in Section 7A of the Hart-Scott-Rodino Act applicable to Motorola's acquisition shall not have expired by that date, the Closing and Closing Date shall take place as soon as reasonably possible following the expiration of such waiting period (but in no event later than March 31, 1994).

6.02 Additional Escrow Instructions.

The Company and Motorola agree to execute such additional and supplemental escrow instructions as may be appropriate to enable the Escrow Holder to comply with the terms of this Agreement; provided, however, that in the event of any conflict between the provisions of this Agreement and any supplementary escrow instructions, the terms of this Agreement shall control.

6.03 Closing Procedures.

The execution and exchange of documents and payment of consideration into escrow shall take place at the Closing, subject to the recording and delivery of documents and disbursement of funds by Escrow Holder pursuant to the Escrow Agreement on the Closing Date. All documents shall be deemed delivered on the date the grant deed delivered by the Company is recorded. In the event the Closing does

December 16, 1993
Revision 7

Page 13

14

not occur on or before the Outside Closing Date, Escrow Holder shall, unless it is notified by both parties to the contrary within five (5) days after the Outside Closing Date, return to the depositor thereof any items which may have been deposited hereunder together with interest on any funds being returned by Escrow Holder.

6.04 Deposits into Escrow by Company.

At least one (1) business day prior to the Closing Date, Company shall make the following deliveries into Escrow to be handled by Escrow Holder in accordance with the terms of the Escrow Agreement:

(a) A Grant Deed in the form reasonably satisfactory to Motorola executed and acknowledged on behalf of Company (with documentary transfer taxes to be shown on a separate non-recorded affidavit);

(b) A Bill of Sale in the form reasonably satisfactory to Motorola, duly executed on behalf of Company;

(c) Instructions for the disbursement of the Cash Payments (as

defined in Section 6.05 below); and

(d) Such other documents and instruments as are reasonably requested by Escrow Holder in order to comply with the terms and conditions of the Escrow Agreement.

6.05 Deposits into Escrow by Motorola.

At least one (1) business day prior to the Closing Date, Motorola shall make the following deliveries into Escrow to be handled by Escrow Holder in accordance with the terms of the Escrow Instructions:

(a) The Cash Payments (as defined below);

(b) Such other documents and instruments as are reasonably requested by Escrow Holder in order to comply with the terms and conditions of the Escrow Agreement.

For purposes hereof, the "Cash Payments" shall mean (A) the sum of (1) the cash payments pursuant to Sections 2.01(a) and (c), (2) the prorations pursuant to Section 6.06 below, (3) Motorola's portion of any sales tax payment pursuant to Section 4.08; (B) reduced by the Vacation Accrual Value pursuant to Section 4.07(c). In the event that any of the foregoing amounts cannot be determined by the time the Cash Payments are to be deposited into Escrow as provided above, the parties shall reasonably agree upon the estimated amount of such item, subject to final adjustment

December 16, 1993
Revision 7

Page 14

15

payment(s) within thirty (30) days after the Closing Date or as soon as the amounts can be accurately ascertained. Motorola and Company shall inform Escrow Holder of the agreed-upon amount of the Cash Payments to be delivered through the Escrow by a joint supplemental escrow instruction to be delivered to Escrow Holder at least one (1) business day prior to the Closing Date.

6.06 Prorations and Apportionments.

(a) The following items shall be prorated and apportioned as of 4:00 p.m. on the Closing Date, so that the Company shall bear all expense with respect to such items for the period preceding such date and time and Motorola shall bear all expense with respect to such items thereafter:

(i) All operating leases and maintenance or service contracts included in the Assumed Liabilities;

(ii) All expenses of the Real Property (not included in Section 6.06(a) above) including taxes (including personal property taxes on personal property included in the Acquisition Assets), real property assessments, water rates and sewer fees, if any, assessments and membership fees of associations in which Motorola will acquire a membership in connection with its purchase of the Real Property, gas, electricity and other utility charges, any unfixed meter charges, if any (apportioned on the basis of the last meter readings), license and permit fees and other expenses customarily prorated. If possible, in lieu of prorating, utilities and other expenses shall be contracted for in the name of Motorola as of the Closing Date. In any event, Motorola shall have all prorated utilities and other expenses contracted for in the name of Motorola as soon as reasonably practicable after the Closing Date.

6.07 Payment of Adjustments to Cash Payment Items.

Either party owing the other party a sum of money based on adjustments with respect to the amounts included in the Cash Payments pursuant to Section 6.05 above after the Closing Date shall promptly pay that sum to the other party, together with interest thereon at the rate of ten percent (10%) per

annum to the date of payment if payment is not made within 10 days after mutual agreement of the amount due.

6.08 Costs and Expenses.

The Company shall pay the costs of the survey of the Real Property, the premium and other costs and expenses for the title policy and the cost of documentary

December 16, 1993
Revision 7

Page 15

16

or other transfer taxes applicable to the sale. Motorola and the Company shall share equally all other costs and charges of the escrow for the purchase and sale of the Acquisition Assets.

6.09 Possession.

Subject to Section 4.07(b) and the Joint Use Agreement, possession of the Real Property and the other Acquisition Assets will be delivered to Motorola at 4:00 p.m. on the Closing Date.

7. Representations and Warranties of the Company.

The Company represents and warrants to Motorola that:

7.01 Ownership of Assets.

(a) As of the Closing Date the Company shall convey, and Motorola will receive good, exclusive and marketable title to all of the Acquisition Assets, free and clear of any liens, claims, debts, security interests, judgments, mortgages or other encumbrances of any kind, except for the rights of vendors, suppliers and equipment lessors associated with liabilities of the Company which are included in the Assumed Liabilities. The representation and warranty made in this Section 7.01(a) does not apply to the Real Property.

(b) The Acquisition Assets shall include all those assets, rights and properties, tangible and intangible, owned or leased by the Company which are needed to conduct the Wafer Fab Operations as conducted by the Company (other than the items referred to in Section 4.03 hereof).

7.02 Organization and Authority.

The Company is duly organized, validly existing and in good standing under the laws of the State of Delaware, has corporate power to own all of its properties and assets and to carry on its business as it is now being conducted, and is duly qualified to do business and is in good standing in the State of California. The Company has all necessary Federal, state and local authorizations to own or lease the Acquisition Assets and to carry on its Wafer Fab Operations (it being understood that, to the extent previously disclosed to Motorola, certain of the equipment used in the Wafer Fab Operations is covered by a "permit to construct" which will need to be finalized).

7.03 Investment.

The Company (a) understands that the Buyer Note has not been, and will not be,

December 16, 1993
Revision 7

Page 16

17

registered under the Securities Act of 1933, as amended (the "Securities Act"), or under any state securities laws, and is being offered and sold in reliance upon federal and state exemptions, (b) is acquiring the Buyer Note solely for its own account for investment purposes, and not with a view to the distribution thereof, (c) has received certain information concerning Motorola and has had the opportunity to obtain additional information as desired in order to evaluate the merits and the risks inherent in holding the Buyer Note, (d) is able to bear the economic risk and lack of liquidity

inherent in holding the Buyer Note, and (e) is an Accredited Investor (as defined in Regulation D under the Securities Act).

7.04 Charter Documents.

The Company has furnished Motorola with true, complete and correct copies of its Certificate of Incorporation and its By-laws, certified by its Secretary.

7.05 Authorization.

- (a) The Company has the corporate power and authority to enter into this Agreement and to carry out its obligations hereunder. The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by the Company's Board of Directors and no other corporate proceedings on the part of the Company are necessary to authorize this Agreement and the transactions contemplated hereby. This Agreement is a valid and binding obligation of the Company enforceable against the Company in accordance with its terms, except as limited by bankruptcy and other laws of general application and relating to or affecting enforcement of creditors' rights and except as limited by the availability of equitable remedies.
- (b) Except as set forth in Schedule 7.05 (b) attached hereto, no notice to, filing with, or authorization, consent or approval of, any government or governmental agency or authority is necessary on the part of the Company for the consummation of the transactions contemplated by this Agreement.

7.06 [intentionally omitted]

7.07 Properties, Leases and Licenses.

- (a) The tangible personal property included in the Acquisition Assets which is of material importance to the Wafer Fab Operations (which expressly excludes all items expended or consumed in the ordinary course of manufacturing) has been maintained in accordance with normal industry practice, is in good operating condition and repair (subject to normal wear

December 16, 1993
Revision 7

Page 17

18

and tear), is suitable for the purposes for which it presently is used and, to the best knowledge of the Company, is free from material defects (patent and latent).

(b) With respect to the Real Property:

- (i) there are no (A) pending or, to the knowledge of Company, threatened condemnation proceedings relating to such property, (B) pending or to the knowledge of the Company, threatened litigation or administrative actions against the Company or the Real Property relating to the Real Property, or (C) other matters known to the Company having a material adverse impact on the current use of the Real Property;
- (ii) the property is not located within any flood plain or subject to any similar type restriction for which any permits or licenses necessary to the use thereof have not been obtained;
- (iii) to the best knowledge and belief of the Company, except as otherwise previously disclosed to Motorola, all facilities have received all approvals of governmental authorities (including licenses and permits) required in connection with the ownership or operation thereof and have been operated and maintained in all material respects in accordance

with applicable laws, rules, and regulations including, without limitation, all building, zoning, environmental, health and safety laws and regulations (including, but not limited to, earthquake, life and safety systems and handicap laws, including without limitation, the Americans with Disabilities Act all state and local disable person access laws applicable thereto) which affect the use and operation thereof, and the Company has not received any notice of violation of law or municipal ordinance, order or requirement from any governmental agency having jurisdiction over the Property, and knows of no facts which would constitute grounds for receiving any notice of a material violation of any such law, municipal order or requirement;

- (iv) there are no leases, subleases, licenses, concessions, or other agreements, written or oral, granting to any party or parties the right of use or occupancy of any portion of the parcel of real property;

December 16, 1993
Revision 7

Page 18

19

- (v) except for the "Permitted Title Exceptions" set forth in the Escrow Agreement, there are no outstanding options or rights of first refusal to purchase the parcel of real property, or any portion thereof or interest therein;
- (vi) there are no parties (other than the Company) in possession of the Real Property;
- (vii) all facilities located on the parcel of real property are supplied with utilities and other services necessary for the operation of such facilities, including gas, electricity, water, telephone, sanitary sewer, and storm sewer, all of which services are adequate in accordance with all applicable laws, ordinances, rules, and regulations and are provided via public roads or via permanent, irrevocable, appurtenant easements benefiting the parcel of real property; and
- (viii) except for the "Permitted Title Exceptions" set forth in the Escrow Agreement, to the knowledge of Company, there are no liens, restrictions or other encumbrances against the title to the Real Property which will be binding upon Motorola or the Real Property after the Closing Date and which will materially adversely affect the use or value of the Real Property.

With respect to the representation and warranty set forth in Section 7.08(viii) above, Motorola waives any right to proceed against Company to the extent any nondisclosed matter is covered by the title insurance policy procured by Company pursuant to the Escrow Agreement.

7.08 Inventories.

All inventories of raw materials and work-in-process related to the Wafer Fab Operations to be included in the Acquisition Assets, which are assigned a value in Schedule 2.01(b) attached hereto, consist only of items of a quality and quantity usable or salable by the Company in the Ordinary Course of Business. All such inventory is merchantable and fit for the purpose for which it was procured or manufactured, and none of which is slow-moving,

obsolete, damaged, or defective. It is understood and agreed that in the event that any of the wafers within the inventories covered by this Section 7.08 are later designated by the Company to be scrap material, the provisions of the Wafer Supply Agreement will govern the consequences of scrapping such material and, as a result, any such event will not be deemed a breach of this Section 7.08.

December 16, 1993
Revision 7

Page 19

20

7.09 Commitments.

To the best knowledge and belief (after due inquiry and investigation) of the Company, except as disclosed in Schedule 7.09 attached hereto, all contracts and agreements included in the Assumed Liabilities are valid, binding, enforceable, fully assignable and in full force and effect and will not expire prior to January 1, 1994 (except for such contracts and agreements which will be renewed on substantially similar economic terms). Neither the Company nor, to the best knowledge of the Company, any other party to any such contract or agreement is in default, or will be in default upon Closing Date, under any such contract or agreement (including, but not limited to, any event which would, with the giving of notice or the passage of time or both, constitute an event of default). True, correct and complete copies of all such written contracts and agreements have been previously given to Motorola. The Company is not a party to any employment, consulting or similar agreement with or for the benefit of any of its employees involved in the Wafer Fab Operations. The Company does not expect that any change is reasonably likely to occur in the relationships of the Company with suppliers to its Wafer Fab Operations which change would be materially adverse to the Wafer Fab Operations (provided that this representation and warranty shall not include changes in such relationships arising due to this transaction).

7.10 Absence of Certain Changes.

Since September 25, 1993 there has not been:

- (a) any change in the nature of the Wafer Fab Operations, or manner of conducting the Wafer Fab Operations which has had, or may reasonably be expected to have, a material adverse effect on the Wafer Fab Operations;
- (b) any material damage, destruction or other casualty loss (whether or not covered by insurance) affecting the Acquisition Assets;
- (c) any increase in the compensation payable or to become payable by the Company to any Listed Employees or to agents directly involved in the Wafer Fab Operations over the amount paid, at September 25, 1993, other than normal merit increases, increases which are not material and increases consented to by Motorola in writing;
- (d) any sale, lease, transfer or assignment of any of the Acquisition Assets, tangible or intangible, other than nonmaterial transfers (such as transfers of finished goods) for a fair consideration in the Ordinary Course of Business;

December 16, 1993
Revision 7

Page 20

21

- (e) any material acceleration, termination, modification or cancellation of any contract, lease, sublease, license, or sublicense (or series of related contracts, leases, subleases, licenses, and sublicenses) relating to the Wafer Fab Operations or the Real Property to which the Company is a party or by which it is bound;

- (f) any delaying or postponing by the Company (beyond practice in the Ordinary Course of Business) of the payment of accounts payable and other liabilities related to the Wafer Fab Operations;
- (g) any loan to, or entry into any other transaction with, any of the Listed Employees substantially involved in the Wafer Fab Operations outside the Ordinary Course of Business;
- (h) any entry into or commitment to enter into any employment contract or collective bargaining agreement, written or oral, with Listed Employees or modification of the terms of any such existing contract or agreement;
- (i) any adoption of (A) bonus, (B) profit-sharing, (C) incentive compensation, (D) pension, (E) retirement, (F) medical, hospitalization, life, or other insurance, (G) severance, or (H) other plan, contract, or commitment for any Listed Employees, or any modification or termination of any such existing plan, contract or commitment; or
- (j) any commitment to do any of the foregoing.

7.11 Intellectual Property.

- (a) Pursuant to law, the Company owns or has the right to use under license, sublicense, agreement, or permission all Relevant Intellectual Property. As used herein, "Relevant Intellectual Property" means only the copyrighted works, mask works, and trade secrets which are owned or used by the Company and which are necessary for the conduct of the Wafer Fab Operations by Motorola on and after the Closing Date. Immediately after the Closing Date, each item of Relevant Intellectual Property is hereby licensed to Motorola by the Company as otherwise will be available for use by Motorola on identical terms and conditions to those under which each item of Relevant Intellectual Property is used or is available for use by the Company.
- (b) With respect to each such item of Relevant Intellectual Property:

December 16, 1993
Revision 7

Page 21

22

- (i) the license, sublicense, agreement, or permission covering the item is legal, valid, binding, enforceable, and in full force and effect;
- (ii) the license, sublicense, agreement, or permission will continue to be legal, valid, binding, enforceable, and in full force and effect on identical terms to those available to the Company;
- (iii) neither the Company nor to the Company's knowledge any other party to the license, sublicense, agreement, or permission is in breach or default, and no event has occurred which with notice or lapse of time would constitute a breach or default or permit termination, modification, or acceleration thereunder;
- (iv) neither the Company nor to the Company's knowledge any other party to the license, sublicense, agreement, or permission has repudiated any provision thereof;
- (v) with respect to each sublicense, the representations and warranties set forth in subsection (a) above and

this subsection (b) are true and correct with respect to the underlying license;

- (vi) the underlying item of Relevant Intellectual Property is not subject to any outstanding judgment, order, decree, stipulation or injunction; and
- (vii) no complaint, action, suit, proceeding, hearing, investigation, claim, or demand is pending or, to the Company's knowledge, is threatened which challenges the legality, validity, or enforceability of the underlying item of Relevant Intellectual Property.

7.12 Undisclosed Liabilities.

To the best knowledge of the Company, except for the Assumed Liabilities, there are no liabilities of the Company of any kind whatsoever attributable to pre-Closing activities, whether or not accrued and whether or not contingent or absolute, in respect of which Motorola may properly be held liable at or after the Closing Date as a result of the consummation of the transactions contemplated by this Agreement. This representation and warranty does not apply to liabilities under Applicable Environmental Law.

December 16, 1993
Revision 7

Page 22

23

7.13 Insurance.

Schedule 7.13 sets forth the following information with respect to each insurance policy covering any of the Acquisition Assets (including policies providing property, casualty, liability, and workers' compensation coverage and bond and surety arrangements) to which the Company has been a party, a named insured, or otherwise the beneficiary of coverage at any time within the past four years:

- (a) the name, address, and telephone number of the agent;
- (b) the name of the insurer, the name of the policyholder, and the name of each covered insured;
- (c) the policy number and the period of coverage;
- (d) the scope (including an indication of whether the coverage was on a claims made, occurrence, or other basis) and amount (including a description of how deductibles and ceilings are calculated and operate) of coverage; and
- (e) a description of any retroactive premium adjustments or other loss-sharing arrangements.

The Company has been covered during the past four years by insurance in scope and amount customary and reasonable for the business in which it has engaged during the aforementioned period. Schedule 7.13 describes any self-insurance arrangements affecting the Company.

7.14 Litigation.

The Company (i) is not subject to any unsatisfied judgment, order, decree, stipulation or injunction and (ii) is not a party or, to the knowledge of the Company, threatened to be made a party to any charge, complaint, action, suit, proceeding, hearing, or investigation of or in any court or quasi-judicial or administrative agency of any federal, state, local, or foreign jurisdiction or before any arbitrator which is attributable to pre-Closing activities by the Company and which could reasonably be expected to have an adverse impact on the Acquisition Assets.

7.15 Taxes.

- (a) The Company has filed all Tax Returns (as defined below) that it was required to file. All such Tax Returns were correct and complete in all material respects. All Taxes shown as due on such Tax Returns have

December 16, 1993
Revision 7

Page 23

24

been paid. There are no security interests on any of the assets of the Company that arose in connection with any failure (or alleged failure) to pay any Tax (as defined below). "Tax" means any federal, state, local, or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental (including taxes under Code Sec. 59A), customs duties, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property, personal property, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated, or other tax of any kind whatsoever, including any interest, penalty, or addition thereto, whether disputed or not. "Tax Return" means any return, declaration, report, claim for refund, or information return or statement relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

- (b) The Company has withheld and paid all Taxes required to have been withheld and paid in connection with amounts paid or owing to any employee, creditor, independent contractor, or other third party.

7.16 Employees.

The Company is not a party to or bound by any collective bargaining agreement, nor has it experienced any strikes, grievances, claims of unfair labor practices, or other collective bargaining disputes. The Company has not committed any unfair labor practice. The Company does not have any knowledge of any organizational effort presently being made or threatened by or on behalf of any labor union with respect to employees of the Company. No work stoppage involving the Company is pending or, to the best of the Company's knowledge, threatened. Neither the Company nor, to the best of the Company's knowledge, any supplier of the Company, is involved in, or threatened with or affected by, any labor dispute, arbitration, lawsuit or administrative proceeding which could materially and adversely affect the Acquisition Assets. Employees of the Company are not represented by any labor union nor are any collective bargaining agreements otherwise in effect with respect to such employees.

7.17 Employee Benefits.

The Company Profit Sharing Plan is a qualified plan under I.R.C. Section 401(a), as amended. The Company's Wafer Fab Operations constitute a "trade or business" under I.R.C. Section 401(k)(10)(A)(ii) and I.R.C. Regulation Section 1.401(k)-1(d). The Acquisition Assets constitute substantially all the assets used in that trade or business for the purposes of I.R.C. Section 401(k)(10)(A)(ii) and I.R.C. Regulation Section 401(k)-1(d). The Company has no benefit plan insured by the Pension Benefit Guaranty Corporation.

December 16, 1993
Revision 7

Page 24

25

7.18 [intentionally omitted]

7.19 Environment, Health, and Safety.

Except as otherwise previously disclosed, to the best knowledge of the Company with respect to the Acquisition Assets:

- (a) The Company, its predecessors and its affiliates each has complied with all laws (including rules and regulations thereunder) of federal, state, local, and foreign governments (and all agencies thereof) concerning the environment, public health and safety, and employee health and safety, and no charge, complaint, action, suit, proceeding, hearing, investigation, claim, demand, or notice has been filed or commenced against any of them alleging any failure to comply with any such law or regulation.
- (b) The Company has no liability (and there is no basis related to the past or present operations, properties, or facilities of its respective predecessors and affiliates for any present or future charge, complaint, action, suit, proceeding, hearing, investigation, claim, or demand against giving rise to any liability) under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Resource Conservation and Recovery Act of 1976, the Federal Water Pollution Control Act of 1972, the Clean Air Act of 1970, the Safe Drinking Water Act of 1974, the Toxic Substances Control Act of 1976, the Refuse Act of 1899, or the Emergency Planning and Community Right-to-Know Act of 1986 (each as amended), or any other law (or rule or regulation thereunder) of any federal, state, local, or foreign government (or agency thereof), concerning release or threatened release of hazardous substances, public health and safety, or pollution or protection of the environment.
- (c) The Company has no liability (and none of the Company and its respective predecessors and affiliates has handled or disposed of any substance, arranged for the disposal of any substance, or owned or operated any property or facility in any manner that could form the basis for any present or future charge, complaint, action, suit, proceeding, hearing, investigation, claim, or demand (under the common law or pursuant to any statute) against the Company giving rise to any liability) for damage to any site, location, or body of water (surface or subsurface) or for illness or personal injury.
- (d) The Company has no liability (and there is no basis for any present or future charge, complaint, action, suit, proceeding, hearing, investigation, claim, or demand against the Company giving rise to any liability) under the Occupational Safety and Health Act, as amended, or any other law (or

December 16, 1993
Revision 7

Page 25

26

rule or regulation thereunder) of any federal, state, local, or foreign government (or agency thereof) concerning employee health and safety.

- (e) The Company has no liability (and the Company has not exposed any employee to any substance or condition that could form the basis for any present or future charge, complaint, action, suit, proceeding, hearing, investigation, claim, or demand (under the common law or pursuant to statute) against giving rise to any liability) for any illness of or personal injury to any employee.
- (f) The Company has obtained and been in compliance with all the terms and conditions of all permits, licenses, and other authorizations which are required under, and has complied with all other limitations, restrictions, conditions, standards, prohibitions, requirements, obligations, schedules, and timetables which are contained in, all federal, state, local, and foreign laws (including rules, regulations, codes, plans, judgments, orders, decrees, stipulations, injunctions, and charges thereunder) relating to public health and safety, worker health and safety, and pollution or protection of the environment, including laws relating to emissions, discharges, releases, or threatened releases of pollutants,

contaminants, or chemical, industrial, hazardous, or toxic materials or wastes into ambient air, surface water, ground water, or lands or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport, or handling of pollutants, contaminants, or chemical, industrial, hazardous, or toxic materials or wastes.

- (g) All properties and equipment used by the Company (or any predecessors or affiliates) have been free of asbestos, PCB's, methylene chloride, trichloroethylene, 1, 2-trans-dichloroethylene, dioxins, dibenzofurans, and Extremely Hazardous Substances (as defined in Section 302 of the Emergency Planning and Community Right-to-Know Act of 1986, as amended).
- (h) All product labeling of the Company has been in conformity with applicable laws (including rules and regulations thereunder).
- (i) No pollutant, contaminant, or chemical, industrial, hazardous, or toxic material or waste ever has been buried, stored, spilled, leaked, discharged, emitted, or released on any real property that Company (or predecessor or affiliate) owns or ever has owned or that Company (or predecessor or affiliate) leases or ever has leased.

December 16, 1993
Revision 7

Page 26

27

7.20 Legal Compliance.

Except as otherwise previously disclosed, to the best knowledge of the Company with respect to the Acquisition Assets, the Company has complied in all material respects with all laws (including rules and regulations thereunder) of federal, state, local, and foreign governments (and all agencies thereof) which affect any of the Acquisition Assets.

7.21 [intentionally omitted]

7.22 Brokers and Finders.

Neither the Company nor any officers, directors, stockholders or employees has employed any broker or finder or incurred any liability for any financial advisory fees, brokerage fees, commissions or finders' fees, and no broker or finder has acted directly or indirectly for the Company in connection with this Agreement or the transactions contemplated hereby.

7.23 [intentionally omitted]

7.24 Disclosure.

No written representation, statement or information made or furnished by the Company (or any agent) to Motorola in this Agreement contains any statement of a material fact that was untrue when made or omits or shall omit any material fact necessary to make the information contained in such representation, statement or information not misleading.

7.25 Other Agreements.

Except as otherwise previously disclosed, to the best knowledge of the Company with respect to the Acquisition Assets, the Company is not a party to or bound by any agreement requiring Motorola to pay any royalty, fee or other payment in connection with conducting Wafer Fab Operations.

8. Representations and Warranties of Motorola.

Motorola represents and warrants to the Company that:

8.01 Organization and Authority.

Motorola is a corporation duly organized, validly existing and in good standing under the laws of the state of Delaware, has corporate power to own all of its properties

December 16, 1993
Revision 7

Page 27

28

and assets and to carry on its business as it is now being conducted.

8.02 Authorization.

Motorola has the corporate power and authority to enter into this Agreement and to carry out its obligations hereunder. The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all corporate proceedings on the part of Motorola which are necessary to authorize this Agreement and the transactions contemplated hereby. This Agreement is a valid and binding obligation of Motorola enforceable against Motorola in accordance with its terms, except as limited by bankruptcy and other laws of general application relating to or affecting enforcement of creditors' rights and except as limited by the availability of equitable remedies.

Neither the execution, delivery and performance of this Agreement by Motorola, nor the consummation of the transactions contemplated hereby, nor compliance by Motorola with any of the provisions hereof or thereof will (i) violate, conflict with, or result in a breach of any provisions of, or constitute a default (or an event which, with notice or lapse of time or both, would constitute a default) under (x) the Certificate of Incorporation or Bylaws of Motorola or (y) any material note, bond, mortgage, indenture, deed of trust, license, lease, agreement or other instrument or obligation to which Motorola is a party or by which Motorola may be bound, or by which it is, or any of its properties or assets may be subject, except for such violations, conflicts, breaches and defaults which would not, in the aggregate, have a material adverse effect on the business, results of operations, prospects or financial condition of Motorola and its subsidiaries taken as a whole, or (ii) subject to compliance with the statutes and regulations referred to in the next paragraph, to Motorola's knowledge, violate any material judgment, ruling, order, writ, injunction, decree, statute, rule or regulation applicable to Motorola or any of its properties or assets.

Other than in connection with or in compliance with the provisions of the Delaware General Corporation Law and the Hart-Scott-Rodino Act, to Motorola's knowledge, no notice to, filing with, or authorization, consent or approval of, any public body or authority is necessary for the consummation by Motorola of the transactions contemplated by this Agreement.

9. Termination.

9.01 Termination of Agreement.

Certain of the parties may terminate this Agreement as provided below:

December 16, 1993
Revision 7

Page 28

29

- (a) Motorola and the Company may terminate this Agreement by mutual written consent at any time prior to the Closing Date;
- (b) Motorola may terminate this Agreement by giving written notice to the Company at any time prior to the Closing Date in the

event the Company is in breach, and the Company may terminate this Agreement by giving written notice to Motorola at any time prior to the Closing Date in the event Motorola is in breach of any material representation, warranty, or covenant contained in this Agreement in any material respect;

- (c) Motorola may terminate this Agreement by giving written notice to the Company at any time prior to the Closing Date if the Closing Date shall not have occurred on or before March 31, 1994 by reason of the failure of any condition precedent (unless the failure results primarily from Motorola breaching any representation, warranty, or covenant contained in this Agreement); or
- (d) the Company may terminate this Agreement by giving written notice to Motorola at any time prior to the Closing Date if the Closing Date shall not have occurred on or before March 31, 1994 by reason of the failure of any condition precedent (unless the failure results primarily from the Company breaching any representation, warranty, or covenant contained in this Agreement).

9.02 Effect of Termination.

In the event of termination, this Agreement shall forthwith become void and there shall be no liability on the part of either Motorola or the Company, or their respective officers or directors except in the case of a willful breach. Obligations with respect to confidentiality, under the agreement attached as Schedule 9.02, shall survive termination of this Agreement.

10. Indemnification.

10.01 Indemnification by the Company.

Subject to the limitations contained in this Section 10, the Company agrees to indemnify and hold harmless Motorola and its Affiliates and its Subsidiaries against and in respect of any or all of the following, including any damage, expense, loss, claims, incidental and consequential damages, and any such amounts related to, arising from or caused by the following:

December 16, 1993
Revision 7

Page 29

30

- (a) all liabilities of any nature, whether accrued, absolute, contingent or otherwise, arising from, caused by or attributed to any act or omission by the Company on or prior to the Closing Date, including, without limitation:
 - (i) all tax liabilities, if any, accrued in respect of or measured by the Company's, or any affiliated or predecessor company's income for any period prior to the Closing Date, or arising out of transactions entered into, or any set of facts existing, prior to the Closing Date;
 - (ii) any and all losses, liabilities, damages or obligations resulting from or relating to any claim or action by any creditor, potential creditor or person claiming any proprietary or equity interest in the Acquisition Assets or the Wafer Fab Operations questioning the validity of or otherwise seeking to rescind the transfer of all right, title and interest in the Acquisition Assets and the Wafer Fab Operations to Motorola;

- (iii) any and all losses, liabilities, damages or obligations relating to any liability of the Company to the Pension Benefit Guaranty Corporation, or to any multiemployer plan, which is enforced or which is attempted to be enforced against either the Acquisition Assets or the Wafer Fab Operations;
- (iv) any and all losses, liabilities, damages or obligations resulting from or relating to any claim or action by any Company employee related to or resulting from inaccurate personnel file information provided to Motorola or the validity of the Company's obtaining a Company employee's authorization for disclosure of such information;
- (v) all actions, suits, proceedings, claims, demands, assessments (whether asserted prior to or following the Closing Date), judgments, costs and expenses incident to any of the foregoing;
- (vi) any Hazardous Material storage, use, manufacture, transportation, disposal, release, discharge or emission by the Company, including, but not limited to, the Wafer Fab Operations, on or prior to the Closing Date;

December 16, 1993
Revision 7

Page 30

31

- (vii) with respect to Hazardous Material other than trichloroethylene ("TCE"), any Hazardous Material which is found to be present in or on the Real Property, on or prior to Closing Date as a result of any acts or omissions of the Company on or prior to the Closing Date;
 - (viii) the exposure to any Hazardous Material on or prior to the Closing Date, of any existing or former Company employee engaged in the Wafer Fab Operations or its related activities, or any other person engaged in activities on the Real Property, the presence of which is attributable to any act or omission of the Company on or prior to the Closing Date; and
 - (ix) any disposal into any landfill or other disposal facility of a Hazardous Material by the Company or by any person to whom Hazardous Materials have been directly or indirectly delivered, by the Company including, but not limited to, the Wafer Fab Operations.
- (b) all damage or deficiency resulting from the inaccuracy of a representation or warranty made by the Company in this Agreement, or resulting from a misrepresentation, breach of warranty or nonfulfillment of an agreement, or covenant contained herein, upon the part of the Company under, or in a document delivered in connection with, this Agreement or from a misrepresentation in or omission from a certificate or other instrument furnished or to be furnished to Motorola hereunder, and all claims relating to a matter covered by any such representation or warranty, whether or not such claim is valid;
- (c) with respect to TCE Hazardous Material, any TCE which is found to be present in or on the Real Property (or other real

property, on which the presence of TCE is claimed to be the result of the Wafer Fab Operations or related activities taking place on the Real Property), at any time on or prior to the Closing Date or after the Closing Date, other than TCE which is proved to be present in or on the Real Property (or such other real property) as a result of disposal, release, discharge or emission by Motorola or which is proved to be present in or on the Real Property (or such other property) as a result of disposal, release, discharge or emission by a new source which had not begun any of the activities which result in any such disposal, release, discharge or emission prior to the Closing Date.

32

10.02 Indemnification by Motorola.

Subject to the limitations contained in this Section 10, Motorola agrees to indemnify and hold harmless the Company and its Affiliates and its Subsidiaries against and in respect of any or all of the following, including any damage, expense, loss, claims, incidental and consequential damages, and any such amounts related to, arising from or caused by the following:

- (a) all liabilities of any nature, whether accrued, absolute, contingent or otherwise, arising from, caused by or attributed to any act or omission by Motorola after the Closing Date, including without limitation:
 - (i) any Hazardous Material storage, use, manufacture, transportation, disposal, release, discharge or emission by Motorola in connection with the use of the Acquisition Assets after the Closing Date;
 - (ii) any Hazardous Material which is found to be present in or on the Real Property as a result of acts or omissions of Motorola after the Closing Date;
 - (iii) the exposure to any Hazardous Material after the Closing Date of any person engaged in activities on the Real Property, provided the presence of such Hazardous Material is not the result of any act of omission by the Company on or prior to the Closing Date; and
 - (iv) any disposal after the Closing Date into any landfill or other disposal facility of a Hazardous Material by Motorola or by any person to whom Hazardous Materials have been directly or indirectly delivered in connection with the use by Motorola of the Acquisition Assets; and
- (b) all damage or deficiency resulting from the inaccuracy of a representation or warranty made by Motorola in this Agreement, or resulting from a misrepresentation, breach of warranty or nonfulfillment of an agreement, or covenant contained herein, upon the part of Motorola under, or in a document delivered in connection with, this Agreement or from a misrepresentation in or omission from a certificate or other instrument furnished or to be furnished to the Company hereunder, and all claims relating to a matter covered by any such representation or warranty, whether or not such claim is valid.

10.03 Matters Involving Third Parties.

If any third party shall notify any party hereto (the "Indemnified Party") with respect to any matter which may give rise to a claim for indemnification against any other party (the "Indemnifying Party") under this Section, then the Indemnified party shall notify each Indemnifying Party thereof promptly; provided, however, that no delay on the part of the Indemnified Party in notifying any Indemnifying Party shall relieve the Indemnifying Party from any liability or obligation hereunder unless (and then solely to the extent) the Indemnifying Party thereby is damaged.

In the event any Indemnifying Party notifies the Indemnified Party within 15 days after the Indemnified Party has given notice of the matter giving rise to the claim that the Indemnifying Party is assuming the defense thereof, (a) the Indemnifying Party will defend the Indemnified Party against the matter with counsel of the Indemnifying Party's choice reasonably satisfactory to the Indemnified Party, (b) the Indemnified Party may retain separate co-counsel at its sole cost and expense (except that the Indemnifying Party will be responsible for the fees and expenses of the separate co-counsel to the extent the Indemnified Party reasonably concludes that the counsel the Indemnifying Party has selected has a conflict of interest), (c) the Indemnified Party will not consent to the entry of any judgment or enter into any settlement with respect to the matter without the written consent of the Indemnifying Party, such consent not to be unreasonably withheld), and (d) the Indemnifying Party will not consent to the entry of any judgment with respect to the matter, or enter into any settlement which does not include a provision whereby the plaintiff or claimant in the matter releases the Indemnified Party from all liability with respect thereto, without the written consent of the Indemnified Party such consent not to be unreasonably withheld.

However, in the event that the Indemnifying Party does not notify the Indemnified Party with 15 days after receipt of notice from the Indemnified Party, that the Indemnifying Party will be assuming the defense thereof, the Indemnified Party may defend against, or enter into any settlement with respect to, the matter in any manner it deems appropriate.

10.04 Other Indemnification Provision.

The foregoing indemnification provisions are in addition to, and not in derogation of, any statutory or common law remedy any party may have for breach of representation, warranty, or covenant.

10.05 Tax Indemnification Procedure.

If any Tax arises out of the Wafer Fab Operations or the Acquisition Assets before the Closing Date is assessed or claimed on or after such date by a taxing authority, Motorola shall notify the Company and it will take over the defense of each such tax claim as well as the liability for any settlement, penalty, interest or tax due. Motorola will take such action as is necessary to cooperate in any proceedings with respect to any such tax or proposed tax.

If any Sales Tax payment arising out of Motorola's purchase of the Acquisition Assets is challenged by a taxing authority, Motorola and the Company shall mutually agree on the defense of such claim and split the cost of such defense equally. Any additional tax, penalty or interest shall be split equally. Any tax refund shall likewise be split equally.

11. Miscellaneous.

11.01 Survival.

With the exception of (i) the representations and warranties with respect to the condition of certain Acquisition Assets in Sections 7.07(a) and 7.08 hereof, which shall survive the Closing Date for one (1) year, (ii) any representation and warranty covering Taxes which shall survive until expiration of applicable statute(s) of limitation and (iii) the license and other rights granted to Motorola pursuant to Section 7.11 hereof which shall survive the Closing Date forever, all of the other representations and warranties of the parties contained in Sections 7 and 8 of this Agreement shall survive the Closing Date hereunder for five (5) years. All of the covenants and indemnities of the parties contained in this Agreement shall survive the Closing Date forever.

11.02 Press Releases and Announcements.

No party shall issue any press release or announcement relating to the subject matter of this Agreement prior to the Closing Date without the prior written approval of the other parties; provided, however, that any party may make any public disclosure it believes in good faith is required by law or regulation (in which case the disclosing party will advise the other parties prior to making the disclosure).

11.03 No Third Party Beneficiaries.

This Agreement shall not confer any rights or remedies upon any person other than the parties and their respective successors and permitted assigns.

December 16, 1993
Revision 7

Page 34

35

11.04 Entire Agreement.

This Agreement (including the documents referred to herein) constitutes the entire agreement between the parties and supersedes any prior understandings, agreements, or representations by or between the parties, written or oral, that may have related in any way to the subject matter hereof.

11.05 Succession and Assignment.

This Agreement shall be binding upon and inure to the benefit of the parties named herein and their respective successors and permitted assigns. No party may assign either this Agreement or any of its rights, interests, or obligations hereunder without the prior written approval of the other party; provided, however, that Motorola may (i) assign any or all of its rights and interests hereunder to one or more of its Subsidiaries and (ii) designate one or more of its Subsidiaries to perform its obligations hereunder (in any or all of which Motorola nonetheless shall remain liable and responsible for the performance of all of its obligations hereunder).

11.06 Counterparts.

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together will constitute one and the same instrument.

11.07 Headings.

The section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

11.08 Notices.

All notices, requests, demands, claims, and other communications hereunder will be in writing. Any notice, request, demand, claim, or other communication hereunder shall be deemed duly given if (and then two business days after) it is sent by registered or certified mail, return receipt requested, postage prepaid, and addressed to the intended recipient as set forth below:

If to the Company:

Corporate Secretary
Western Digital Corporation
8105 Irvine Center Drive
Irvine, California 92713

December 16, 1993
Revision 7

Page 35

36

If to Motorola:

Corporate Secretary
Motorola Inc.
1303 East Algonquin Road
Schaumburg, Illinois 60196

Any party may give any notice, request, demand, claim, or other communication hereunder using any other means (including personal delivery, expedited courier, messenger service, telecopy, telex, ordinary mail, or electronic mail), but no such notice, request, demand, claim, or other communication shall be deemed to have been duly given unless and until it actually is received by the individual for whom it is intended. Any party may change the address to which notices, requests, demands, claims, and other communications hereunder are to be delivered by giving the other party notice in the manner herein set forth.

11.09 Governing Law.

This Agreement shall be governed by and construed in accordance with the internal laws (and not the law of conflicts) of the State of California.

11.10 Amendments and Waivers.

No amendment of any provision of this Agreement shall be valid unless the same shall be in writing and signed by the Company and Motorola. No waiver by any party of any default, misrepresentation, or breach of warranty or covenant hereunder, whether intentional or not, shall be deemed to extend to any prior or subsequent default, misrepresentation, or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent such occurrence.

11.11 Severability.

Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction. If the final judgment of a court of competent jurisdiction declares that any term or provision hereof is invalid or unenforceable, the parties agree that the court making the determination of invalidity or unenforceability shall have the power to reduce the scope, duration, or area of the term or provision, to delete specific words or phrases, or to replace any invalid or

December 16, 1993
Revision 7

Page 36

unenforceable term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision, and this Agreement shall be enforceable as so modified after the expiration of the time within which the judgment may be appealed.

11.12 Construction.

The language used in this Agreement will be deemed to be the language chosen by the parties to express their mutual intent, and no rule of strict construction shall be applied against any party. Any reference to any federal, state, local, or foreign statute or law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise. Nothing in the Schedules shall be deemed adequate to disclose an exception to a representation or warranty made herein unless the Schedules identify the exception with reasonable particularity and describes the relevant facts in reasonable detail. The parties intend that each representation, warranty, and covenant contained herein shall have independent significance. If any party has breached any representation, warranty, or covenant contained herein in any respect, the fact that there exists another representation, warranty, or covenant relating to the same subject matter (regardless of the relative levels of specificity) which the party has not breached shall not detract from or mitigate the fact that the party is in breach of the first representation, warranty, or covenant.

11.13 Incorporation of Exhibits and Schedule.

The Exhibits and Schedules identified in this Agreement are incorporated herein by reference and made a part hereof.

11.14 Specific Performance.

Each of the parties acknowledges and agrees that the other parties would be damaged irreparably in the event any of the provisions of this Agreement are not performed in accordance with their specific terms or otherwise are breached. Accordingly, each of the parties agrees that the other parties shall be entitled to an injunction or injunctions to prevent breaches of the provisions of this Agreement and to enforce specifically this Agreement and the terms and provisions hereof in any action instituted in any court of the United States or any state thereof having jurisdiction over the parties and the matter (subject to the provisions set forth below), in addition to any other remedy to which it may be entitled, at law or in equity.

11.15 Alternative Dispute Resolution.

The parties will attempt to settle any claim or controversy arising out of this Agreement through consultation and negotiation in good faith and in a spirit of mutual cooperation. If those attempts fail, then such dispute will be mediated by a mutually-

acceptable mediator to be chosen by the parties within fifteen (15) business days after written notice by one of the parties demanding mediation. Neither the Company nor Motorola may unreasonably withhold consent to the selection of the mediator. By mutual agreement, however, the Company and Motorola may postpone mediation until the Company and Motorola have each completed some specified but limited discovery regarding the dispute. The parties may also mutually agree to replace mediation with some other form of alternative dispute resolution ("ADR"), such as neutral fact-finding or a mini-trial.

Any dispute which the parties cannot resolve through negotiation, mediation or another form of ADR within forty-five (45) days of the date of the initial demand for ADR by one of the parties may be submitted to any federal or state court of competent jurisdiction located in the State of California for

resolution. The Company and Motorola agree to waive any objection to personal jurisdiction or venue in any forum located in the State of California. The use of any ADR procedures will not be construed under the doctrine of laches, waiver or estoppel to affect adversely the rights of any party. Nothing in this Section 11.15 will prevent any party from resorting to judicial proceedings if (i) good faith efforts to resolve the dispute under these procedures have been unsuccessful, or (ii) interim relief from a court is necessary to prevent serious and irreparable injury to such party.

11.16 Mutual Release.

Motorola releases the Company and the Company releases Motorola from every claim of infringement of every patent (whether a U.S. patent or otherwise) for any acts carried out anywhere in the world at any time on or before the Closing Date.

11.17 [Intentionally Omitted]

11.18 [Intentionally Omitted]

12. Post-Closing Activities.

12.01 Further Assistance.

From and after the Closing Date, upon the request of Motorola, the Company shall execute, acknowledge and deliver to Motorola (or cause to be executed, acknowledged and delivered by others) all such further bills of sale, assignments, transfers, conveyances, and other documents, in a form reasonably satisfactory to Motorola, as may be required to convey, transfer and deliver to Motorola, and protect Motorola's right, title and interest in the Acquisition Assets, and as otherwise may be

December 16, 1993
Revision 7

Page 38

39
appropriate to carry out the transactions contemplated by this Agreement.

12.02 Regulatory Filings.

Each of the parties hereto will furnish to the other parties hereto such necessary information and reasonable assistance as such other parties may reasonably request in connection with its preparation of necessary filings or submissions to any governmental agency.

12.03 [intentionally omitted]

12.04 Litigation and IRS Support.

In the event and for so long as any party actively is contesting or defending against any charge, complaint, action, suit, proceeding, hearing, investigation, claim, or demand in connection with (i) any transaction contemplated under the agreement or (ii) any fact, situation, circumstance, status, condition, activity, practice, plan, occurrence, event, incident, action, failure to act, or transaction on or prior to the Closing Date involving the Company, each of the other parties will cooperate with the contesting or defending party and his or its counsel in the contest or defense, make available his or its personnel, and provide such testimony and access to his or its books and records as shall be necessary in connection with the contest or defense, all at the sole cost and expense of the contesting or defending party (unless the contesting or defending party is entitled to indemnification therefor).

IN WITNESS WHEREOF, Motorola, and the Company have caused this Agreement to be signed by their respective corporate seals to be affixed hereto, all as of the date first written above.

MOTOROLA INC.,
a Delaware Corporation

WESTERN DIGITAL CORPORATION,
a Delaware Corporation

By: _____
Murray A. Goldman
Senior Vice President
and Assistant General Manager
Semiconductor Products Sector

By: _____
A. Travis White
Executive Vice President
Group General Manager
Microcomputer Products

December 16, 1993
Revision 7

Page 39

40

WESTERN DIGITAL CORPORATION
8105 IRVINE CENTER DRIVE
IRVINE, CA 92718
(714) 932-5000

Dated as of
December 23, 1993

Motorola Inc.
6501 William Cannon Drive West
Austin, TX 78721

Attn: Richard Timmins
Vice President/Controller
Microcontroller Technologies Group
Mail Drop OE16

Dear Rick:

Reference is made to the Asset Purchase Agreement dated as of December 16, 1993 (the "Agreement") by and between Motorola Inc. ("Motorola") and Western Digital Corporation (the "Company"). As used herein, the terms "Closing" and "Closing Date" shall have the meanings ascribed to them in the Agreement. In consideration of the mutual promises contained herein, Motorola and the Company hereby agree as follows:

1. Section 2.01(b) of the Agreement provides for calculation of the amount to be paid by Motorola to the Company for raw material and work-in-process inventories based on Schedule 2.01(b) to the Agreement, to be updated as of 4:00 p.m. on the Closing Date. The parties have agreed to use the dollar amount set forth in such Schedule 2.01(b) (\$6,735,267.65) for purposes of the Closing and hereby agree to adjust that amount to reflect the final raw material and work-in-process schedule which will be prepared in a manner consistent with such Schedule 2.01(b) and will be available after the Closing. If the adjusted amount is higher than the amount used for Closing, Motorola will pay the additional amount to the Company in two equal installments at the time of payments on the Buyer Note. If the adjusted amount is lower, then the difference will be offset against the two installments due under the Buyer Note.

2. Sections 3.01 and 4.07 of the Agreement, as well as other sections of the Agreement, refer to "Listed Employees" as reflected in Schedule 3.01 to the Agreement. Such Schedule 3.01 has been prepared as of the most recent

41

Motorola Inc.
Page 2

practicable time prior to the Closing; however, the parties are continuing the process of determining whether certain additional Company employees (approximately 15 or less in number) will become "Listed Employees" subject to such additional employees qualifying under Motorola's employment policies. The persons to be added to the list of "Listed Employees" will be designated in writing by Motorola in its discretion prior to January 1, 1994.

3. Schedule 1.03 (Excluded Assets) to the Agreement contains, among other things, a schedule of excluded supplies which will need to be

updated as of 4:00 p.m. on the Closing Date. Since this update will not be available until after the Closing, the parties agree to complete such update in a manner consistent with the schedule of excluded supplies which is included in such Schedule 1.03 as of the Closing.

4. The allocation referred to in Section 2.02 of the Agreement will be completed and agreed to by the parties by January 30, 1994.

Very truly yours,
Western Digital Corporation

By: _____
Timothy J. Leyden
Vice President and
Controller, Microcomputer Products

Accepted to and accepted
as of the date first
written above:

Motorola Inc.

By: _____
Richard Timmins
Vice President and Controller
Microcontroller Technologies Group

42

LIST IDENTIFYING CONTENTS OF OMITTED SCHEDULES
PURSUANT TO REGULATION S-K ITEM 601(B) (2)

Schedule 1.01(a)	Description of Real Property
Schedule 1.02	Assumed Liabilities
Schedule 1.03	Excluded Assets
Schedule 2.01(b)	Raw Material/WIP
Schedule 2.01(c)	Capital Float
Schedule 3.01	Listed Employees
Schedule 5.03(d)	Legal Opinion by Gibson Dunn & Crutcher
Schedule 5.03(g)	Estoppel Certificate
Schedule 6	Joint Escrow Instructions
Schedule 7.05(b)	Government Approvals and Consents
Schedule 7.09	Excluded Contracts
Schedule 7.13	Insurance Information
Schedule 9.02	Confidentiality Agreement

Registrant will furnish supplementally a copy of any omitted schedule to the Commission upon request.

43

EXHIBIT A

PROMISSORY NOTE

\$6,735,267.65

December 23, 1993

FOR VALUE RECEIVED, Motorola, Inc., the undersigned promises to pay to the

order of Western Digital Corporation or holder the sum of Six Million Seven Hundred Thirty-Five Thousand, Two Hundred Sixty-Seven and 65/100 dollars (\$6,735,267.65) payable in two (2) equal installments, thirty (30) and sixty (60) days from the date hereof.

At the option of the holder, this note shall become immediately due and payable without notice or demand upon occurrence of any of the following events: (a) voluntary or involuntary filing of a petition in bankruptcy or for reorganization; (b) application for appointment or appointment of a Receiver; or (c) assignment for the benefit of creditors or adjudication in bankruptcy by or against the undersigned.

The liability of the undersigned hereunder shall be absolute and unconditional. Maker hereby waives presentment, demand for payment, notice of dishonor, protest, and any and all notices and demands in connection with the performance, default or enforcement of this note.

All amounts in arrears to bear interest at the rate of one and a half percent per month or the legal maximum until finally paid. If after any default, the holder shall place this note with an attorney for collection, then, if permitted by law, the undersigned agrees to pay all costs and expenses of such action, and a reasonable attorney's fee.

Witness:

Richard F. Timmins
Vice President and Controller
Microcontroller Technologies Group
Motorola Inc.

END OF EXHIBIT 1 TO FORM 8-K

EXHIBIT 2 TO FORM 8-K

SUPPLY AGREEMENT
BETWEEN
WESTERN DIGITAL CORPORATION
AND
MOTOROLA INC.

DECEMBER 16, 1993

CONTENTS

I.	DEFINITIONS	1
II.	AGREEMENT TERM	4
III.	STATEMENT OF WORK	4
IV.	ORDERING	4
	A. Purchase Orders And Weekly Releases	4
	B. Capacity Planning	5
	C. Performance Shortfalls	7
	D. Change Orders	7
	E. Scrapped Wafers	8
	1. Wafers Scrapped at Western Digital's Request	8
	2. Wafers Scrapped Due to Motorola Processing	9
V.	INVOICES AND PAYMENT TERMS	9
VI.	PRICING	9
	A. Wafer Price	9
	B. Wafer Device Yield	9
VII.	SUPPORT SERVICES	10
	A. Engineering Lots	10
	B. Test Changes - Process Improvement Support	10
	C. Motorola Report Requirements	11
	D. Mask Sets	11
	E. Probe Cards	11
	F. Prototype Device Development	11
	1. Prototype Design Information	11
	2. Prototype Capacity Reservation	12
	3. Prototype Diagnostics - Acceptance	12
VIII.	GENERAL SALES TERMS	12
	A. Packing Requirements	12
	B. Quality Assurance	13
	C. Failure Analysis	13
	D. Delivery Terms	13
	E. Minimum Device Per Wafer Standards	13
IX.	ADDITIONAL COVENANTS	13
	A. Drawing, Design and Specification Changes	13
	B. Motorola Changes	14
	C. Material/Process Failure Analysis	14
	D. IBM SQP Support	14
	E. IBM Maverick Initiative	14
	F. Support Customer Questionnaires, Surveys, and	

G. Customer Audit	14
H. No Ozone Depleting Substances	15
I. Work in Process ("WIP") Processing	15
J. Right to process Wafers	15
X. OPERATIONS AND DISPUTE RESOLUTION	15

A. Operations Managers Appointment and Duties	15
B. Executive Committee.	16
C. Mediation	16
XI. WARRANTY	16
XII. INTELLECTUAL PROPERTY AND CONFIDENTIALITY	17
XIII. MISCELLANEOUS PROVISIONS	19
A. No Waiver of Default	19
B. Entire Agreement	19
C. Assignment, Transfer or Sale of Facility	20
D. Compliance with Laws	20
E. Independent Contractor	20
F. Employees	20
G. Similar Products	21
H. Notices	21
I. Termination Provisions	22
J. Government Contract Conditions	22
K. Importation And Exportation	22
L. Limitation of Liability	22
M. Section Titles	23
N. Counterparts.	23
O. Time of the Essence	23
P. Force Majeure	23
Q. Severability	23
R. Governing Law.	23
S. Survival	23

SUPPLY AGREEMENT
BETWEEN
WESTERN DIGITAL CORPORATION
AND
MOTOROLA INC.

This Supply Agreement (this "Agreement") is made and entered into on December 16, 1993, by and between Motorola, Inc., a Delaware corporation, located at 3501 Ed Bluestein Boulevard, P.O. Box 6000, Austin, Texas 78762 and Western Digital Corporation, a Delaware corporation located at 8105 Irvine Center Drive, Irvine, California 92718 ("Western Digital"). This Agreement shall be effective (the "Effective Date") as of the Closing Date, as such term is defined in the Asset Purchase Agreement by and between the parties dated concurrent herewith (the "Asset Purchase Agreement"); provided, however, that if for any reason the Closing, as such term is defined in the Asset Purchase Agreement, does not occur within the time periods required pursuant to Section 6 of the Asset Purchase Agreement then this Agreement shall be null and void and have no further effect.

I. DEFINITIONS

The definitions set forth in this Article I shall apply to the corresponding words and phrases set forth with initial capitalization in this Agreement, whether used in the singular or the plural.

1.1 CONFIDENTIAL INFORMATION

shall mean any Trade Secret (as defined below) (other than any Trade Secret covered by Section IX(J) (2) hereinbelow) one Party (the "Disclosing Party") discloses to the other Party (the "Receiving Party") pursuant to this Agreement either:

- A. in a document (any written, graphic, machine readable, or other tangible form) which is either
 - 1. marked "Confidential" or in some other manner to indicate its confidential nature; or
 - 2. a tape or electronic transfer of data that is inherently known to have a confidential nature, such as a tape for reticle generation, a netlist, a database for testing, etc.;
- B. orally, provided that the Disclosing Party:

1

5

- 1. at the time of disclosure, states that such orally disclosed Trade Secret is confidential, and
- 2. within a reasonable time (not to exceed thirty (30) days) after its oral disclosure, delivers to the Receiving Party a document setting forth written confirmation of the prior oral confidential disclosure and setting forth the Trade Secret so disclosed.

1.2 "CYCLE TIME"

shall mean the total time from starting a Wafer until shipment of the Finished Wafer to Western Digital as set forth in Schedule 1.2.

1.3 "DEVICE"

shall mean a Die that is identified by a Western Digital manufacturing device code, regardless of whether or not the Die has been separated from a Wafer.

1.4 "DEVICES PER WAFER" OR "DPW"

shall mean the number of Good Devices that fit on a given Wafer.

1.5 "DEVICE PER WAFER YIELD"

shall mean the ratio of Good Devices to DPW for a given Wafer.

1.6 "DIE"

shall mean an individual integrated circuit or component which when completed create an integrated circuit.

1.7 "ENGINEERING LOT"

shall mean a group of Wafers which are processed to experiment with changes in the manufacturing process.

1.8 "FINAL RELEASE ORDER"

shall mean a final detailed order placed seven (7) days prior to starting production of a Lot of Wafers.

1.9 "FINISHED WAFER"

shall mean a completely processed, Background and Probed Wafer which meets the minimum Device Per Wafer Yield requirements set forth in Schedule 1.9 and meets the applicable Finished Wafer thickness specification.

1.10 "FINISHED WAFER DELIVERY RECEIPT"

shall mean Western Digital's written verification of an order that has been delivered by Motorola to fulfill a Final Release Order.

2

6

1.11 "FIRST BUSINESS DAY"

shall mean Monday or such other day as the parties shall mutually agree from time to time.

1.12 "GOOD DEVICE"

shall mean Devices which successfully complete the unit probe program and are operational integrated circuit products in unpackaged form.

1.13 "HOLDS"

shall have that meaning set forth in Section IV(C) hereof.

1.14 "LOT"

shall mean a group of Wafers (each Wafer containing a quantity of Devices) which are processed as a group. Each Lot will be assigned a specific alpha/numeric identification that distinguishes it from any other group that contains the same type of Die so that each Lot can be separately identified and tracked throughout the life of all Die produced in a Lot.

1.15 "MONTH" OR "WEEK"

shall mean a Motorola fiscal month or week.

1.16 "PRE-RELEASE ORDER"

shall mean a preliminary detailed order issued fourteen (14) days prior to starting production of a lot of Wafers. Pre-Release Order are for planning purposes and are subject to modification by a Change Order or corresponding Final Release Order.

1.17 "PROBE"

shall mean Motorola's final test of a processed wafer to determine if it qualifies as a Finished Wafer.

1.18 "PROTOTYPE DEVICE"

shall have the meaning as defined in Section VII(F).

1.19 "RISK STARTS"

shall be defined as Wafers related to Die that have not been released to production by Western Digital but for which the fabrication process has been released by Western Digital.

1.20 "RUSH LOT"

shall mean Wafer Lots which are to be processed on an accelerated basis equal to sixty-five one hundredths (.65) of the then current Cycle Time.

3

7

1.21 "SCRAPPED WAFERS"

shall have the meaning as defined in Section IV(E) (1) .

1.22 "TRADE SECRET"

shall mean any information, including a formula, pattern, compilation, program, device, method, technique, or process, that: derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. Without limiting the generality of the foregoing, Trade Secrets include information concerning designs of Devices, layout data, and test programs for testing Wafers and Devices.

1.23 "WAFER"
shall mean a crystalline substrate for integrated circuit production which when fully processed may consist of several potential finished Devices.

1.24 "FINISHED WAFER SPECIFICATIONS"
shall mean the specifications related to the warranty of Wafers as set forth in Schedule XI.

1.25 "WAFER STANDARD PRICE"
shall be the price for Finished Wafers set forth in Schedule 1.25.

II. AGREEMENT TERM

Unless terminated earlier under Section XIII(I), the term of this Agreement to supply Wafers to Western Digital shall be three (3) years from the Effective Date (the "Term"). The last Final Release Order to be received by Motorola no later than seven days prior to the end of the Term.

III. STATEMENT OF WORK

During the Term of this Agreement, Motorola will manufacture and sell Finished Wafers to Western Digital at the Wafer Standard Price, in the quantities and to the requirements set forth herein and perform other services as described in this Agreement. Motorola will make sufficient wafer starts to meet the minimum quantity requirements according to the timetable for delivery of Finished Wafers and with the Cycle Times as set forth in this Agreement. Motorola will achieve the minimum Device Per Wafer Yield as set forth in Schedule 1.9.

Subject to Western Digital's confidentiality obligations and such reasonable confidentiality restrictions as Western Digital may require, Western Digital will be

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responsible for supplying Motorola with Western Digital's technical information and reasonable assistance regarding the production of masks sets and Probe necessary for the manufacture of Devices as required by this Agreement. Western Digital will provide such technical information and assistance in a timely manner, so that Motorola may meet delivery timetables.

In no event will Motorola sell Wafers containing Western Digital's Devices to any other party.

IV. ORDERING

A. PURCHASE ORDERS AND WEEKLY RELEASES

Thirty (30) days prior to the beginning of each Western Digital fiscal quarter, Western Digital shall issue a blanket purchase order ("Purchase Order") in an amount sufficient to cover the price of the Finished Wafers Western Digital forecasts purchasing from Motorola during such quarter (the "Purchase Order Period"). Purchase Orders will list the anticipated quantity of Double Level Metal ("DLM") or Triple Level Metal ("TLM") Finished Wafers that Western Digital anticipates purchasing during such quarter.

On the First Business Day of each week, two weeks prior to Western Digital's actual desired date for wafer start, Western Digital will issue a non-binding Pre-Release Order. The Pre-Release Order will list the quantity of DLM or TLM Finished Wafers that Western Digital forecasts for start two weeks later. Each Pre-Release Order will be followed by a Final Release Order, on the First Business Day of each week, one week prior to Western Digital's actual desired date for wafer start. Final Release Orders may not be modified or canceled by Western Digital without the consent of Motorola.

Motorola will make sufficient weekly wafer starts to deliver to Western Digital the Finished Wafers as described on the Final Release Order within the Cycle Times. Western Digital will coordinate the timing of its Pre-Release Orders and Final Release Orders so that, Western Digital will receive Finished Wafers on the date it desires such Finished Wafers (provided that Motorola delivers the Finished Wafers within the Cycle Time).

B. CAPACITY PLANNING

In order to plan for the efficient utilization of the plant manufacturing capacity, the parties agree to exchange such other forecasts and information as is reasonably requested by the other party. Each month, Western Digital will provide Motorola with a six (6) month forecast of its Finished Wafer requirements which shall be used by Motorola for planning purposes only in order to allocate sufficient plant capacity to fulfill Western Digital's forecasted Finished Wafer requirements; provided, however, that such forecasts

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Western Digital shall not constitute a commitment by Western Digital to Motorola with respect to such forecasted requirements. Motorola and Western Digital shall meet as often as reasonably requested by the other party, but at least quarterly, to address capacity planning and capacity utilization issues.

Motorola has determined that as of the Effective Date, the manufacturing capacity of the wafer fabrication facility located at 1 Banting Way, Irvine, California (the "Wafer Fab Facility") is two thousand (2000) DLM, or DLM Equivalent (as defined below), Finished Wafers per week ("Initial Fab Capacity"). The parties also agree that, for purposes of measuring the additional manufacturing process requirements, a TLM Finished Wafer shall be converted to the equivalent DLM Finished Wafer (the "DLM Equivalent") by reference to the following: (i) each TLM Finished Wafer shall be deemed equivalent to one DLM Finished Wafer if eight hundred and fifty (850) or fewer TLM Finished Wafers per week are ordered by Western Digital under a Final Release Order, (ii) each TLM Finished Wafer ordered by Western Digital on a Final Release Order over and above eight hundred and fifty (850) per week but less than one thousand (1000) per week shall be deemed equivalent to one and two tenths (1.2) of a DLM Finished Wafer, (iii) the DLM Equivalent for each TLM Finished Wafer ordered by Western Digital on a Final Release Order over and above one thousand (1000) per week shall be reasonably determined and negotiated by the parties based upon the actual additional manufacturing process requirements of such volumes of TLM Finished Wafers.

During calendar years 1994 and 1995, Motorola agrees to provide to Western Digital the minimum number of DLM Equivalent Finished Wafers per calendar quarter as set forth in Schedule IV(B) (the "WD Finished Wafer Capacity"); provided, however, that all Wafers started prior to the Effective Date hereof shall be processed to Finished Wafers by Motorola but shall not count against the WD Finished Wafer Capacity. Notwithstanding, however: (i) Motorola is entitled to one hundred percent (100%) of any capacity above the Initial Fab Capacity, and (ii) as of the beginning of the fourth calendar quarter of 1994, and thereafter, Motorola shall be entitled to a minimum of fifty percent (50%) of the Initial Fab Capacity. Motorola may reject any Purchase Order, Pre-Release Order, or Final Release Order which would exceed the WD Finished Wafer Capacity. Motorola will accept Purchase Orders, Pre-Release Orders, and Final Release Orders which conform to the requirements of this Agreement and provide sufficient Wafer starts therefor.

Western Digital's utilization of the WD Finished Wafer Capacity for any given week shall be determined with reference to the Finished Wafers ordered by Western Digital in a Final Release Order and for which Western Digital issues a Finished Wafer Delivery

6

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Receipt. WD Finished Wafer Capacity which is not utilized by Western Digital in any given quarter due to Western Digital's failure to place Pre-Release Orders or Final Release Orders sufficient to utilize the WD Finished Wafer Capacity available in any given quarter will not carry over to any subsequent quarter.

The parties agree that to the extent that, for any reason, Western Digital does not receive the total number of Finished Wafers equal to the total WD Finished Wafer Capacity, such production capacity will have been made available to Motorola for which Motorola will pay to Western Digital a contingent capacity fee of up to fifteen million dollars (\$15,000,000) (the "Contingent Capacity Fee") paid as follows: (i) on or before January 15, 1995, Motorola will pay to Western Digital in cash a sum equal to ten million dollars

(\$10,000,000) less Earned Capacity Credits (as defined below) attributable to Finished Wafers delivered by Motorola to Western Digital pursuant to this Agreement in calendar 1994; provided, however, in no event shall Motorola pay to Western Digital an amount less than zero; and (ii) on or before January 15, 1996, Motorola will pay to Western Digital in cash a sum equal to fifteen million dollars (\$15,000,000) less the aggregate Earned Capacity Credits attributable to Finished Wafers delivered by Motorola to Western Digital pursuant to this Agreement in calendar 1994 and 1995; ; provided, however, in no event shall Motorola pay to Western Digital an amount less than zero. As used herein, the dollar amount of "Earned Capacity Credits" attributable to a particular period shall be equal to the number of Finished Wafers delivered in that period multiplied by one hundred and fifty dollars (\$150). The amount of Contingent Capacity Fee which, at any given point in time, has not been paid to Western Digital shall be referred to herein as the "Unpaid Contingent Capacity Fee." Upon termination of this Agreement for any reason prior to January 15, 1996, Motorola shall pay to Western Digital, in addition to any other amounts due to Western Digital, the Unpaid Contingent Capacity Fee.

Throughout the Term of this Agreement the parties shall cooperate to maintain records that accurately reflect Western Digital's utilization of the Wafer capacity. The parties shall cooperate to mutually verify these records for accuracy and completeness as often as either party may reasonably request but in no event less frequently than monthly.

C. PERFORMANCE SHORTFALLS

A "Performance Shortfall" shall be defined as an amount equal to the number of Finished Wafers ordered by Western Digital in a Final Release Order that are not shipped to Western Digital within the applicable Cycle Time. On a monthly basis during the Term of this Agreement the parties shall cooperate to determine the existence and amount of any Performance Shortfall.

7

11

Motorola will exercise its best efforts to allocate capacity to make up any Performance Shortfalls in the number of Finished Wafers required to meet the WD Finished Wafer Capacity as soon as possible. Motorola shall allocate Wafer production capacity to make up any Performance Shortfalls in the number of Western Digital's Finished Wafers such that Western Digital is allocated as much additional capacity possible in proportion to the percentage of Wafer production allocated to Western Digital with reference to other entities to which Motorola is contractually obligated to produce Wafers for at the Wafer Fab Facility ("Customers") so that Western Digital is allocated an additional pro rata share of the capacity so that Western Digital's Performance Shortfall make up Wafer capacity allocation is no less favorable than any other Customer and all Customers have their capacity allocation reduced on a pro rata basis in order to provide capacity to make up the Performance Shortfall.

D. CHANGE ORDERS.

Western Digital may make changes to any Pre-Release Order (a "Change Order") to increase the quantity of Finished Wafers that had been ordered in a Pre-Release Order, and Motorola shall accept such Change Order provided that such increases do not exceed one hundred and twenty-five percent (125%) of the quantities to be purchased under the relevant quarterly Purchase Order on a cumulative basis for such quarter.

Western Digital may issue Change Orders to any Pre-Release Order to decrease the quantity of Finished Wafers that had been ordered in a Pre-Release Order, and Motorola shall accept such Change Order provided that such decreases are not below seventy-five percent (75%) of the quantities to be purchased under the relevant quarterly Purchase Order on a cumulative basis for such quarter.

Western Digital may issue a Change Order to suspend the processing of Wafers for a maximum of forty-five (45) days (a "Hold On-Line") or have processing of Wafers resumed by notifying Motorola at no additional charge; provided, however, that the following limits on the number of Wafers on hold shall apply: (i) during the first and second calendar quarters of 1994 no more than one thousand (1000) Wafers may be on Hold On-Line at any given time, (ii) during the third calendar quarter of 1994 no more than seven hundred and fifty (750) Wafers may be on Hold On-Line at any given time, (iii) during the fourth calendar quarter of 1994 and thereafter throughout the Term of this Agreement no more than five hundred (500) Wafers may be on Hold On-Line at any given

time. The delivery schedules and Cycle Times for any Wafers on Hold On-Line shall be increased by one day for each day such Wafers are on Hold On-Line. By the end of the forty-five (45) day Hold On-Line period, Western Digital will notify Motorola of its

8

12

decision to: (i) reactivate processing of the Hold On-Line Wafers, (ii) scrap the Hold On-Line Wafers in accordance with Section IV(E)(1), or (iii) have such Hold On-Line Wafers taken out of the production line by Motorola whereupon Motorola will store such Wafers within the Wafer Fab Facility until directed otherwise by Western Digital (a "Hold Off-Line") at no additional charge. A Hold Off-Line shall not exceed one year, after which Motorola may dispose of such Wafers. In the event Western Digital elects to place Wafers on Hold Off-Line it shall be billed an adjusted price for each Hold Off-Line Wafer based upon the point of production at which the Wafers were when Western Digital notified Motorola to place such Wafers on Hold Off-Line status in accordance with the percentages of the Wafer Standard Price set forth in Schedule IV(D) (the "Partially Processed Wafer Price"). Upon Western Digital's request Motorola shall either: (i) dispose of the Hold Off-Line Wafers or (ii) provided Motorola approves such request, which approval shall not be unreasonably withheld, Motorola will reactivate processing of the Hold Off-Line Wafers and process them into Finished Wafers and deliver such Finished Wafers in accordance with the terms and conditions set forth herein (the "Hold Off-Line Completion Processing"); provided, however, that Motorola may charge Western Digital for the Hold Off-Line Completion Processing ("Completion Charge") provided that the sum of the Completion Charge and the Partially Processed Wafer Price shall not exceed the then current Wafer Standard Price. Any Hold Off-Line Wafers disposed of under this Section shall count against the WD Finished Wafer Capacity.

Western Digital may also issue a Change Order to have any given Lot be processed as a Rush. Western Digital may, at no additional charge, have a maximum of ten (10) Lots of any kind (prototype or non-prototype) on Rush status in Motorola's fabrication line at any one time.

E. SCRAPPED WAFERS

1. WAFERS SCRAPPED AT WESTERN DIGITAL'S REQUEST

Western Digital may issue Change Orders to scrap Wafers as it may determine necessary from time to time ("Scrapped Wafers"); provided, however, that: (i) Western Digital shall pay the Partially Processed Wafer Price for each Scrapped Wafer, (ii) each Scrapped Wafer shall count as a Finished Wafer against the WD Finished Wafer Capacity, and (iii) upon Western Digital's request, Motorola shall deliver the Scrapped Wafers to Western Digital.

2. WAFERS SCRAPPED DUE TO MOTOROLA PROCESSING

If Wafers are scrapped due to problems in Motorola's processing of such Wafers, Motorola will promptly notify Western Digital and Western Digital shall

9

13

not be charged for such Scrapped Wafers and such Scrapped Wafer shall not count as a Finished Wafers against the WD Finished Wafer Capacity. Motorola shall at Western Digital's option and upon notice from Western Digital: (i) restart new Wafers with the same device to replace such Scrapped Wafers, (ii) restart new Wafers with a different device to replace such Scrapped Wafers, or (iii) cancel its order for such Wafers without charge.

V. INVOICES AND PAYMENT TERMS

Motorola shall submit an invoice to Western Digital at the end of each week for Finished Wafers which were shipped to Western Digital during that week (the "Weekly Invoice"). Within thirty (30) days of Western Digital's receipt of the Weekly Invoice Western Digital shall remit payment to Motorola for all Finished

Wafers for which Western Digital has issued a Finished Wafer Delivery Receipt.

Western Digital shall pay all applicable sales taxes on the Finished Wafers delivered to Western Digital hereunder and for which Western Digital has issued a Finished Wafer Delivery Receipt.

VI. PRICING

A. WAFER PRICE

The prices for all Finished Wafers delivered pursuant to this Agreement shall be at the Wafer Standard Price applicable on the date upon which the Finished Wafers are delivered to Western Digital hereunder, provided that Western Digital does not require a Substantially Different Process (as defined below) to produce such Finished Wafers. A "Substantially Different Process" is a process which is different from the current process in that it requires a significant increase in the number of steps in the process or a significant increase in the complexity of processing and such increased complexity results in increases to the cost of processing such Finished Wafers.

B. WAFER DEVICE YIELD

The Device Per Wafer Yield for Western Digital Devices in production as of the Effective Date is set forth in Schedule 1.9. The Device Per Wafer Yield for Western Digital Devices which are not currently in production ("New Devices") and which do not require a Substantially Different Process shall be established pursuant to the following procedure:

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14

Motorola shall process five hundred (500) Wafers for New Device mask sets ("Baseline Wafers") whereupon the following formula shall be used to establish an Device Per Wafer for that Device type:

The Device Per Wafer shall be calculated according to the following formula based upon the actual Device Per Wafer Yield realized in the production of the Baseline Wafers:

$$\begin{aligned}
 \text{DPW} &= \frac{\text{Average Actual Die Per Wafer From The Baseline Wafers ("ADPW")}}{\frac{([\text{SIGMA}]D \quad (\text{ADPW}) \quad * \quad (\text{Quantity of D Wafers}))}{\text{Standard Die Per Wafer} \quad \text{Total Western Digital Wafers}}} \\
 [\text{SIGMA}]D &= \text{Sum of all Western Digital Devices (ED) in the production line.}
 \end{aligned}$$

The DPW established pursuant to the foregoing section with reference to the Baseline Wafers (the "Initial DPW") shall remain in effect for the remainder of the quarter within which the final Baseline Wafers used to determine the DPW were processed ("Baseline Quarter"). For all quarters beyond the Baseline Quarter the Initial DPW shall be increased by (the "D0 Curve") percentages set forth on Schedule 1.9 (the "Updated DPW").

Motorola shall provide Western Digital any and all information relating to the processing of the Baseline Wafers as Western Digital may reasonably request including, without limitation, information related to any conditions or problems encountered in processing of the Baseline Wafers that may have effected the actual Device Per Wafer Yield of the Baseline Wafers (the "Baseline Processing Data").

In the event that Western Digital concludes, based upon its analysis of the Baseline Processing Data, that the Device Per Wafer Yield results obtained for certain of the Baseline Wafers do not accurately reflect the Device Per Wafer Yield that can be expected for such Device type Wafers ("Unrepresentative Wafers") then upon Western Digital's notice to Motorola of such Unrepresentative Wafers, Motorola shall recalculate the Initial DPW based upon the Device Per Wafer Yield realized from the Baseline Wafers after excluding the Device Per Wafer Yield related to the Unrepresentative Wafers.

Provided that the Baseline Wafers meet or exceed the parametric test criteria provided by Western Digital Baseline Wafers shall be priced at the

then current Wafer price for the given Wafer type (DLM or TLM).

VII. SUPPORT SERVICES

A. ENGINEERING LOTS

Motorola shall provide Western Digital with engineering and operational support associated with establishing Motorola's capability to produce new Devices under this Agreement. Western Digital shall pay an additional ten percent (10%) above the Wafer

11

15

Standard Price (after subtracting Probe costs) for all Wafers related to an Engineering Lot. Each Engineering Lot Wafer shall count against the WD Finished Wafers Capacity.

B. TEST CHANGES - PROCESS IMPROVEMENT SUPPORT

Motorola agrees to take reasonable steps to improve the economies of Device fabrication and manufacture including accommodating test changes as may be mutually agreed (taking into account any impact on capacity). Western Digital will provide at no charge to Motorola, High Pin Count Test Capacity for Western Digital products produced by Motorola that exceed existing test capacities. Priorities to be determined by Western Digital.

C. MOTOROLA REPORT REQUIREMENTS

Motorola shall provide Western Digital with information requested by Western Digital which is reasonably related to Western Digital's administration of this Agreement including all reports and information identified in Schedule VII(C).

D. MASK SETS

Western Digital shall either furnish to or, if Western Digital requests that Motorola create such, reimburse Motorola for, the costs associated with the creation of the initial mask set for each new Device type not listed on Schedule VII(D) (the "Initial Mask Set"); provided that for each Initial Mask Set ordered during the Term of this Agreement Motorola shall charge Western Digital a price that the parties shall negotiate in good faith, taking into account the actual costs incurred by Motorola in the production of such Initial Mask Set. All costs and charges associated with mask sets other than the Initial Mask Sets which are necessary or advisable to produce the Finished Wafers in the volumes and within the time periods specified herein shall be paid by Motorola.

E. PROBE CARDS

Western Digital shall reimburse Motorola for the costs associated with the creation of the initial production probe card for each Device type not listed on Schedule VII(D) ("Initial Probe Card"); provided that for each Initial Probe Card ordered by Western Digital during the Term of this Agreement Motorola shall charge Western Digital a price that the parties shall negotiate such price in good faith, taking into account the actual costs incurred by Motorola in the production of such Initial Probe Card. All costs and charges associated with the replacement or maintenance of the Initial Probe Cards or probe cards other than the Initial Probe Cards which are necessary or advisable to produce the Finished Wafers in the volumes and within the time periods specified herein shall be paid by Motorola.

12

16

F. PROTOTYPE DEVICE DEVELOPMENT

Western Digital may, at its discretion, provide to Motorola designs for new Devices ("New Design") or modifications of existing Devices ("Revised Design"). Such New Designs and Revised Designs shall be processed by Motorola in accordance with the terms and conditions of this section (the "Prototype Devices"). Each Prototype Device Wafer shall count against the WD Finished Wafer Capacity. Any non-standard processing of Prototype Device designs must be approved in writing in advance by Western Digital.

1. PROTOTYPE DESIGN INFORMATION

Western Digital shall provide to Motorola an initial data base for reticle generation, or acceptable production reticles for the Prototype Devices to be fabricated by Motorola (the "Prototype Database") by electronic transmission of such data or by such other format as reasonable under the circumstances. Western Digital shall retain ownership in one set of reticles per device and any additional reticles required as a result of development work related to Prototype Device revisions. Motorola shall be responsible for the costs associated with any replacement reticle sets. All reticles and data base for a given Device shall be returned to Western Digital within five (5) days of Western Digital written request for therefor.

2. PROTOTYPE CAPACITY RESERVATION

Upon seven (7) days prior written notice from Western Digital to Motorola of Western Digital's desire to have Motorola fabricate a particular Prototype Device design, Motorola shall make available the resources and processing capacity for mask preparation and wafer starts for material for the Prototype Device design fabrication as necessary to produce the Prototype Device designs specified by Western Digital in such written notice.

3. PROTOTYPE DIAGNOSTICS - ACCEPTANCE

Each lot of Wafers based upon the Prototype Device designs ("Prototype Lot") shall be subject to the then current diagnostic (i/v) tests and sample plan (accept/reject) criteria applicable to the type of material (DLM or TLM) used. If the Prototype Lot does not pass this criteria, Motorola shall provide such Prototype Lot to Western Digital at no cost and the Prototype Device Wafer shall not count against the WD Finished Wafer Capacity. In addition, at Western Digital's request and at no additional charge, Motorola shall immediately restart fabrication of that

13

17

Prototype Device design as a Rush Lot; provided, however, that such Rush Lots shall not count against the Rush Lots which Western Digital is permitted to specify elsewhere in this Agreement. Motorola shall provide Western Digital a copy of all Diagnostics Data along with each Lot of Wafers based upon the Prototype Device designs. Motorola shall provide Western Digital with detailed documentation on Prototype Device array and test structures and any non-standard processing which the Prototype Device Wafers were subjected to.

VIII. GENERAL SALES TERMS

A. PACKING REQUIREMENTS

Motorola shall properly pack, mark, and ship all Wafers or other items to be delivered to Western Digital under this Agreement as follows: A packing list shall accompany each shipping package unit; Each packing list, bill of lading or equivalent and an invoice which shall: identify every applicable Western Digital Purchase Order number, and every Device code of every Device and circuits on every Wafer being shipped; specify by Device code the quantity of both Devices and Wafers being shipped, and the location to which Wafers or items are being shipped; Each shipping package unit shall be properly marked with the applicable order number(s). All Wafers and other items to be delivered to Western Digital under this Agreement shall be properly packed, marked and shipped in accordance with Western Digital packing criteria QC000159 attached hereto as Schedule VIII(A).

B. QUALITY ASSURANCE

Motorola shall, through its quality assurance organization, inspect Wafers delivered to Western Digital under this Agreement according to the Quality Assurance Specifications requirements of Schedule VIII(B).

In order to avoid undue delay in the processing of the Devices, Motorola shall notify Western Digital of any known or suspected failure mechanisms and/or defects which are or which it suspects might be present in a completed Device. Western Digital shall use reasonable efforts to provide Motorola the information it reasonably requests in connection with Motorola's efforts to correct such failure mechanisms and/or defects.

C. FAILURE ANALYSIS

Motorola shall provide Western Digital with failure analysis reports on all returns by Western Digital customers, qualification unit failures, and reliability monitor failures describing root cause and corrective action within a reasonable time of Motorola's receipt of such returns.

14

18

D. DELIVERY TERMS

Title and risk of loss or damage to the products will pass to Western Digital FOB destination Western Digital facility in Irvine, California; provided, however, that title and risk of loss or damage to products delivered within the Wafer Fab Facility in Irvine will pass upon Western Digital's issuance of a Finished Wafer Delivery Receipt therefor.

E. MINIMUM DEVICE PER WAFER STANDARDS

Motorola shall not ship any Finished Wafer with actual Device Per Wafer Yield less than that set forth in the Minimum Device Per Wafer Yield Schedule ("Substandard Wafers") without the prior written approval of Western Digital. In the event Western Digital approves shipment of Substandard Wafers: (i) the Substandard Wafers shall not be counted against Western Digital's Finished Wafer capacity utilization, and (ii) Western Digital shall be charged only that portion of the then current Wafer price based upon percentage of actual Device Per Wafer Yield so that if the actual Device Per Wafer Yield was forty percent (40%) of the DPW then Western Digital would be charged forty percent (40%) of the then current Wafer price.

IX. ADDITIONAL COVENANTS

A. DRAWING, DESIGN AND SPECIFICATION CHANGES

Changes to the drawings, designs, and specifications related to the Devices, Wafers and technical specifications related thereto as referred to in this Agreement may be requested by either party. Upon request for change, Motorola shall submit a report to Western Digital setting forth its best judgment as to the probable effect, if any, of the requested change in the function, performance, reliability, schedule, payment, unit prices, delivery, or other criteria ("Change Report") within a reasonable time after a request for change by Western Digital and with a request for change by Motorola. The parties will then mutually agree as to the appropriate action.

B. MOTOROLA CHANGES

Motorola shall obtain Western Digital's written approval prior to implementing any change to any requirement which is referenced in Western Digital documents RL000100 and/or QC000156 and/or QC000175, and which affects any product or products procured by Western Digital under this Agreement including, without limitation, any changes to the processes used to fabricate the Devices.

C. MATERIAL/PROCESS FAILURE ANALYSIS

Motorola will perform material/process analysis and take action necessary to correct any deficiencies discovered as a result of such analysis whenever there is a known or

15

19

suspected material or process problem. Motorola and Western Digital work together to bring about continuous process improvement.

D. IBM SQP SUPPORT

Motorola shall support Western Digital in meeting the requirements of the IBM SQP agreement. A copy of the latest IBM SQP agreement is attached hereto as Exhibit A (the ("IBM Agreement")). Motorola shall support Western Digital in responding to and complying to any changes to the IBM SQP from and after the Effective Date of this Agreement including, without limitation any changes to the monthly KPI report as defined in the IBM Agreement.

E. IBM MAVERICK INITIATIVE

Motorola is responsible for meeting the requirements of the IBM "Maverick initiative" (including "no rework policy") as described in the Jedec Proposal dated 8/4/93 a copy of which Motorola has in its possession. Motorola shall support Western Digital in responding to and complying with agreed to changes to the Maverick initiative from and after the Effective Date of this Agreement.

F. SUPPORT CUSTOMER QUESTIONNAIRES, SURVEYS, AND AUDITS

Motorola shall complete all reasonable questionnaires and surveys from Western Digital customers. These questionnaires and surveys shall be completed by Motorola in a timely manner.

G. CUSTOMER AUDIT

Upon two weeks prior notice, Motorola shall permit Western Digital's customers to audit the Motorola Facility(ies) that produce Western Digital Devices pursuant to this Agreement and to perform source inspection of customers product if required by Western Digital contract with its customer. Western Digital's customers must agree to comply with Motorola's security, safety and confidentiality requirements. Motorola shall support such audits by Western Digital customers including, setting the date of such audit, presenting the Fab Quality systems, supplying guides to support the physical audit and taking all requested corrective action to the audit results in a timely manner.

H. NO OZONE DEPLETING SUBSTANCES

The United States Clean Air Act amendments of 1990 provide specific requirements for the usage and elimination of ozone depleting substances ("ODS"). Motorola's Wafer Fab Facility shall either be free of ODS or Motorola shall have a plan, which must be provided to Western Digital, for the elimination of ODS within the time frames dictated by the United States Clean Air Act.

16

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I. WORK IN PROCESS ("WIP") PROCESSING

As of the Effective Date of this Agreement, a certain quantity of Wafers shall be at various stages of processing within the Wafer Fab Facility (the "WIP Wafers") Motorola will process the WIP Wafers and deliver same to Western Digital as Finished Wafers in accordance with the Cycle Times set forth herein (taking into account time spent processing the Wafers prior to the Effective Date hereof) and other requirements applicable to Finished Wafers as set forth herein (the "Finished WIP Wafer"). For each Finished WIP Wafer, Western Digital shall pay Motorola the Wafer Standard Price applicable to all Finished Wafers on the date upon which the Finished WIP Wafer is delivered to Western Digital. Finished WIP Wafers shall not count against the WD Finished Wafer Capacity.

J. RIGHT TO PROCESS WAFERS

1. Western Digital hereby grants to Motorola the right to use any part of or all of Western Digital's Intellectual Property (as defined in Section 1.03 of the Asset Purchase Agreement as the "Company's Intellectual Property"), whether now existing or hereafter acquired which is necessary to make Finished Wafers for Western Digital hereunder.

2. Western Digital hereby agrees that Western Digital shall make no claim under any Western Digital Intellectual Property, whether now existing or

hereafter acquired, to prevent Motorola from using or disclosing or to require Motorola to pay any royalty for using or disclosing, anywhere in the world, any process for making CMOS wafers that is identical to or substantially the same as either of the specific processes of making CMOS wafers that Western Digital has disclosed or hereafter discloses to Motorola for Motorola to use to make 0.9 micron, double-level metal and triple-level metal wafers for Western Digital hereunder. This Section IX(J)(2) shall in fact survive after termination of this Agreement, regardless of the basis for such termination.

X. OPERATIONS AND DISPUTE RESOLUTION

A. OPERATIONS MANAGERS APPOINTMENT AND DUTIES

Each party shall appoint an individual with overall responsibility for monitoring performance and addressing any performance deficiencies under this Agreement (the "Managers"). Subject to and in accordance with the terms and requirements of this Agreement, the Managers shall meet as often as necessary and shall respectively serve as each party's chief coordinator to effect the purposes of this Agreement and to address resolution of disputes hereunder. In the event any issue or dispute is not resolved for

17

21

whichever reason within ten (10) days from the commencement of such issue or dispute, either Manager may refer the issue or dispute to the Executive Committee.

B. EXECUTIVE COMMITTEE.

Each party shall appoint a member of its management to serve on an executive committee (the "Executive Committee"). The Executive Committee shall meet by teleconference or in person at the Wafer Fab Facility, as often as either party may reasonably request for the purpose of reviewing high level operational priorities and objectives related to this Agreement and resolving disputes that arise under this Agreement that have not been resolved by the Operating Oversight Committee. In the event that the Executive Committee is unable to resolve a dispute within fifteen (15) days after the initial request to resolve such dispute is received by the Executive Committee, then either party may submit the matter for resolution as provided under Section X(C) hereof.

Notwithstanding anything to the contrary contained herein, and irrespective of the existence of any dispute between the parties, Motorola shall continue to provide to Western Digital all products and services upon the terms and conditions hereof during the pendency of any such dispute.

C. MEDIATION

Motorola and Western Digital will attempt to settle any claim or controversy through consultation and negotiation in good faith and a spirit of mutual cooperation. If those attempts fail, then the dispute will be mediated by a mutually-acceptable mediator to be chosen by Motorola and Western Digital within ten (10) days after written notice by a party demanding mediation. Neither party may unreasonably withhold consent to the selection of a mediator, and Motorola and Western Digital will share the costs of the mediation equally.

Any dispute which cannot be resolved through negotiation or mediation within thirty (30) days of the date of the initial demand by either party shall then be finally resolved by the courts. The use of any alternative dispute resolution procedure will not be construed under the doctrines of laches, waiver or estoppel to affect adversely the rights of either party. And nothing in this paragraph will prevent either party from resorting to judicial proceedings if: (a) good faith efforts to resolve the dispute under these procedures have been unsuccessful, or (b) interim relief from a court is necessary to prevent serious and irreparable injury to one party or to others.

18

22

XI. WARRANTY

Motorola warrants that Finished Wafers sold hereunder shall at the time of shipment be free and clear of liens and encumbrances, be in compliance with the specifications set forth in Schedule XI, and be shall free from defects in material and workmanship. As determined by the Incoming Quality Inspection which shall be performed by Western Digital, subject to good faith verification, per Western Digital's Vendor Incoming Inspection document.

THIS WARRANTY EXTENDS TO WESTERN DIGITAL ONLY AND MAY BE INVOKED BY WESTERN DIGITAL ONLY FOR ITS CUSTOMERS. MOTOROLA SHALL NOT ACCEPT WARRANTY RETURNS DIRECTLY FROM WESTERN DIGITAL'S CUSTOMERS OR USERS OF WESTERN DIGITAL'S PRODUCTS. MOTOROLA DOES NOT WARRANT FINISHED WAFERS REJECTED BY WESTERN DIGITAL AS A RESULT OF THE FOLLOWING, UNLESS, OTHERWISE PREVIOUSLY AGREED TO BY THE PARTIES IN WRITING: (1) CHANGES TO WESTERN DIGITAL'S RELIABILITY TESTING, OR (2) SUBSTANTIAL CHANGES IN WESTERN DIGITAL'S PROCESSING OF THE FINISHED WAFERS AFTER DELIVERY TO WESTERN DIGITAL. THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES WHETHER EXPRESS, IMPLIED OR STATUTORY INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE. THIS WARRANTY DOES NOT APPLY TO DEFECTS ARISING AS A RESULT OF WESTERN DIGITAL'S DESIGN OR FORMULA. WESTERN DIGITAL'S SOLE REMEDY FOR ANY BREACH SHALL BE LIMITED TO THE REMEDIES SET FORTH IN THIS AGREEMENT.

Within five (5) calendar days of Western Digital's request therefor Motorola will provide Western Digital a return material authorization ("RMA") for all Wafers to be returned under warranty ("Defective Wafers").

Unless Motorola and Western Digital mutually agree that Motorola will repair such Defective Wafers, Motorola will, at Western Digital's option, replace the Defective Wafers with new Finished Wafers (as Performance Shortfalls in accordance with Section IV(C) hereof) or refund the purchase price of such Finished Wafers. Defective Wafers shall not count against the WD Finished Wafer Capacity.

19

23

In the event repeated field failures occur with respect to a Device, or a significant field failure occurs which requires immediate consideration, Western Digital and Motorola shall discuss a solution thereof in good faith.

XII. INTELLECTUAL PROPERTY AND CONFIDENTIALITY

A. Except as provided on Section IX(J) (2) and except as required for the performance of this Agreement, each Party shall treat as confidential all Confidential Information of the other Party, shall not use such Confidential Information and shall not disclose such Confidential Information to any third party except as required for the performance of this Agreement, and subject to confidentiality obligations at least as protective as those set forth herein. Without limiting the foregoing, the Receiving Party shall use at least the same degree of care which it uses to prevent the disclosure of its own confidential information of like importance to prevent the disclosure of Confidential Information disclosed to it by the Disclosing Party.

B. The Receiving Party has no obligation to refrain from making a disclosure of Confidential Information if such disclosure is:

1. in response to a valid order of a court or other governmental body of the United States or any political subdivision thereof; provided, however, that the Receiving Party making the disclosure pursuant to the order shall first have given notice to the Disclosing Party and made a reasonable effort to obtain a protective order requiring that the information and/or documents so disclosed be used only for the purposes for which the order was issued; or
2. otherwise required by law, or
3. necessary to establish rights under this Agreement.

C. The Receiving Party has no obligation to refrain from either making a disclosure of, or using any information that:

1. is already in the possession of the Receiving Party without obligation of confidence;

2. is independently developed by the Receiving Party;
3. is or becomes publicly available without breach of this Agreement;
4. is rightfully received by the Receiving Party from a third party.

20

24

D. The obligation to protect the Confidential Information shall survive for three (3) years following the expiration or termination of this Agreement.

E. Except for patents of AT&T, if any, covering the specific processes for making CMOS Wafers, disclosed or to be disclosed by Western Digital to Motorola, Motorola agrees to defend at its expense any suits brought against Western Digital based upon a claim that any process performed by Motorola under this Agreement directly infringe any patent or copyright and to pay costs and damages finally awarded, in any such suit against Western Digital, provided that Motorola is notified promptly in writing of the suit and at Motorola's request and at its expense Motorola is given control of said suit and all requested reasonable assistance for defense thereof. If the use or sale of any of the Finished Wafers is enjoined as a result of such suit, Motorola, at its option and at no expense to Western Digital, shall either: (i) obtain for Western Digital the right to use and sell the Finished Wafers, (ii) substitute an equivalent method for performing the activity which is acceptable to and qualified by Western Digital and extend this indemnity thereto, or (iii) accept return of the Finished Wafers and refund the purchase price. Motorola will use its best efforts to provide a remedy under clause (i) or (ii) prior to refunding the purchase price under clause (iii). This indemnity does not extend to any suit based upon any infringement or alleged infringement of any patent or copyright when such infringement is made necessary by any article of Western Digital's design or formula. This is the entire liability of Motorola to Western Digital for patent or copyright infringement relating to Finished Wafers or Motorola's activities.

F. Western Digital agrees to defend at its expense any suits brought against Motorola based upon a claim that any Finished Wafers, or their Die, furnished by Motorola to Western Digital infringes any patent or copyright when such infringement is necessary for Motorola's compliance with Western Digital's specifications or formula, and to pay costs and damages finally awarded in such suit against Motorola, provided that Western Digital is notified promptly in writing of the suit and at Western Digital's request and at its expense is given control of said suit and all requested reasonable assistance for defense. This Section XII(F) shall in fact survive after termination of this Agreement, regardless of the basis for such termination.

G. The sale of Finished Wafers does not convey any license by implication, estoppel, or otherwise, under any proprietary or patent rights of Motorola covering combinations of Finished Wafers with other elements.

H. Western Digital agrees to indemnify, defend and hold harmless Motorola from and against all damages, liabilities, costs and expenses (including reasonable attorneys' fees for

21

25

outside counsel but not in house counsel) arising out of any claims or suits filed against Motorola by AT&T alleging that the production of Wafers by Motorola for supply to Western Digital pursuant to this Agreement using any process disclosed to Motorola pursuant to this Agreement or the Asset Purchase Agreement infringes any patent held by AT&T as of the closing date of the Asset Purchase Agreement. This Section XII(H) shall in fact survive after termination of this Agreement, regardless of the basis for such termination.

IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING FROM INFRINGEMENT OR ALLEGED INFRINGEMENT OF PATENT OR COPYRIGHTS.

A. NO WAIVER OF DEFAULT

No course of dealing or failure of either party to strictly enforce any term, right, or corrective with respect to any transaction, objection or order hereunder shall be constructed as a waive of such item, right, or cancellation. The failure of either party to exercise any termination right hereunder shall not constitute a waiver of the rights granted herein with respect to any subsequent default.

B. ENTIRE AGREEMENT

This Agreement and that certain Asset Purchase Agreement between the parties of even date herewith and the attached schedules and exhibits, which are incorporated herein by this reference, contain the entire agreement of the parties and supersedes all prior agreements, whether written or oral, with respect to the subject matter. Modification or amendment of this Agreement or any part may be made only by written instrument executed by both parties.

C. ASSIGNMENT, TRANSFER OR SALE OF FACILITY

Neither party shall assign, sublicense or otherwise transfer this Agreement or any rights or obligations arising under this Agreement without the prior written approval of the other party, provided, however, that no such consent shall be required for the assignment of any rights or obligations arising under this Agreement to any affiliate, subsidiary or division or in connection with a merger, consolidation, sale of substantially all of the assets of either party or an affiliate, subsidiary or division or any change of control, in which event, this Agreement shall apply to, inure to the benefit of and be binding upon the parties hereto and upon their respective successors in interest.
Motorola

22

26

shall not delegate or subcontract its performance of this Agreement to any third party. In addition, Motorola may not transfer the manufacture of the Devices to any physical location other than the Wafer Fab Facility prior to qualifying such other location under criteria provided by Western Digital for manufacture of the Devices.

D. COMPLIANCE WITH LAWS

Each party shall at all times during the Term of this Agreement perform its duties and obligations hereunder in full compliance with all requirements of applicable laws, statutes, ordinances, rules, regulations, orders and decrees of any state federal or local governmental entities.

E. INDEPENDENT CONTRACTOR

It is agreed that Motorola is an independent contractor for the performance of services under this Agreement, and that for accomplishment of the desired result Western Digital is to have no control over the methods and means of accomplishment, except as specifically set forth in this Agreement. Motorola is and shall be the sole employer and principal of any and all persons providing services under this Agreement, and shall be obligated to perform all requirements of an employer under federal, state, and local laws and ordinances including, without limitation, payment of compensation to such personnel including, without limitation, payment of all federal, state and local taxes or contributions imposed or required under unemployment insurance, social security and income tax laws with respect to such persons and for any injury to them in the course of their employment. Under no circumstances shall Motorola or its employees or agents be construed to be employees of Western Digital, nor shall Motorola's employees or agents be entitled to participate in the profit sharing, pension, or other plans established for the benefit of Western Digital's employees. Under no circumstances shall Western Digital or its employees or agents be construed to be employees of Motorola, nor shall Western Digital's employees or agents be entitled to participate in the profit sharing, pension, or other plans established for the benefit of Motorola's employees.

F. EMPLOYEES

Except pursuant to mutual written consent, during the term of this Agreement Western Digital and Motorola s Semiconductor Product Sector will not recruit,

as an employee, consultant or in any other capacity, any personnel of the other party who have provided services pursuant to this Agreement.

G. SIMILAR PRODUCTS

It is understood by each party that the other has substantial independent development relating to the subject matter of this Agreement and other products. This Agreement shall

23

27

not limit a party's development, manufacture or marketing of other products with ideas, concepts, techniques, know-how, designs, formulas, algorithms or technology similar to the products that are the subject matter of this Agreement; provided that such products are developed by the developing party without reference to the other party's trade secrets or intellectual property. This Agreement shall not prohibit or restrict a party from undertaking similar efforts with third parties, including competitors of the other party, provided that such party does not breach its obligations under this Agreement.

H. NOTICES

All notices, requests, demands and other communications required or permitted hereunder, other than routine operational communications under this Agreement, shall be in writing and shall be deemed to have been duly given, made and received only when personally delivered or delivered by Federal Express or other nationally recognized courier service, or two (2) days after having been deposited in the United States mail, certified mail, postage prepaid, return receipt requested (except when such notice is a termination notice, in which event any two (2) of the delivery methods described above must be used), addressed as set forth below:

If to Western Digital: Western Digital Corporation
8105 Irvine Center Drive
Irvine, CA 92718
Attention: A. Travis White
Executive Vice President,
General Manager, Microcomputer Products

With a copy to: Western Digital Corporation
8105 Irvine Center Drive
Irvine, CA 92718
Attention: Robert L. Erickson
Vice President Law & Administration

If to Motorola: Motorola
3501 Ed Bluestein Boulevard
P.O. Box 6000
Austin, TX 78762
Attention: N.E. Stouder
Corporate Vice President, Manufacturing

24

28

With a copy to: Motorola Law Department
3501 Ed Bluestein Boulevard
P.O. Box 6000
Austin, TX 78762
Attention: Dirk Buikema, Esq.

Any party may change the address to which communications or copies are to be sent by giving notice of such change of address in conformity with the provisions of this Section for the giving of notice.

I. TERMINATION PROVISIONS

Either party will be considered to be in default if any of the following occurs: (a) it assigns this Agreement or any of its rights under this Agreement in violation of Section XIII(C), (b) it fails to perform any material obligation under this Agreement, including the obligation to pay amounts when due; (c) it makes an assignment for the benefit of its creditors, or a receiver, trustee in bankruptcy or similar officer is appointed to take charge of its assets; (d) it files for relief under state or federal bankruptcy laws; or (e) there is a substantial change in its ownership. In that event, the non-defaulting party may terminate this Agreement if the other has failed to take corrective action within 30 days after its receipt of a notice of default and intent to terminate.

J. GOVERNMENT CONTRACT CONDITIONS

If Western Digital's purchase order is placed pursuant to a U.S. Government contract: (a) under no circumstances will Motorola provide an SF1411 or any other cost data; (b) Motorola will provide an SF1412 only in limited circumstances and only upon written agreement prior to order acceptance; (c) no Government terms and conditions shall apply to this Agreement or any order unless agreed to in writing by Motorola.

K. IMPORTATION AND EXPORTATION

Both parties agree that they will comply with all U.S. export laws and that they will not directly or indirectly export, reexport, resell, ship or divert any product or technical data or software furnished hereunder to any country for which the U.S. at the time of export or reexport requires an export license or other governmental approval without first obtaining such license or approval.

L. LIMITATION OF LIABILITY

UNDER NO CIRCUMSTANCES WILL EITHER PARTY BE LIABLE FOR LOSS OF DATA, REPROCUREMENT COSTS, LOST REVENUE OR PROFITS, OR FOR ANY OTHER SPECIAL, INCIDENTAL OR CONSEQUENTIAL

25

29
DAMAGES, EVEN IF THEY WERE FORESEEABLE OR ONE PARTY HAS INFORMED THE OTHER OF THEIR POTENTIAL.

In no event shall Motorola be liable for any breach of this agreement to the extent it arises from Western Digital's breach of any of the warranties and representations made by Western Digital in the Asset Purchase Agreement.

Motorola's total liability for breach of this Agreement will not exceed the sum of Fifteen Million Dollars (\$15,000,000) plus the Unpaid Contingent Capacity Fee (the "Liability Limitation"), provided that the Liability Limitation shall not apply and shall have no force or effect, in the event that Motorola has not delivered at least seventy-five percent (75%) of the total number of Finished Wafers that Motorola has agreed to deliver under this Agreement for the period beginning three (3) months before and three (3) months after the events upon which Western Digital's claim is based ("Wafer Delivery Failure"), unless such Wafer Delivery Failure occurs as a direct result of a force majeure event as specified in Section XIII(P) hereof, for which there is no reasonable cure.

M. SECTION TITLES

Section titles as to the subject matter of particular sections herein are for convenience only and are in no way to be construed as part of this Agreement or as a limitation of the scope of the particular sections to which they refer.

N. COUNTERPARTS.

This Agreement may be executed in several counterparts, each of which shall

be deemed to be an original, but all of which shall constitute one and the same instrument.

O. TIME OF THE ESSENCE

Time is of the essence as to each and every provision of this Agreement.

P. FORCE MAJEURE

Neither party shall be in default of its obligations under this Agreement to the extent that its performance is delayed or prevented by causes beyond its reasonable control, including, without limitation, acts of God, acts of third party suppliers directly related to performance of work under this Agreement, civil disorders, acts of any civil or military authority, or judicial action. Motorola shall notify Western Digital at the earliest indication of any interruption in supplying Finished Wafers or other difficulty which may impact the availability of products under this Agreement.

26

30

Q. SEVERABILITY

If any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

R. GOVERNING LAW.

This Agreement shall be governed by and construed in accordance with the internal laws (and not the law of conflicts) of the State of California.

S. SURVIVAL

All obligations contemplated to be performed, whether as a whole or in part, after termination of this Agreement, shall in fact survive after termination of this Agreement regardless of the basis for such termination.

IN WITNESS WHEREOF, Motorola and Western Digital have caused this Agreement to be signed by their respective duly authorized officers, as of the date above first written.

MOTOROLA INC.

WESTERN DIGITAL CORPORATION

By: _____
Murry A. Goldman
Sr. Vice President
and Assistant General Manager
Semiconductor Products Section
Motorola, Inc.

By: _____
A. Travis White
Executive Vice President
MCP Operations
Western Digital Corporation

27

31

LIST IDENTIFYING CONTENTS OF OMITTED SCHEDULES
PURSUANT TO REGULATION S-K ITEM 601(b)(2)

Schedule 1.2	Finished Wafer Cycle Time Schedule
Schedule IV(D)	Partially Processed Wafer Price Schedule
Schedule VII(C)	Motorola Report Requirements
Schedule VII(D)	Western Digital Device Types
Schedule VIII(A)	Packing Criteria
Schedule VIII(B)	Quality Assurance Specifications
Schedule XI	Finished Wafer Specifications
Exhibit A	Supplier Quality Program

Registrant will furnish supplementally a copy of any omitted schedule to the Commission upon request.

32

SCHEDULE 1.9
MINIMUM DEVICE PER WAFER YIELD SCHEDULE

Western Digital Current Device Codes	Q1 1994	Q2 1994	Q3 1994	Q4 1994	Q1 1995	Q2 1995
	DPW	DPW	DPW	DPW	DPW	DPW
1028EA	*	*	*	*	*	*
3396EE	*	*	*	*	*	*
6112EB	*	*	*	*	*	*
6125EB	*	*	*	*	*	*
6140EB	*	*	*	*	*	*
7613EC	*	*	*	*	*	*
7855EB	*	*	*	*	*	*
9127ED	*	*	*	*	*	*
9133EA01	*	*	*	*	*	*
9324EC	*	*	*	*	*	*

MINIMUM DEVICES PER WAFER CALCULATION

Each month a standard deviation will be calculated from the immediately preceding three months for each Western Digital Device. A minimum device per wafer ("MDPW") will be calculated as the point * standard deviations from the mean. If the standard deviation of the Devices per Wafer for any Device type as calculated for any given month is greater than the previous month's standard deviation then the previous month's standard deviation will be used to calculate the MDPW, otherwise the current month's standard deviation will be used to calculate the MDPW.

D0 Curve

	Q1 1994	Q2 1994	Q3 1994	Q4 1994	Q1 1995	Q2 1995
DO CURVE	*	*	*	*	*	*

* Confidential portion has been omitted and filed separately with the Commission.

33

SCHEDULE 1.25
WAFER STANDARD PRICE SCHEDULE

	1994				1995			
	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4
DLM PRICE	*	*	*	*	*	*	*	*
TLM PRICE	*	*	*	*	*	*	*	*

Prices are for Finished Wafers of the Wafer types indicated delivered to Western Digital. Quarters indicated are according to the Motorola fiscal year.

* Confidential portion has been omitted and filed separately with the

Commission.

34

SCHEDULE IV(B)
WESTERN DIGITAL FINISHED WAFER CAPACITY
(Finished Wafers per Quarter)

	1st Qtr -----	2nd Qtr -----	3rd Qtr -----	4th Qtr -----
1994	*	*	*	*
1995	*	*	*	*
1996	*	*	*	*

WIP means Wafers in process in the Wafer Fab Facility as of the Effective Date of this Agreement.

* Confidential portion has been omitted and filed separately with the Commission.